

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

FORM 10-K

(Mark One)

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

For the Fiscal Year Ended December 31, 2012

OR

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

For the transition period from _____ to _____

Commission File Number: 001-35232

WAGeworks, INC.

(Exact name of Registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

**1100 Park Place, 4th Floor
San Mateo, California**

(Address of principal executive offices)

94-3351864

(I.R.S. Employer
Identification No.)

94403

(Zip Code)

(650) 577-5200

(Registrant's telephone number, including area code)

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

Title of each class
Common Stock, \$0.001 par value

Name of each exchange on which registered
The New York Stock Exchange

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

None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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

Indicate by check mark whether the registrant has submitted electronically and posted to its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

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

The aggregate market value of the registrant's common stock, \$0.001 par value per share, held by non-affiliates of the registrant on June 29, 2012, the last business day of the registrant's most recently completed second fiscal quarter, was \$144,698,814 (based on the closing sales price of the registrant's common stock on that date). This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of February 20, 2013, there were 32,175,608 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement for its 2013 Annual Meeting of the Stockholders (the "2013 Proxy Statement"), to be filed with the Securities and Exchange Commission not later than 120 days after the end of the year covered by this Annual Report, are incorporated by reference into Part III of this Annual Report where indicated.

[Table of Contents](#)

WAGEWORKS, INC.

FORM 10-K

Table of Contents

PART I

Item 1. Business	1
Item 1A. Risk Factors	19
Item 1B. Unresolved Staff Comments	35
Item 2. Properties	35
Item 3. Legal Proceedings	36
Item 4. Mine Safety Disclosures	36

PART II

Item 5. Market For Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	37
Item 6. Selected Financial Data	40
Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations	41
Item 7A. Quantitative and Qualitative Disclosures About Market Risk	63
Item 8. Financial Statements and Supplementary Data	64
Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure	101
Item 9A. Controls and Procedures	101
Item 9B. Other Information	101

PART III

Item 10. Directors, Executive Officers and Corporate Governance	104
Item 11. Executive Compensation	104
Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	104
Item 13. Certain Relationships and Related Transactions, and Director Independence	104
Item 14. Principal Accounting Fees and Services	104

PART IV

Item 15. Exhibits and Financial Statement Schedules	105
Signatures	106

[Table of Contents](#)

Forward Looking Statements

This Annual Report on Form 10-K contains forward-looking statements that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. Statements that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Forward-looking statements are often identified by the use of words such as, but not limited to, “anticipate,” “believe,” “can,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “project,” “seek,” “should,” “target,” “will,” “would” and similar expressions or variations intended to identify forward-looking statements. Such statements include, but are not limited to, statements concerning tax-advantaged consumer-directed benefits, market opportunity, our future financial and operating results, investment strategy, sales and marketing strategy, management’s plans, beliefs and objectives for future operations, technology and development, economic and industry trends or trend analysis, expectations about seasonality, opportunity for portfolio purchases, operating expenses, anticipated income tax rates, capital expenditures, cash flows and liquidity. These statements are based on the beliefs and assumptions of our management based on information currently available to us. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. You should not place undue reliance on these forward-looking statements which speak only as of the date of this Annual Report on Form 10-K. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such events.

PART I

Item 1. Business

Corporate Information

WageWorks was incorporated as a Delaware corporation in 2000. Our website address is www.wageworks.com. We make available on our website, free of charge, our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any amendments to those reports, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission (“SEC”). Our SEC reports can be accessed through the Investor Relations section of our website. The information found on our website is not part of this or any other report we file with or furnish to the SEC.

Overview

We are a leading on-demand provider of tax-advantaged programs for consumer-directed health, commuter and other employee spending account benefits, or CDBs, in the United States. We administer and operate a broad array of CDBs, including spending account management programs such as health and dependent care Flexible Spending Accounts, or FSAs, Health Savings Accounts, or HSAs, Health Reimbursement Arrangements, or HRAs, and commuter benefits, such as transit and parking programs.

We deliver our CDB programs through a highly scalable delivery model that employer clients and their employee participants may access through a standard web browser on any internet-enabled device, including computers, smart phones and other mobile devices such as tablet computers. Our on-demand delivery model eliminates the need for our employer clients to install and maintain hardware and software in order to support CDB programs and enables us to rapidly implement product enhancements across our entire user base.

Our CDB programs enable employees and their families to save money by using pre-tax dollars to pay for certain of their healthcare and commuter expenses. Employers financially benefit from our programs through reduced payroll taxes, even after factoring in our fees. Under our FSA, HSA and commuter programs, employee

[Table of Contents](#)

participants contribute funds from their pre-tax income to pay for qualified out-of-pocket healthcare expenses not fully covered by insurance, such as co-pays, deductibles and over-the-counter medical products or for commuting costs.

These employee contributions result in savings to both employees and employers. As an example, based on our average employee participant's annual FSA contribution of approximately \$1,400 and an assumed personal combined federal and state income tax rate of 35%, an employee participant will reduce his or her taxes by approximately \$490 per year by participating in an FSA. Our employer clients also realize payroll tax (i.e., FICA and Medicare) savings on the pre-tax contributions made by their employees. In the above FSA example, an employer client would save approximately \$64 per participant per year, even after the payment of our fees.

Under our HRA programs, employer clients provide their employee participants with a specified amount of available reimbursement funds to help their employee participants defray out-of-pocket medical expenses such as deductibles, co-insurance and co-payments. All amounts paid by the employer into HRAs are deductible by the employer as an ordinary business expense and are tax-free to the employee.

We believe there is significant potential for growth in the market we serve. In order to increase employee participation, we educate and advocate the use of CDB programs through a comprehensive online and offline approach. The higher the election rates in these CDB programs, the more employees save on income taxes and the more employers save on payroll taxes.

Our clients include many of the Fortune 100 and Fortune 500 and over 25,000 small- and medium-sized businesses, or SMBs. Our larger employer clients, which we refer to as enterprise clients, generally enter into three-year written service agreements and commit to pay fixed monthly fees that are set at the beginning of the contract term based on the number of employee participants enrolled in our CDB programs at the beginning of each annual enrollment period. For SMB clients, our agreements are typically for one to three year terms and the monthly fee remains constant for the plan year. In some cases, the agreements provide that the monthly fee is subject to upward revision when there is a 10% or greater increase in the number of employee participants during the plan year. In addition, we derive a portion of our revenues from interchange fees that we receive when employee participants use the prepaid debit cards we provide to them for healthcare and commuter expenses. We market and sell our CDB programs through multiple channels, including direct sales to large enterprises, direct sales and through brokers to SMBs, direct sales to industry purchasing and affiliate groups and through channel partners.

At January 31, 2013, we had approximately 2.8 million employee participants from approximately 27,000 employer clients. Our participant counts do not include our TransitChek Basic program participants, as that fare media is shipped directly to the employers and then the employers distribute the products to their employee base as the demand presents. We believe that January 31 is the most appropriate point-in-time measurement date for annual plan metrics. Although plan changes and the entry and exit of employers and participants from our programs are usually decided late in the calendar year during open enrollment to be effective on January 1, it is not unusual for employers to still be submitting updated files of participants in early January. While updates can be delayed past January, any changes from such late updates are usually minimal. Consequently, we believe the January 31 point-in-time measurement date is the most appropriate date to use as a baseline. In 2012, approximately 2.2 million WageWorks prepaid debit cards were delivered to employee participants. Through a combination of the acquisition and integration of smaller third party administrators, or TPAs, which we refer to as portfolio purchases, and organic growth, we grew our revenue from \$115.0 million in 2010 to \$135.6 million in 2011 and to \$177.3 million in 2012. Our revenues are highly diversified. Our largest employer client represented only 2.8% of our 2012 revenues and our top 10 employer clients represented only 12.5% of our 2012 revenues. We have a recurring revenue model that has been highly predictable. For each of 2010, 2011 and 2012, clients that accounted for more than 90% of our revenues (excluding interchange fees and vendor commissions) during the year have remained under contract with us in the succeeding year. Our net loss was \$17.3 million in 2010 and our net income was \$33.3 million and \$10.5 million in the years 2011 and 2012, respectively. Our total assets as of December 31 2010, 2011 and 2012 equaled \$206.8 million, \$278.7 million and \$518.8 million, respectively.

[Table of Contents](#)

Part of our growth strategy is the acquisition and integration of TPAs, which we refer to as portfolio purchases. We completed two portfolio purchases in 2012: The Choice Care Card, LLC, also known as Choice Strategies, or CS, in January 2012, and Benefit Concepts, Inc., or BCI, in December 2012. In addition, we completed the acquisition of TransitChek in February 2012.

Industry Overview

Rising Cost of Healthcare to Employers and Employees

Healthcare costs for both employers and employees continue to increase dramatically. According to a 2012 Kaiser Family Foundation Survey, since 2002, family premiums for employer-sponsored health coverage have increased by 102%. A 2012 Aon Hewitt report predicts that large employers can expect average annual premium increases of 6.3% from 2012 to 2013. To mitigate the continuing rise in healthcare costs, employers are more frequently passing these costs on to employees by increasing deductibles, out-of-pocket limits and non-network provider cost sharing and by migrating to co-insurance models-systems where employees pay a percentage of the out-of-pocket costs for each healthcare service. As a result, according to the Aon Hewitt report, average employee out-of-pocket healthcare costs are expected to increase 13.4% from 2012 to 2013.

Rising Commuter Costs and Impacts on the Environment

We believe that rising commuter costs and a new era of corporate social responsibility have also led to the creation of a variety of programs that are aimed at helping employees understand and reduce their carbon footprint by encouraging alternatives to driving to work. These alternatives include carpooling, cycling and the use of public transportation. According to a 2012 American Public Transportation Association report, over the last seven years since 2005, transit travel has increased 12 percent and the population has grown 6 percent, while highway travel has stopped growing. As gasoline prices continue to rise, we believe employees will be more inclined to utilize public transportation as a means of commuting to work.

Establishment of Tax-Advantaged Spending Accounts

Beginning in the late 1970's, federal laws have been enacted to establish ways for employers to offer structured benefit plans to their employees that lessen overall healthcare and transportation costs through the use of tax-advantaged spending accounts.

Tax-advantaged spending accounts for healthcare were first authorized in 1978. The legislation established a set of rules under which an employer could offer a special benefit plan that allows employees to set aside a portion of their earnings on a pre-tax basis, which are exempt from income and payroll taxes, to pay for certain expenses that are primarily related to healthcare, but also cover dependent care, vision and dental expenses. This benefit was called a "flex" or "cafeteria" plan, and a participating employee's funds were placed into an FSA. In 2012, there were approximately 35 million active FSA accounts.

Subsequent legislation enacted in 1980 established HRAs, which are employer-funded spending accounts with rules and tax treatment that generally mirror FSAs, but allow employers to have greater control over eligible expenditure designations and plan administration. In 2003, the Medicare Prescription Drug, Improvement, and Modernization Act established another closely related product, the HSA. HSAs also offer tax-advantaged treatment for contributed funds, but include savings account features and are only available to individuals who are enrolled in a qualified High Deductible Health Plan, or HDHP. According to a 2013 Employee Benefit Research Institute report, the combined number of HSAs and HRAs was 1.3 million in 2006, 5.4 million in 2010, 8.4 million in 2011 and 11.6 million in 2012.

Commuter benefits were established in 1998 to provide tax incentives to employees to encourage the use of mass transportation. As with tax-advantaged healthcare accounts, commuter accounts allow employee

[Table of Contents](#)

participants to set aside earnings on a pre-tax basis to cover commuter rail, subway, bus, commuter-related parking and eligible vanpool expenses. In 2009, the American Recovery and Reinvestment Act increased the monthly pre-tax benefit cap for commuter accounts from \$120 to \$230, a level that was maintained through 2011, and brought parity between allowable monthly parking and transit benefits. In 2012, the temporary extension of the \$230 monthly pre-tax benefit cap for commuter accounts expired and the cap was reduced from \$230 to \$125. In early 2012, the monthly parking benefit cap was increased from \$230 to \$245 due to an automatic cost of living increase. In January 2013, Congress increased the commuter account benefit cap to be on par with the parking benefit cap, retroactive to January 1, 2012.

Challenges of Tax-Advantaged CDBs for Employers

Employers face numerous challenges in implementing and administering CDBs, including:

- *High regulatory risks and related compliance costs.* The rules and regulations applicable to implementing and administering CDBs in-house are complex and continually changing. Failure to comply can lead to disqualification of the entire plan, as well as severe penalties. We believe, based on our industry experience and interactions with other CDB providers including interactions with potential and actual employer clients, that most employers do not have the internal resources required to assure such compliance and the cost of obtaining such internal resources is high.
- *Education to increase employee usage of plan benefits.* Given the complexity of CDBs, employers are challenged with effectively communicating plan benefits to employees in order to increase employee participation.
- *Effectiveness of benefit programs.* In order to help employers maximize the value of these programs, employers need quality data and analysis to help them understand employee participation, measure the effectiveness and efficiency of their CDB programs and improve cost management.

If not successfully met, these challenges can diminish the value employees and employers receive from CDBs and can lead to unnecessary friction between employees and their employers.

Fragmented Landscape of CDB Providers

The current market for administrators of CDBs is highly fragmented. Larger service providers, including health insurance carriers, payroll providers, human resources consulting firms and commercial banks, generally offer CDB programs as non-core offerings bundled with their main products and services. The technology these larger service providers employ for many CDBs is often licensed or outsourced. Their relative lack of focus on CDB plans often restricts the breadth of their offerings in the CDB area. As a result, many of these providers only offer healthcare benefits and do not offer commuter or other CDBs.

There are also hundreds of TPAs that provide administration services for CDBs. We believe many regional TPAs lack sufficient resources to rapidly implement new technologies or to tailor their operations and service offerings in response to evolving rules and regulations.

We believe that the increasing regulation of the healthcare industry, and the increased demand for a variety of tax-advantaged CDBs will lead employers to seek providers that have a principal focus on CDBs and can provide best-in-class, full-featured and scalable programs.

Our CDB Programs

We focus on providing CDB programs to employer clients of any size. Our CDB programs enable our employer clients and their employee participants to achieve significant tax savings through the use of tax-advantaged spending programs. Using our CDB programs, employee participants contribute a portion of either their pre-tax income or employer-provided funds to pay for qualified out-of-pocket healthcare expenses not fully

[Table of Contents](#)

covered by insurance, such as co-pays, deductibles and over-the-counter medical products, as well as to pay for commuting expenses. Our employer clients also benefit financially from our programs through reduced payroll taxes, even after payment of our fees.

Our programs are designed to increase employee participation in employer clients' CDB offerings. We believe our employer clients and their employee participants benefit from our superior customer service, efficient workflow processes and advanced monitoring applications. The quality of our customer support has resulted in high levels of client satisfaction and service level performance. We employ a wide range of sophisticated tools to communicate available benefit options to employees and measure the effectiveness of CDB program performance.

We deliver our CDB programs through a highly scalable delivery model under which we host and maintain the benefits programs that we provide to our employer clients. Our on-demand delivery model enables employer clients and their employee participants to implement, access and use our proprietary software remotely through a standard web browser on any internet-enabled device, including computers, smart phones and other mobile devices such as tablet computers. We are able to implement improvements to our programs in a rapid and uniform manner because updates and upgrades to our programs are managed by us on behalf of our clients. Our CDB programs are delivered through integrated platforms that eliminate the need to support multiple versions of our products and multiple websites, and enable us to focus more of our development resources and efforts on the creation of innovative new functionality and features for our employer clients and employee participants. We, therefore, believe that our on-demand model requires less up-front investment by our employer clients than traditional third-party software and hardware options, as well as less personnel resources and implementation services.

The following is a summary of the principal benefits that our CDB programs offer to our employer clients and their employee participants:

Employer Clients

- Achieve FICA and Medicare tax savings on employee payroll deductions through increased employee participation in FSA, HSA and commuter programs
- Realize tax deductions on contributions to employee HRAs
- Outsource the risk and cost of compliance with regulation and industry standards related to CDBs
- Help increase employee awareness of CDB programs
- Improve ability to monitor the effectiveness of CDB programs through robust reporting capabilities
- Enable to offer best-in-class CDB benefits that are not tied to a single insurance provider
- Eliminate cost of on-premises information technology infrastructure management, systems security and disaster recovery
- Encourage activities and behaviors that may result in a healthier and more socially responsible workforce

Employee Participants

- Reduce after-tax out-of-pocket healthcare and commuting costs through tax-advantaged spending
- Manage CDBs through an easy to use online interface
- Enhance convenience through multiple options for the payment, submission and reimbursement of claims, including the use of a prepaid debit card

- Access to a broader selection of CDB programs to customize their health package to meet their specific needs

Key Attributes of Our Business

Key attributes of our business include the following:

- *Recurring revenue model with high visibility.* Our revenue is derived almost entirely from recurring monthly fees paid by our employer clients. We typically sign three-year agreements with our enterprise clients and one to three-year agreements with our SMB clients and, for each of 2010, 2011 and 2012, employer clients that accounted for more than 90% of our revenues (excluding interchange fees and vendor commissions) during each year remained under contract with us in the succeeding year.
- *Focus on quality of service.* Our focus is to consistently deliver the highest quality service to our employer clients and their employee participants, which primarily means providing employee participants with timely and accurate responses to their inquiries, claims submissions and other account transactions. We normally enter into service level agreements with our employer clients where we incur financial penalties if we fail to meet the call and claims processing service standards outlined in those agreements. We have exceeded our contractual service levels to our enterprise employer clients each month since May 2007. We typically process 99% of claims within two business days of receipt. This consistent record of service performance includes six consecutive Januarys, the month in which our call volume is substantially greater than the average month.
- *Leading-edge scalable technology platforms.* Our CDB programs employ an easy-to-use website interface that provides our employer clients with robust data and reporting capabilities to help them manage their benefits offerings and healthcare spending, and provides employee participants with direct access to their accounts, claims history and balance information. Employee participants can also submit claims and upload receipts online. Our highly scalable on-demand technology infrastructure supports employers of any size, from SMBs to Fortune 100 companies.
- *Ability to identify, execute and integrate portfolio purchases.* As demonstrated by the six portfolio purchases and one acquisition we have made since 2007, we have a proven ability to successfully identify and execute portfolio purchases and integrate the operations of these complementary businesses to expand our employer client base.
- *Experienced, proven management team.* Our senior management team has significant operating and service delivery experience with industry-leading businesses in healthcare, such as Kaiser Permanente, transaction processing, such as Alliance Data Systems and First Data Corporation, and financial services, such as American Express. Since 2007, our management team has focused on making improvements to our CDB programs and the implementation of

improved controls and processes. As a result, we have achieved significant operational efficiencies, consistently high service levels and improved client and participant satisfaction levels.

- *Large and highly diversified employer client base.* Our current employer clients include many of the Fortune 100 and Fortune 500. Our largest employer client represented only 2.8% of our 2012 revenues and our top 10 employer clients represented only 12.5% of our 2012 revenues.
- *Focus on CDB programs.* Our core business is providing a comprehensive array of full-featured CDB programs to employers. Our technology and development resources are exclusively dedicated to creating, enhancing and optimizing our CDB programs and technology platforms to better support our employer clients and their employee participants. In contrast, many of our competitors, which include health insurance carriers, human resources consulting firms and payroll providers, generally offer CDBs as non-core service offerings.

Our Strategy

Our objective is to enhance our position as a leading provider of CDB account management programs. The key elements of our growth strategy are to:

- *Increase employee adoption and usage.* We believe that significant opportunities exist to substantially increase employee participation levels within our existing client base. As of the end of 2012, employee participation levels in FSA benefit programs that we serviced for top tier clients averaged 26.0%. We aim to increase employee enrollment through the continued promotion of our CDB programs, including through the education and communication programs that we offer to our employer clients, and the investments we are making with our new Chief Marketing Officer on board.
- *Cross-sell new products to existing employer clients.* We believe that our broad portfolio of CDB products and strong employer client relationships create a significant opportunity for us to cross-sell additional CDB programs to our existing employer clients. For example, many of our employer clients currently utilize us for only healthcare or commuter CDB programs, but not both.
- *Capitalize on portfolio purchases.* We intend to continue to execute our focused strategy to broaden our employer client base through portfolio purchases. There are several hundred regional TPA portfolios that we continually monitor and evaluate in order to maintain a robust pipeline of potential candidates for purchase. We have demonstrated our ability to successfully integrate complementary businesses, as evidenced by the six TPA portfolio purchases and one acquisition we have made since 2007. Portfolio purchases have been the principal driver of our revenue growth from 2009 through 2012.
- *Leverage multiple sales channels.* We believe that we can continue to gain market share with both Fortune 1000 companies and SMBs

by leveraging our multiple sales channels. Our enterprise sales force generates new large client account relationships through employer prospecting, channel partnerships, consultant relationships and strategic relationships. We will also continue to use an extensive network of brokers to reach SMBs. We believe that there is a significant growth opportunity in this sales channel, as there are millions of SMBs throughout the United States and the penetration of CDBs in this population is much lower than that for larger companies.

- *Continually enhance our products and develop new products and functionality*. We believe that our focus on CDB programs and the breadth of our client base has provided us with a deep understanding of our employer clients' needs. We believe that this knowledge enables us to provide innovative CDB programs to our employer clients and their employee participants. Our easy to use process for online claim submissions is an example of our innovation.

Starting in 2010, our growth strategy has shifted from a singular focus on adding new employer clients to also seeking to take advantage of our substantial base of existing employer clients and their employees who are eligible to participate in our CDB programs. This shift has included initiatives to increase participation in pre-tax healthcare and commuter programs by targeting awareness and education at non-participating eligible employees, and the addition of dedicated sales personnel to focus on the specialized cross-selling of healthcare programs to our existing commuter employer clients and vice versa. With a new Chief Marketing Officer on board since September 2012, we will be increasing our investment in these programs including through the use of social media.

Our Services

Flexible Spending Accounts

Healthcare

We offer flexible spending accounts, or FSAs, which are employer-sponsored CDBs that enable employees to set aside pre-tax dollars to pay for eligible healthcare expenses that are not generally covered by insurance, such as co-pays, deductibles and over-the-counter medical products, as well as vision expenses, orthodontia, medical devices and autism treatments. Employers benefit from payroll tax savings on the pre-tax FSA contributions from the employee.

During each annual open enrollment period, an employee elects an amount to be placed into an FSA for the following plan year. The contributed amount is then deducted in equal increments out of each paycheck on a pre-tax basis over the plan year. The entire annual election amount is available to the participant for use starting on the first day of the plan year and cannot be changed except for the occurrence of certain life events such as a birth, death, marriage or divorce. During the course of the plan year, we are able to automatically process a substantial majority of our employee participants' claims for reimbursement. The remaining claims for reimbursement are independently adjudicated by us to ensure that FSA funds are used only for qualified healthcare expenses. Any unused funds that remain in the account at the end of the plan year are forfeited by the employee participant and revert to the employer, and are generally used by the employer to defray the administrative expenses of the FSA plans. Forfeitures also reduce excess claims costs that may have been incurred by employee participants who voluntarily or involuntarily leave their employ before the end of a plan year.

The Affordable Care Act imposes a \$2,500 limit, indexed to inflation, on pre-tax dollar employee contributions made to a healthcare FSA for plan years that begin on or after January 1, 2013. Employers themselves are able to contribute additional amounts in excess of this statutory limit, and may choose to do so in an effort to mitigate the impact of rising healthcare costs on their employees.

[Table of Contents](#)

Dependent Care

We also offer FSA programs for dependent care plans. These plans allow employees to set aside pre-tax dollars to pay for eligible dependent care expenses, which typically include child care or day care expenses but may also include expenses incurred from adult and elder care. Current laws and regulations limit the amount of pre-tax dollars employees can contribute to dependent care FSAs to \$5,000 per tax year. Like healthcare FSAs, employers can also contribute funds to employees' dependent care FSAs, subject to a statutory \$5,000 annual limit on total contributions. As with healthcare FSAs, employers realize payroll tax savings on the pre-tax dependent care FSA contributions made by their employees.

Health Reimbursement Arrangements

We offer employer-funded health reimbursement arrangements, or HRAs. Under HRAs, employers provide their employees with a specified amount of reimbursement funds that are available to help employees defray their out-of-pocket healthcare expenses, such as deductibles, co-insurance and co-payments. HRAs may only be funded by employers and, while there is no limitation on how much employers may contribute, employers are required to establish the programs in such a way as to prevent discrimination in favor of highly compensated employees. HRAs must either be considered an excepted benefit (for example, a dental-only HRA or a retiree HRA) or be integrated with another group health plan. HRAs can be customized by employers so employers have the freedom to determine what expenses are eligible for reimbursement under these arrangements. At the end of the plan year, employers have the option to allow all, or a portion, of the unused funds to roll over and accumulate year-to-year if not spent. All amounts paid by employers into HRAs are deductible by the employer and tax-free to the employee.

Health Savings Accounts

We also administer health savings accounts, or HSAs, for employers that allow employee participants to invest funds to be used for qualified healthcare expenses at any time without federal tax liability or penalty. Such funds are also exempt from payroll taxes for employers. Both employees and employers can make contributions to an HSA. HSA funds are held by a custodian, accumulate year-to-year if not spent and are portable if a participant leaves his employer. Our HSA programs are designed to offer employers a choice of third party custodian to hold the funds as well as a variety of investment options within each custodial offering that enables employers the opportunity to explore a broader assortment of funds to offer their employees.

In order to be eligible for an HSA, an employee must be enrolled in a qualified High Deductible Health Plan, or HDHP, that is HSA-compatible and not be covered by any other impermissible coverage. HSAs have annual contribution limits. For 2013, the annual HSA contribution limit is \$3,250 for an individual and \$6,450 for a family, with allowable catch-up annual contributions of \$1,000 for those aged 55 and older so that those individuals can accumulate adequate funds to meet their healthcare expense obligations. Withdrawals for non-medical expenses are treated similarly to those in an individual retirement account. Specifically, such withdrawals may provide tax advantages if taken after retirement age, and may incur penalties if taken earlier.

Commuter Programs

We also offer qualified transportation fringe benefits. The federal tax code currently permits employers to provide the following commuter benefits to employees on a tax-free basis:

- qualified parking;
- transit passes;
- transportation in a commuter highway vehicle, or vanpooling, if such transportation is in connection with travel between the employee's residence and place of employment; and
- qualified bicycle commuting reimbursement.

[Table of Contents](#)

For commuter benefits, the maximum monthly amount that employees can exclude from gross income for federal income tax purposes and, in most cases, state income tax purposes is subject to a statutory limit that is periodically adjusted for inflation. For 2013, the monthly maximum is \$245 for transit or vanpooling, \$245 for parking and \$20 for bicycle reimbursement. During 2012, the pretax limit for qualified transit passes and vanpooling benefits decreased to \$125 per month (although qualified parking benefits were \$245 per month). The American Taxpayer Relief Act, which was signed into law on January 2, 2013, retroactively adjusted the pretax limit for transit passes and vanpooling for 2012 to \$245 per month.

We offer five variations of pre-tax commuter benefit programs: Commuter Order Model (COM), Commuter Account Model (CAM), Commuter Express, TransitChek Premium and TransitChek Basic. Each of these programs is described below.

While these programs differ in terms of funding, implementation and available services, they include the following common features unless otherwise noted:

- home delivery of transit passes and vouchers (other than TransitChek Basic);
- electronic loading of transit agency smartcards (where available and other than TransitChek Basic);
- an express electronic payment feature for selected transit and vanpool operators (other than TransitChek Premium and TransitChek Basic);
- access to transit vouchers (where available and accepted);
- a prepaid debit card used to pay for transit purchases or parking expenses;
- a direct monthly payment to parking providers for eligible parking (other than TransitChek Basic);
- Park-n-Ride Support, which provides parking at or near transit stations or stops (other than TransitChek Premium and TransitChek Basic);
- a cash reimbursement process for parking, vanpool, and certain other transit expenses (other than TransitChek Basic); and
- employer managed parking, which includes support for employer owned, managed, or leased parking, including customization capability by parking facility (COM only).

Under our COM, which we target to medium-sized and larger enterprise clients, employees place orders for transit, vanpool or parking benefits through our website or our toll-free customer service center. Employers pay us for transit and parking orders in advance. Employers either provide the benefit as a tax-free employer-paid fringe benefit, or reimburse themselves through payroll deductions from the participants, or a combination of both, all of which are exempt from payroll and federal income taxes and, in most cases, state income taxes as well, up to a statutory monthly cap. In addition to the tax-free pretax payroll deductions, employees may also supplement the amounts in their account with their own personal funds, although such supplemental funds, which may be made through payroll deductions, are contributed on an after-tax basis.

Under our CAM, which we target to medium-sized and larger enterprise clients, and particularly to those clients in the public sector, employees make pretax payroll deduction elections that employers use to fund accounts that we maintain. These deductions are exempt from payroll and federal income taxes and, in most cases, state income taxes as well, up to a statutory monthly cap. Participants use the funds in their accounts either automatically to fund a prepaid debit card that can be used to make transit or parking purchases at eligible locations or to purchase a transit or parking pass directly on our website. In addition to the payroll deductions, employees may also supplement the amounts in their account with their own personal funds, although such supplemental funds are contributed on an after-tax basis.

Under our Commuter Express program, which we target to SMBs, employers create transit and parking accounts on behalf of their employees using a web-based application on our proprietary platform. Employees

[Table of Contents](#)

then designate a monthly election amount, the employer submits the appropriate funds to us and we deposit those funds into a transit or parking account, which can be used to fund a variety of transit and parking options. All such employee elections are exempt from federal income taxes and, in most cases, state income taxes as well, up to a statutory monthly cap. The employer usually recognizes a financial benefit because it does not pay FICA or Medicare tax on amounts contributed by its employees. Employees may also supplement the amounts in their account with their own personal funds, although such supplemental funds are contributed on an after-tax basis.

Under our TransitChek Premium program, which we target primarily to SMBs in the greater New York Metropolitan market, employers offer their employees the ability to enroll for transit, vanpool, parking or bicycle benefits through our TransitChek Account Management (TAMS) website or our toll-free customer service center. Employer clients pay us for the selected benefit in advance. Other than the bicycle benefit, employer clients either provide the benefit as tax-free employer-paid fringe benefit, or reimburse themselves through payroll deductions from the participants, or a combination of both, all of which are exempt from payroll and federal income taxes and, in most cases, state income tax as well, up to a statutory monthly cap. In addition to the tax free fringe and pretax payroll deductions, employees may also supplement the amounts in their account with their own personal funds, although such supplemental funds, which may be made through payroll deductions, are contributed on an after-tax basis. The bicycle benefit may only be offered as an employer paid fringe benefit. In all cases, the elections are exempt from federal income taxes and, in most cases, state income taxes as well.

Under our TransitChek Basic program, employee participants enroll through their employers for pre-tax commuter benefit programs. Employers may offer only transit and parking benefits under this program. These benefits may be offered as a monthly pre-tax election deducted from an employee's salary, an employer-paid fringe benefit on which employees pay no taxes, or a combination of both. Employer clients order products in bulk on behalf of their employees and handle the administration and distribution of the benefit to their employee participants. In all cases, the elections are exempt from federal income taxes and, in most cases, state income taxes as well, up to a statutory monthly cap. The employer recognizes a financial benefit because it does not pay FICA or Medicare tax on amounts contributed by its employees.

Our commuter programs include a parking catalog with over 3,000 selectable locations and purchasable transit products from over 650 transit operators covering every major metropolitan area. At January 31, 2013, we offered over 137,000 different transportation products and currently we fulfill over 10 million commuter orders, including passes, smartcards, parking payments, vanpool vouchers and commuter cards, to commuters and their employers on an annual basis. We sell our commuter program to employers of all sizes and industries.

COBRA

We offer Consolidated Omnibus Budget Reconciliation Act, or COBRA, continuation services to employer clients to meet the employer's obligation to make available continuation of coverage for participants who are no longer eligible for the employer's COBRA covered benefits which includes medical, dental, vision, HRAs and certain healthcare FSAs. COBRA requires employers to make health coverage available for terminated employees for a period of up to 36 months post-termination. As part of our COBRA program, we offer a direct billing service where former employee participants pay for coverage they elect to continue. We handle the accounting and customer service for these separated employees, as well as interfacing with the carrier regarding the employees' eligibility. At January 31, 2013, we provided COBRA services to approximately 1,300 employer clients.

Our Employer Clients

As of January 31, 2013, we had over 27,000 employer clients across a broad range of industries with approximately 2.8 million participating employees. Our employer clients include many of the Fortune 100 and Fortune 500 and over 25,000 SMBs.

[Table of Contents](#)

Our Technology Platforms

We run our services on two distinct on-demand technology platforms that have been designed to be highly scalable, and we closely monitor utilization of all aspects of our platforms for capacity planning purposes. Our existing infrastructure has been designed with sufficient capacity to meet our current and planned future needs.

The majority of our accounts run on our integrated and scalable proprietary platform, which we call our v5 platform. We generally use our v5 platform for medium-sized and enterprise clients. Our v5 platform supports all account administrative functions and provides integration with the systems used by employer clients, payment networks, health plans and key suppliers. Our v5 platform offers employer clients and employee participants a variety of payment features, in addition to traditional reimbursement, for our healthcare, commuter and other employee spending plans. Our v5 platform features a flexible, rules-based engine that includes multi-wallet functionality and is highly configurable to accommodate custom client plan designs and service requests. This multi-wallet functionality allows us to include more than one type of healthcare account (FSA, HRA and HSA) on one card, and helps ensure that funds that are otherwise subject to forfeiture at the end of a plan year are used first to pay for eligible expenses. Our v5 platform also allows for automated file interfacing with clients and external vendors, including card processors, custodian banks, health plan providers, claims and payment vendors. We have a daily settlement system and have implemented internal reporting and monitoring systems to ensure quality control on a daily basis.

In addition to our v5 platform, we also operate a technology platform known as WinFlexOne, which has been specifically designed and enhanced to address the needs of SMBs. While the overall features and capabilities of WinFlexOne are comparable to v5, WinFlexOne utilizes a simpler set of interfaces and product configurations that better accommodate the more limited administrative capabilities and needs of small employers.

In addition to on-going enhancements to our mobile platform, in September 2012 we rolled out a new participant website that includes a technology upgrade, improved navigation, a new look and feel and mobile and tablet device compatibility. Some of the enhanced capability now available includes our new "Pick & Process" feature which allows participants to direct how each claim received from a health plan is processed and the ability for participants to electronically view all claim and receipt images submitted via our participant website or EZ Receipts mobile application. Our health and wellness offerings were also expanded over the past year to include online claims for our wellness product and the integration of a Wellness Portal in June 2012. Our Wellness Portal offers participants helpful health and wellness information via the internet. Through our Wellness Portal, we offer searchable health and wellness content, educational condition videos, information on over-the-counter and prescription medicines, a symptom checker, nutritional information and recipes, tips, aids, tools and calculators, such as immunization schedules and a calories burned calculator.

Operations

Operation Support Services

We provide operational support services to our clients, including customer support center servicing and claims processing.

Our customer support center servicing team is responsible for handling all incoming calls from our employee participants and is focused on continually improving the participants' customer service experience. Our team is trained to provide support on all our product offerings and is cross trained to support our claims servicing team. The customer support center servicing team is responsible for resolving any issues or problems an employee participant may have, including: education as to how our programs work; to what benefits an employee participant may be entitled; how to submit a claim for reimbursement; and why an employee participant may need to provide additional detail before a particular transaction is approved. We also have an executive escalations team that is trained to respond to any significant service issues that arise. Our customer support center team serviced approximately 3.1 million calls in 2012.

[Table of Contents](#)

Our claims servicing team is responsible for processing all incoming claims for payment or reimbursement directly to providers or participants. This team reviews and adjudicates claims to ensure they meet all compliance and employer plan requirements and communicates with participants regarding the status of their claims using our in-house claims center technology tool. Like the customer support center servicing team, the claims servicing team is trained to support the customer support center servicing team when demand dictates. In 2012, the claims servicing team processed approximately 6.8 million claims and card use verification forms.

In an effort to increase our service efficiency and maintain our high-quality high-touch approach, we have outsourced and trained additional resources that we can use to support our customer support center and claims services teams during busy times such as open enrollment. All of these outsourced resources go through the same rigorous training as our own customer support center and claims servicing teams, and we believe that they provide the same level of quality service as our own employees.

Our operations support team is also responsible for processing and coordinating all activities required to support our high volume transaction business, including:

- managing prepaid funds and reimbursement payments from client employers to settle participant transactions;
- monitoring all card spending, authorizations and settlements with the transaction processors;
- delivering electronic and paper statements directly to participants;
- delivering “explanation of benefits” forms directly to participants;
- delivering healthcare and commuter cards and passes directly to participants; and
- managing process improvement projects across our organization.

Our operations support team utilizes both our v5 and WinFlexOne on-demand platforms to deliver products and services to clients and participants. In addition, we have supporting applications provided by third party vendors, the most significant of which is Fidelity National Information Services, which provides card network switching and settlement services, and Fiserv, Inc., which handles fulfillment of our printed healthcare statements, explanation of benefits and payment statements and open enrollment guides.

In 2012, our operations team delivered approximately 2.2 million healthcare and commuter prepaid debit cards, and fulfilled over 10 million commuter products to employees.

We also have a professional services team that is responsible for coordinating all activities related to the implementation, transition and on-board of new employer clients, assisting our existing clients with the addition of new services to their accounts and transitioning clients that we acquire from portfolio purchases to our platforms. This team also coordinates project planning to ensure that the startup of new programs coincide with the employer client’s new plan year and acts as a client liaison to keep the client informed of the implementation status. In addition, our professional services team coordinates the completion of requests for proposals in response to new business prospects and works directly with all other functions in our organization to ensure each employer client receives consistent quality service.

Employer Client Services

We assign each employer client to a regionally aligned account team with a relationship manager who functions as the client’s single point of contact. Our relationship managers are trained on all of our account offerings and receive prompt updates from internal subject matter experts on how regulatory or operational changes may impact a particular program or procedure. Our account service consultants, who are responsible for day-to-day management of client data, and our service account representatives, who are subject matter experts on new or specific aspects of our business, work closely with the relationship manager to ensure that our employer clients receive high-quality consultative service.

[Table of Contents](#)

We provide assistance to our enterprise clients with their open enrollment processes. Our employer clients have an annual open enrollment period during which their employees have the opportunity to enroll, re-enroll or change their benefit elections for the upcoming plan year. We provide our employer clients with tools, such as educational information, calculators, video, webinars and onsite support to help facilitate their open enrollment and help drive employee participation in our programs.

We also provide both pre- and post-enrollment consultation services to employer clients to ensure that they utilize our services in a way that fits with their overall approach to employee benefit plans for the upcoming year. These consultations include providing employer clients with robust data regarding spend patterns, participation and service utilization, such as website usage, online claims submissions and participant feedback, to ensure maximum employee participation in their benefits programs. Our employer client services team also ensures that any platform or product changes are properly communicated to and adopted by our clients. Examples of these changes include service enhancements, such as online claims processing, the launch of our mobile application and website process changes.

We have relationships with a significant number of regional transit authorities, and have a large catalog of commuter pass offerings. Our employer client services team ensures that our commuter clients' employee participants are kept informed about rate changes, new pricing schemes and the adoption of new technologies, such as smart cards.

Sales and Business Development

We grow our employer client base through our various sales channels and through other business development efforts.

Sales

We sell our CDB programs to our employer clients through three different sales channels, each of which targets a distinct group of clients.

Enterprise Sales. Our enterprise sales force targets Fortune 1000 companies and generates new large account relationships through employer prospecting, consultant relationships and strategic partnerships. Our sales process includes responding to requests for proposals, making client presentations and providing demonstrations of our v5 platform, and is focused on both securing new accounts as well as cross-selling additional products to existing clients.

SMB Distribution Channel. Our SMB distribution channel complements our enterprise sales channel and consists of third party advisors, including insurance agents and benefits consultants who typically have two to three enterprise clients and several hundred smaller employer clients, and institutional resellers, including regional and national insurance carriers, health plans, payroll providers, commercial banks and TPAs, who sell our CDB programs to smaller employers along with their own complementary products. We provide CDB programs to our resellers who either rebrand our programs under their own name or co-brand the programs with us.

Group Purchasing Organizations. We also sell our programs through group purchasing organizations in which we negotiate a standard service contract with group purchasing organizations that are formed by industry specific employers to cover their members. Once the standard contract and pricing have been negotiated, we are able to add additional employers that are members of the group at a low incremental cost.

Business Development

In addition to our sales channels, we utilize portfolio purchases as a business development strategy to broaden our employer client base and to acquire new employer clients. Since 2007, we have purchased CDB portfolios of six TPAs: MHM Resources, or MHM, in September 2007, Creative Benefits, or CB, in September 2008, Planned Benefit Systems, or PBS, in August 2010, the CDB assets of a division of Fringe Benefits Management Company, or FBM, in November 2010, CS in January 2012 and BCI in December 2012. In addition, we completed one acquisition, TC. We migrate acquired clients to our proprietary technology platforms over time following the completion of a portfolio purchase. The acquired portfolios often contain a mix of large employer clients and SMB clients. In general, larger clients will be transitioned to our v5 platform and smaller clients will be transitioned to the WinFlexOne platform. This process is usually completed over a 12-to-24-month period. In connection with these portfolio purchases, we have leveraged the ease of integration and efficiencies afforded by our on-demand software platforms and cross-sold additional CDB products and services to many acquired employer clients.

Marketing

We market ourselves as a provider of CDB programs and services through three primary channels.

Public Communications

Our public communications efforts include:

- Our public websites, which include information about WageWorks, our CDB programs and developments in the CDB industry, generally;
- Our nationwide media campaign to educate the public about CDBs, which includes broadcast, print and online media stories, as well as utilization of social media;
- Participation in trade shows, conferences and other events designed to educate the public about CDBs; and
- Involvement with various industry organizations, such as the Employers Council on Flexible Compensation, the Special Interest Group for IIAS Standards, the HSA Council and the Society of Human Resource Management.

Client Communications

Our client communications initiatives include:

- Publishing client newsletters with information about us, our products and the industry;
- Providing clients with educational programs, such as webinars and white papers;
- Creating education and awareness tools for employees to support clients' annual open enrollment processes; and
- Providing clients with regulatory updates and guidance.

Participant Communications

Our participant communications efforts include:

- Providing open enrollment materials that are easy for participants to understand and use to make a decision;
- Preparing welcome materials and introductory guides to help new participants get started; and

[Table of Contents](#)

- Providing ongoing educational resources for participants regarding program features, benefits and regulatory changes.

We also regularly engage in advocacy efforts to educate legislators and regulators about the importance of retaining and expanding the availability of CDBs for employees. For example, we worked closely with legislators to reestablish parity of the monthly pre-tax benefit caps for the parking and transit statutory limits. In addition, we continue to work to eliminate the forfeiture rule associated with FSAs and to improve the mechanical aspects of Health Reimbursement Arrangements.

Government Regulation

Our business is subject to extensive, complex and rapidly changing federal and state laws and regulations.

IRS Regulations

We are subject to applicable Internal Revenue Service regulations, which lay the foundation for tax savings and eligible expenses under the CDB programs we administer. Each year, the IRS issues guidance regarding employee plans.

ERISA

Certain of our CDB programs are covered by the Employee Retirement Income Security Act of 1974, as amended, or ERISA, which governs the structure of “employee benefits plans.” ERISA does not apply to dependent care FSAs, HSAs or any of our commuter programs, and does not typically apply to agreements with churches or governments. ERISA generally imposes extensive reporting requirements on employers, as well as an obligation to provide detailed disclosure to covered individuals, which includes both employees and beneficiaries. The Department of Labor can bring enforcement actions or assess penalties against employers for failing to comply with ERISA’s requirements. Participants may also file lawsuits against employers under ERISA.

HIPAA, Privacy and Data Security Regulations

In connection with processing data on behalf of our clients and participants, we frequently undertake or are subject to specific compliance obligations under privacy and data security-related laws, including the Health Insurance Portability and Accountability Act of 1996, or HIPAA, and related state laws. We are also subject to federal and state security breach notification laws, as well as state laws regulating the processing of personal information, including laws governing the collection, use and disclosure of social security numbers and related identifiers. As part of the payment-related aspects of our business, we may also undertake security-related obligations arising out of the Gramm-Leach-Bliley Act and the Payment Card Industry guidelines applicable to card systems.

Department of Labor

The Department of Labor, or the DOL, is responsible for issuing guidance under any component plans that are subject to ERISA, including healthcare FSAs and HRAs.

The DOL issues regulations, technical releases and other pieces of guidance that apply to employee benefit plans generally. In addition, in response to a request by an individual or an organization, the DOL’s Employee Benefits Security Administration may issue an advisory opinion that interprets and applies ERISA to a specific situation, including issues related to consumer-directed healthcare accounts.

[Table of Contents](#)

Centers for Medicare and Medicaid Services / Department of Health and Human Services

The Centers for Medicare and Medicaid Services, or CMS, is also involved in the oversight of the group health plans we administer as a division of the Department of Health and Human Services, or HHS. In addition to the IRS, Department of Treasury, and the Department of Labor, CMS has responsibility for enforcement and implementation of many of the requirements of health care reform. HHS has responsibility over enforcement of the HIPAA privacy rules.

Healthcare Reform

In March 2010, the federal government enacted significant reforms to healthcare legislation through the Patient Protection and Affordable Care Act, or PPACA, and the Healthcare and Education Reconciliation Act of 2010, or HCERA. These laws amended various provisions in many federal laws, including the Internal Revenue Code of 1986, as amended, or the Code, and ERISA. These amendments include numerous coverage changes affecting group health plans, which now apply to insurers and governmental plans, as well as employer-sponsored health plans, including self-insured plans.

Dodd-Frank Act and Durbin Amendment

In July 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, which includes the Durbin Amendment to the Electronic Fund Transfer Act. On June 29, 2011, final rules were issued that implement interchange transaction fee restrictions and prohibitions against payment card network exclusivity arrangements and transaction routing restrictions related to the processing of electronic debit transactions. Although the rules do not include an explicit exemption for health benefit debit cards, they do contain a general purpose reloadable prepaid card exception that exempts almost all of our CDB programs. In addition, the rules call for a delay in the implementation date of the network exclusivity rules until April 1, 2013. We do not currently expect that these rules will have, or are reasonably likely to have, a material adverse impact on our financial condition or operating results.

Competition

The market for CDBs is highly competitive, rapidly evolving and fragmented. Key categories of competitors include:

- National CDB specialists, such as TASC, Inc.;
- Health insurance carriers, such as Aetna or UHC;
- Human resources consulting firms, such as Aon Hewitt;
- Payroll providers, such as ADP or Ceridian;
- Small regional TPAs focused on CDBs; and
- Commercial banks, such as Bank of America.

CDB sales opportunities are presented through a number of different channels and often involve direct competition and requests for proposal processes. Many of our competitors, such as health insurance carriers, payroll providers, human resources consulting firms and commercial banks, offer CDB programs as non-core offerings bundled with their main products and services. We also compete against many regional TPAs who often lack sufficient resources to rapidly implement new technologies or to tailor their operations and service offerings in response to evolving rules and regulations. We further compete against the limited number of other CDB specialists.

[Table of Contents](#)

Our ability to compete successfully depends on a number of factors, including:

- our products' performance and cost relative to that of our competitors;
- the quality of service that we provide to our employer clients and their employee participants;
- our ability to easily identify, acquire and integrate client portfolio purchases; and
- our industry leadership and expertise.

Some of our competitors have longer operating histories and significantly greater financial, technical, marketing and other resources than we do. As a result, some of these competitors may choose to devote greater resources to the development, promotion, sale and support of their products and services. We believe our focus on CDB programs, our high quality service and our highly scalable delivery model are the principal basis on which we can compete in the CDB market. We cannot assure you that our products will continue to compete favorably or that we will be successful in the face of increasing competition from new products and enhancements introduced by our existing competitors or new companies entering our market.

Intellectual Property

Our success depends in part on our ability to protect our core technology and intellectual property. To accomplish this, we rely on a combination of patent laws, trade secrets, including know-how, employee and third party nondisclosure agreements, copyright laws, trademarks, intellectual property licenses and other contractual rights to establish and protect our proprietary rights in our technology. We have one issued patent which expires in 2027.

Despite our efforts to preserve and protect our proprietary and intellectual property rights, unauthorized third parties may attempt to copy, reverse engineer, or otherwise obtain portions of our products. Competitors may attempt to develop similar products that could compete in the same market as our products. Unauthorized disclosure of our confidential information by our employees or third parties could occur.

Third-party infringement claims are also possible in our industry, especially as software functionality and features expand, evolve, and overlap with other industry segments. Current and future competitors, as well as non-practicing patent holders, could claim at any time that some or all of our products infringe on patents they now hold or might obtain, or be issued in the future.

Employees

At December 31, 2012, we had 1,007 employees, including 873 full-time employees, 18 part-time employees and 116 temporary or seasonal employees. There are 117 employees located in our Northern California headquarters and the remainder are located in our various other offices throughout the United States or work remotely from various locations. None of our employees are currently represented by labor unions or are covered by a collective bargaining agreement with respect to his or her employment. To date we have not experienced any work stoppages, and we consider our relationship with our employees to be good.

Legal Proceedings

From time-to-time, we are subject to various legal proceedings that arise in the normal course of our business activities. In addition, from time-to-time, third parties may assert intellectual property infringement claims against us in the form of letters and other forms of communication. As of December 31, 2012, we are not a party to any litigation whereby the outcome of which, if determined adversely to us, would individually or in the aggregate be reasonably expected to have a material adverse effect on our results of operations, prospects, cash flows, financial position or brand.

Item 1A. Risk Factors

RISK FACTORS

You should carefully consider the risks described below together with the other information set forth in this report, which could materially affect our business, financial condition and future results. The risks described below are not the only risks facing our company. Risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and operating results. If any of the following risks is realized, our business, financial condition, results of operations and prospects could be materially and adversely affected. In that event, the trading price of our common stock could decline.

Our business is dependent upon the availability of tax-advantaged consumer-directed benefits to employers and employees and any diminution in, elimination of, or change in the availability of, these benefits would materially adversely affect our results of operations, financial condition, business and prospects.

Our business fundamentally depends on employer and employee demand for tax-advantaged consumer-directed health, commuter and other employee spending plan benefits, or CDBs. Any diminution in or elimination of the availability of CDBs for employees would materially adversely affect our results of operations, financial condition, business and prospects. In addition, incentives for employers to offer CDBs may also be reduced or eliminated by changes in laws that result in employers no longer realizing financial gain from the implementation of these benefits. If employers cease to offer CDB programs or reduce the number of programs they offer to their employees, our results of operations, financial condition, business and prospects would also be materially adversely affected. We are not aware of any reliable statistics on the growth of CDB programs and cannot assure you that participation in CDB programs will grow.

In addition, if the payroll tax savings employers currently realize from their employees' utilization of CDBs become reduced or unavailable, employers may be less inclined to offer these programs to their employees. If the tax savings currently realized by employee participants by utilizing CDBs were reduced or unavailable, we expect employees would correspondingly reduce or eliminate their participation in such CDB plans. Any such reduction in employer or employee incentives would materially adversely affect our results of operations, financial condition, business and prospects.

Future portfolio purchases and acquisitions are an important aspect of our growth strategy, and any failure to successfully identify, acquire or integrate acquisitions or additional portfolio targets could materially adversely affect our ability to grow our business. In addition, costs of integrating acquisitions and portfolio purchases may adversely affect our results of operations in the short term.

Our recent growth has been, and our future growth will be, substantially dependent on our ability to continue to make and integrate acquisitions and complementary portfolio purchases to expand our employer client base and service offerings. Since 2007, we have completed six portfolio purchases and one acquisition, including two portfolio purchases and one acquisition in 2012. Our most recent portfolio purchase, the acquisition of Benefit Concepts, Inc., or BCI, was completed in December 2012. Our successful integration of these portfolio purchases and acquisitions into our operations on a cost-effective basis is critical to our future financial performance. While we believe that there are numerous potential portfolio purchases that would add to our employer client base and service offerings, we cannot assure you that we will be able to successfully make a sufficient number of such portfolio purchases in a timely and effective manner in order to support our growth objectives. In addition, the process of integrating portfolio purchases and our most recent acquisition may create unforeseen difficulties and expenditures. We face various risks in making portfolio purchases and any acquisition, including:

- our ability to retain acquired employer clients and their associated revenues;
- diversion of management's time and focus from operating our business to address integration challenges;

[Table of Contents](#)

- our ability to retain or replace key employees from acquisitions and portfolios we acquire;
- cultural and logistical challenges associated with integrating employees from acquired portfolios into our organization;
- our ability to integrate the combined products, services and technology;
- the migration of acquired employer clients to our technology platforms;
- our ability to cross-sell additional CDB programs to acquired employer clients;
- our ability to realize expected synergies;
- the need to implement or improve internal controls, procedures and policies appropriate for a public company at businesses that, prior to the portfolio purchase or acquisition, may have lacked effective controls, procedures and policies, including, but not limited to, processes required for the effective and timely reporting of the financial condition and results of operations of the acquired business, both for historical periods prior to the acquisition and on a forward-looking basis following the acquisition;
- possible write-offs or impairment charges that result from acquisitions and portfolio purchases;
- unanticipated or unknown liabilities that relate to purchased businesses;
- the need to integrate purchased businesses' accounting, management information, human resources, and other administrative systems to permit effective management; and
- any change in one of the many complex federal or state laws or regulations that govern any aspect of the financial or business operations of our business and businesses we acquire, such as state escheatment laws.

Portfolio purchases and acquisitions may have a short-term material adverse impact on our results of operations, including a potential material adverse impact on our cost of revenues, as we seek to migrate acquired employer clients to our proprietary technology platforms, typically over the succeeding 12 to 24 months, in order to achieve additional operating efficiencies. For example, our cost of revenues in 2012 included additional expenses of \$9.1 million due to the purchases of TC and CS. Additionally, from time to time, we may incur material costs related to consolidating our operations following our portfolio purchases and acquisitions.

If we are unable to retain and expand our employer client base and establish new channel partnerships, our results of operations, financial condition, business and prospects would be materially adversely affected.

Most of our revenue is derived from the long term, multi-year agreements that we typically enter into with our employer clients. The initial subscription period is typically three years for our larger employer clients, which we refer to as enterprise clients, and one to three years for our small- and medium-sized business, or SMB, clients. We also derive revenue from our channel partner agreement with American Family Life Assurance Company, or Aflac, and we may in the future establish new channel partnerships with other companies. Our employer clients, however, have no obligation to renew their agreements with us after the initial term and we cannot assure you that our employer clients will continue to renew their agreements at the same rate, if at all.

Moreover, most of our employer clients have the right to cancel their agreements for convenience, subject to certain notice requirements. While few employer clients have terminated their agreements with us for convenience, some of our employer clients have elected not to renew their agreements with us. Our employer clients' renewal rates may decline or fluctuate as a result of a number of factors, including the prices of competing products or services or reductions in our employer clients' spending levels. Channel partners are independent and typically offer products of competing companies. They require that we provide competitive prices, products and services which may require a significant amount of investment on our part without a guarantee of a return on our investment. Our ability to grow our business will therefore depend to a degree upon our ability to maintain our existing channel partner relationships and develop new relationships. No assurance

[Table of Contents](#)

can be given that new channel partners will be found, that any such new relationships will be successful when they are in place, or that business with our current channel partners will increase. If our employer clients or channel partners do not renew their agreements with us, and we are unable to attract new employer clients or channel partners, our revenue may decline and our results of operations, financial condition, business and prospects may be materially adversely affected.

Our business may not grow if our marketing efforts do not successfully raise awareness among employers and employees about the advantages of adopting and participating in CDB programs.

Our revenue model is substantially based on the number of employee participants enrolled in the CDB programs that we administer. We devote significant resources to educating both employers and their employees on the potential cost savings available to them from utilizing CDB programs. We have created various marketing, educational and awareness tools to inform employers about the benefits of offering CDB programs to their employees and how our services allow them to offer these benefits in an efficient and cost effective manner. We also provide marketing information to employees that informs them about the potential tax savings they can achieve by utilizing CDB programs to pay for their healthcare, commuter and other benefit needs. However, if more employers and employees do not both become aware of or understand these potential cost savings and choose to adopt CDB programs, our results of operations, financial condition, business and prospects may be materially adversely affected.

Our business may not grow if a greater percentage of employees do not participate in our employer clients' CDB programs.

Our revenue depends on the number of employees who participate in the CDB programs that we sell to our employer clients. If more employees do not participate in these benefit programs for various reasons, including a lack of information about the tax-related advantages of doing so, insufficient funds to set aside pre-tax income into such programs, concerns about forfeiting contributions due to forfeiture provisions in FSA benefit programs, or otherwise, our business may not grow as we anticipate and that may materially adversely affect our results of operations, financial condition, business and prospects.

Our business and prospects may be materially adversely affected if we are unable to cross-sell our products and services.

A significant component of our growth strategy is the increased cross-selling of products and services to current and future employer clients. In particular, many of our employer clients use only one of our products so we expect our ability to cross-sell our commuter programs to our healthcare program clients and our healthcare programs to our commuter employer clients to be an important part of this strategy. We may not be successful in cross-selling our products and services if our employer clients find our additional products and services to be unnecessary or unattractive. Any failure to sell additional products and services to current and future clients could materially adversely affect our results of operations, financial condition, business and prospects.

We may be unable to compete effectively against our current and future competitors.

The market for our products and services is highly competitive, rapidly evolving and fragmented. We have numerous competitors, including health insurance carriers, such as Aetna and UHC, human resources consultants and outsourcers, such as Aon Hewitt, payroll providers, such as ADP and Ceridian, national CDB specialists, such as TASC, and regional third party administrators and commercial banks, such as Bank of America. Many of our competitors, including health insurance carriers, have longer operating histories and significantly greater financial, technical, marketing and other resources than we have. As a result, some of these competitors may be in a position to devote greater resources to the development, promotion, sale and support of their products and services.

[Table of Contents](#)

In addition, if one or more of our competitors were to merge or partner with another of our competitors, the change in the competitive landscape could materially adversely affect our ability to compete effectively. Our competitors may also establish or strengthen cooperative relationships with our current or future strategic brokers, insurance carriers, payroll services companies, third party advisors or other parties with which we have relationships, thereby limiting our ability to promote our CDB programs with these parties and limiting the number of brokers available to sell or market our programs. Additionally, the cost of switching to a competing product or service may be too low to prevent our employer clients from moving to a competitor's product or service. If we are unable to compete effectively with our competitors for any of the foregoing reasons or for any other reasons, our results of operations, financial condition, business and prospects could be materially adversely affected.

Changes in healthcare laws and other regulations applicable to our business may constrain our ability to offer our products and services.

Changes in healthcare or other laws and regulations applicable to our business may occur that could increase our compliance and other costs of doing business, require significant systems enhancement, or render our products or services less profitable or obsolete, any of which could have a material adverse effect on our results of operations. For instance, when the new debit card network exclusivity restrictions set forth in the Durbin Amendment to the Electronic Fund Transfer Act are implemented in April 2013, we will be required to use at least two unaffiliated networks for our prepaid debit cards and the card issuers and networks may pass a portion of the implementation costs of such changes to us. While we do not currently expect that this will have, or is reasonably likely to have, a material adverse impact on our financial condition or operating results, we will need to continue to monitor the status of this rule as well as other potential changes in laws or regulations that may impact our business as such changes could potentially adversely affect our business, prospects and results of operations. In addition, if the existing law which requires forfeiture of unused flexible spending account balances at the end of the plan year or at the end of an FSA grace period (referred to as the use it or lose it rule) is amended or eliminated, we expect there to be an increased number of participants holding FSAs and we may incur additional costs associated with an increase in personnel in order to accommodate the increased participation rates.

There has been an increasing political and regulatory focus on healthcare laws in recent years. While legislation such as the Patient Protection and Affordable Care Act has been signed into law, many of the details necessary to implement the legislation have yet to be defined. For example, any new laws that increase reporting and compliance burdens on employers may make them less likely to offer CDBs to their employees and instead offer employees benefit coverage through state run health insurance exchanges. If employers are less incentivized to offer our CDB programs to employees because of increased regulatory burdens or otherwise, our results of operations and financial condition could be materially adversely affected.

We plan to extend and expand our products and services and introduce new products and services, and we may not accurately estimate the impact of developing and introducing these products and services on our business.

We intend to continue to invest in technology and development to create new and enhanced products and services to offer our employer clients and their participating employees. For example, in 2012, in addition to enhancing our mobile platform, we rolled out a new participant website that includes a technology upgrade, improved navigation, a new look and feel, and mobile and tablet device compatibility. Some of the enhanced capability now available includes the ability for participants to electronically view all claim and receipt images submitted via our participant website or EZ Receipts mobile application. Our health and wellness offerings were also expanded over the past year to include online claims for our wellness product and the integration of a Wellness Portal to provide our users with the most up-to-date health and wellness information. We have limited experience in these areas and so we may not be able to anticipate or manage new risks and obligations or legal, compliance or other requirements that may arise. In addition, the anticipated benefits of these expanded products and services may not outweigh the costs and resources associated with their development.

[Table of Contents](#)

Our ability to attract and retain new employer clients and increase revenue from existing employer clients will depend in large part on our ability to enhance and improve our existing products and services and to introduce new products and services. The success of any enhancement or new product or service depends on several factors, including the timely completion, introduction and market acceptance of the enhancement or new product or service. Any new product or service we develop or acquire may not be introduced in a timely or cost-effective manner and may not achieve the broad market acceptance necessary to generate significant revenue. If we are unable to successfully develop or acquire new products or services or enhance our existing products or services to meet client requirements, our results of operations, financial condition, business or prospects may be materially adversely affected.

If the market for our services does not grow as we anticipate, our results of operations, financial condition, business and prospects may be materially adversely affected.

Our future success depends on increasing the number of employer clients and their employee participants to whom we provide our services. However, there is no guarantee that the market for our services will grow as we expect. For example, the value of our services is directly related to the complexity of administering CDB programs and government action that significantly reduces or simplifies these requirements could reduce demand or pricing for our services. If the market for our services declines or develops more slowly than we expect, or the number of employer clients that select us to provide CDB programs to their employee participants declines or fails to increase as we expect, our revenue, results of operations, financial condition, business and prospects could be materially adversely affected.

If we fail to manage future growth effectively, we may not be able to market and sell our products and services successfully.

We have expanded our operations significantly in recent years and anticipate that further expansion will be required in order for us to grow our business. If we do not effectively manage our growth, the quality of our services could suffer, which could materially adversely affect our results of operations, financial condition, business and prospects, and damage our reputation among existing and prospective clients. In order to manage our future growth, we will need to hire, integrate and retain highly skilled and motivated employees. We will also be required to continue to improve our existing systems for operational and financial information management, including our reporting systems, procedures and controls and regulatory compliance processes. These improvements may require significant capital expenditures and will place increasing demands on our management. We may not be successful in managing or expanding our operations, or in maintaining adequate operating and financial information systems and controls. If we are not successful in implementing improvements in these areas, our results of operations, financial condition, business and prospects would be materially adversely affected.

General economic and other conditions may adversely affect trends in employment and hiring patterns, which could result in lower employee participation in CDB programs, which would materially adversely affect our results of operations, financial condition, business and prospects.

Our revenue is attributable to the number of employee participants at each of our employer clients, which in turn is influenced by the employment and hiring patterns of our employer clients. To the extent that weak economic conditions cause our employer clients to freeze or reduce their headcount or wages paid, demand for our programs may decrease, which could materially adversely affect our results of operations, financial condition, business and prospects. Similarly, our revenue growth opportunities may be negatively affected by such headcount or wage reductions by our potential employer clients.

[Table of Contents](#)

Our business and prospects may be materially adversely affected if we are unable to maintain high levels of service while reducing operating costs.

One of the key attributes of our business is providing high quality service to our employer clients and their employee participants. While we have exceeded contractual service levels to our enterprise employer clients each month since May 2007, as our business grows and we service increasing numbers of employer clients and their employee participants, we may be unable to sustain these same levels of service, which could have a material adverse effect on our business. Alternatively, we may only be able to sustain high levels of service by significantly increasing our operating costs, which would materially adversely affect our operating results. If we are unable to maintain these high levels of service performance, our brand and reputation could suffer and our results of operations, financial condition, business and prospects would be materially adversely affected.

Failure to effectively develop and expand our direct and indirect sales channels may materially adversely affect our results of operations, financial condition, business and prospects and reduce our growth.

We will need to continue to expand our sales and marketing infrastructure in order to grow our employer client base and our business. We rely on our enterprise sales force to target new Fortune 1000 client accounts, as well as to cross-sell additional products and services to our existing enterprise clients. Effectively training our sales personnel requires significant time, expense and attention. In addition, we utilize various channel brokers, including insurance agents, benefits consultants, regional and national insurance carriers, health plans, payroll companies, banks and regional TPAs, to sell and market our programs to SMB employers. If we are unable to develop and expand our direct sales teams or these indirect sales channels, our ability to attract new employer clients and cross-sell our programs may be negatively impacted and our growth opportunities will be reduced, each of which would materially adversely affect our results of operations, financial condition, business and prospects.

If our efforts to develop and expand our direct and indirect sales channels do not generate a corresponding increase in revenue, our business may be materially adversely affected. In particular, if we are unable to effectively train our sales personnel or if our direct sales personnel are unable to achieve expected productivity levels in a reasonable period of time, we may not be able to increase our revenue and grow our business.

Long sales cycles make the timing of our long-term revenues difficult to predict.

Our average sales cycle ranges from approximately two months for SMBs to six to nine months for our large institutional clients, and, in some cases, even longer depending on the size of the potential client. Factors that may influence the length of our sales cycle include:

- the need to educate potential employer clients about the uses and benefits of our CDB programs;
- the relatively long duration of the commitment clients make in their agreements with us or with pre-existing plan administrators;
- the discretionary nature of potential employer clients' purchasing and budget cycles and decisions;
- the competitive nature of potential employer clients' evaluation and purchasing processes;
- fluctuations in the CDB program needs of potential employer clients; and
- lengthy purchasing approval processes of potential employer clients.

The fluctuations that result from the length of our sales cycle may be magnified for large- and mid-sized potential employer clients. If we are unable to close an expected significant transaction with one or more of these potential clients in the anticipated period, our operating results for that period, and for any future periods in which revenue from such transaction would otherwise have been recognized, would be harmed.

[Table of Contents](#)

Our business and operational results are subject to seasonality as a result of open enrollment for CDB programs and decreased use of commuter program offerings during typical vacation months.

The number of accounts that generate revenue is typically greatest during our first calendar quarter due primarily to three factors. First, new employer clients and their employee participants typically begin service on January 1. Second, during the first calendar quarter, we are also servicing the end of plan year activity for existing clients, including assisting our clients initiate the deduction of healthcare premiums on a tax-deferred basis, and employee participants who do not continue participation into the next plan year. Third, we receive the majority of cash for pre-funded accounts from our employer clients in late December or early January, which results in higher cash balances during our first quarter.

Generally, in comparison to other quarters, our revenue is highest in the first quarter and lowest in the second and third quarters. Thereafter, our revenue generally grows gradually in the fourth quarter as our employer clients hire new employees who then elect to participate in our programs, thereby increasing our monthly minimum billing amount. The minimum billing amount is not, however, generally subject to downward revision when employees leave their employers because we continue to administer those former employee participants' accounts for the remainder of the plan year. Revenue from commuter programs may vary from month-to-month because employees may elect to participate in our commuter programs at any time during the year and may change their election to participate or the amount of their contribution on a monthly basis; however, participation rates in our commuter business typically slow during the summer as people take vacations and do not purchase transit passes or parking passes during that time.

Our operating expenses increase during the fourth quarter because of increased debit card production and because we increase our customer support center capacity to answer questions from employee participants during the open enrollment periods related to their CDB participation decisions. The cost of providing services peaks in the first quarter as new employee participants contact us for information about their CDBs, and as terminating employee participants submit their final claims for reimbursement.

Our operating results can fluctuate from period-to-period, which could cause our share price to fluctuate.

Fluctuations in our quarterly operating results could cause our stock price to decline rapidly, may lead analysts to change their long-term models for valuing our common stock, could cause short-term liquidity issues, may impact our ability to retain or attract key personnel or cause other anticipated issues. If our quarterly operating results or guidance fall below the expectations of research analysts or investors, the price of our common stock could decline substantially. Our quarterly operating expenses and operating results may vary significantly in the future and period-to-period comparisons of our operating results may not be meaningful. You should not rely on the results of one quarter as an indication of future performance.

If employee participants do not continue to utilize our prepaid debit cards, our results of operations, business and prospects could be materially adversely affected.

We derive a portion of our revenue from interchange fees that are paid to us when employee participants utilize our prepaid debit cards to pay for certain healthcare and commuter expenses under CDB programs. These fees represent a percentage of the expenses transacted on each debit card. If our employer clients do not adopt these prepaid debit cards as part of the benefits programs they offer, if the employee participants do not use them at the rate we expect, or if other alternatives to prepaid tax-advantaged benefit cards develop, our results of operations, business and prospects could be materially adversely affected.

If we are unable to maintain and enhance our brand and reputation, our ability to sustain and grow our business may be materially adversely affected.

Maintaining and strengthening our brand is critical to attracting new clients and growing our business. Our ability to maintain and strengthen our brand and reputation will depend heavily on our capacity to continue to provide high levels of customer service to our employer clients and their employee participants at cost effective

[Table of Contents](#)

and competitive prices, which we may not do successfully. In addition, our continued success depends, in part, on our reputation as an industry leader in promoting awareness and understanding of the positive impact of CDBs among employers and employees. If we fail to successfully maintain and strengthen our brand, our results of operations, financial condition, business and prospects will be materially adversely affected.

Some plan providers with which we have relationships also provide, or may provide, competing services.

We face competitive risks in situations where some of our strategic partners are also current or potential competitors. For example, certain of the banks we utilize as custodians for our prepaid debit card funds also offer their own HSA products. To the extent that these partners choose to offer competing products and services that they have developed or in which they have an interest to our current or potential clients, our results of operations, business and prospects could be materially adversely affected.

We are subject to complex regulation, and any compliance failures or regulatory action could materially adversely affect our business.

The plans we administer and, as a result, our business are subject to extensive, complex and continually changing federal and state laws and regulations, including IRS regulations, ERISA, privacy and HIPAA regulations and Department of Labor regulations, all of which are further described in “*Business—Government Regulation*” below. If we fail to comply with any applicable law, rule or regulation, we could be subject to fines and penalties, indemnification claims by our clients, or become the subject of a Department of Labor enforcement action, each of which would materially adversely affect our business and reputation.

We may also become subject to additional regulatory and compliance requirements as a result of changes in laws or regulations, or as a result of any expansion or enhancement of our existing products and services or any new products or services we may offer in the future. For example, if we expand our product and service offerings into the health insurance market in the future, we would become subject to state Department of Insurance regulations. Compliance with any new regulatory requirements may divert internal resources and take significant time and effort.

Any claims of noncompliance brought against us, regardless of merit or ultimate outcome, could subject us to investigation by the Department of Labor, the Internal Revenue Service, the Centers for Medicare and Medicaid Services, the Treasury Department or other federal and state regulatory authorities, which could result in substantial costs to us and divert management’s attention and other resources away from our operations. In addition, investor perceptions of us may suffer and could cause a decline in the market price of our common stock. Our compliance processes may not be sufficient to prevent assertions that we failed to comply with any applicable law, rule or regulation.

Failure to ensure and protect the confidentiality of participant data could lead to legal liability, adversely affect our reputation and have a material adverse effect on our results of operations, business or financial condition.

We must collect, store and use employee participants’ confidential information, including the transmission of that data to third parties, to provide our services. For example, we collect names, addresses, social security numbers and other personally identifiable information from employee participants. In addition, we facilitate the issuance and funding of prepaid debit cards and, in some cases, collect bank routing information, account numbers and personal credit card information for purposes of funding an account or issuing a reimbursement. We have invested significantly in preserving the security of this data.

In addition, we outsource customer support center services and claims processing services to third-party subcontractors to whom we transmit certain confidential information of our employee participants. We have security measures in place with each of these subcontractors to protect this confidential information, including

[Table of Contents](#)

written agreements that outline how protected health information will be handled and shared. However, there are no assurances that these measures, or any additional security measures that our subcontractors may have in place, will be sufficient to protect this outsourced confidential information from unauthorized security breaches.

We cannot assure you that, despite the implementation of these security measures, we will not be subject to a security breach or that this data will not be compromised. We may be required to expend significant capital and other resources to protect against security breaches or to alleviate problems caused by security breaches, or to pay penalties as a result of such breaches. Despite our implementation of security measures, techniques used to obtain unauthorized access or to sabotage systems change frequently. As a result, we may be unable to anticipate these techniques or implement adequate preventative measures to protect this data. Any compromise or perceived compromise of our security could damage our reputation with our clients and brokers, and could subject us to significant liability, as well as regulatory action, including financial penalties, which would materially adversely affect our brand, results of operations, financial condition, business and prospects.

Privacy concerns could require us to modify our operations.

As part of our business, we collect employee participants' personal data for the sole purpose of processing their benefits. For privacy or security reasons, privacy groups, governmental agencies and individuals may seek to restrict or prevent our use of this data. We have incurred, and will continue to incur, expenses to comply with privacy and security standards and protocols imposed by law, regulation, industry standards or contractual obligations. Increased domestic or international regulation of data utilization and distribution practices, including self-regulation, could require us to modify our operations and incur significant additional expense, which could have a material adverse effect on our results of operations, financial condition, business and prospects.

If we fail to effectively upgrade our information technology systems, our business and operations could be disrupted.

As part of our efforts to continue the improvement of our enterprise resource planning, we plan to upgrade our existing information technology systems in order to automate several controls that are currently performed manually. We may experience difficulties in transitioning to these upgraded systems, including loss of data and decreases in productivity as personnel work to become familiar with these new systems. In addition, our management information systems will require modification and refinement as we grow and as our business needs change, which could prolong difficulties we experience with systems transitions, and we may not always employ the most effective systems for our purposes. If we experience difficulties in implementing new or upgraded information systems or experience significant system failures, or if we are unable to successfully modify our management information systems or respond to changes in our business needs, we may not be able to effectively manage our business and we may fail to meet our reporting obligations.

Our future success depends on our ability to recruit and retain qualified employees, including our executive officers.

Our success is substantially dependent upon the performance of our senior management, such as our chief executive officer. Our management and employees may terminate their employment at any time, and the loss of the services of any of our executive officers could materially adversely affect our business. Our success is also substantially dependent upon our ability to attract additional personnel for all areas of our organization. Competition for qualified personnel is intense, and we may not be successful in attracting and retaining such personnel on a timely basis, on competitive terms or at all. If we are unable to attract and retain the necessary personnel, our results of operations, financial condition, business and prospects would be materially adversely affected.

[Table of Contents](#)

We might require additional capital to support business growth in the future, and this capital might not be available on acceptable terms, if at all.

We believe that our existing cash and cash equivalents, combined with our credit line and expected cash flow from operations, will be sufficient to meet our operating and capital requirements, as well as anticipated requirements for potential additional portfolio purchases, for at least the next 12 months. Our business and operations may, however, consume resources faster than we currently anticipate. We intend to continue to make investments to support our business growth, including through additional portfolio purchases of complementary businesses, and may require additional funds in the future to respond to business challenges, including the need to develop new features and platforms, enhance our existing programs or improve our operating infrastructure. Accordingly, we may seek to sell additional equity or debt securities or obtain additional debt financing. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing secured by us in the future could involve 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 to pursue business opportunities, including potential portfolio purchases. We have not made arrangements to obtain additional financing and there can be no assurances that financing, if required, will be available in amounts or on terms acceptable to us, if at all.

Changes in credit card association or other network rules or standards set by Visa or MasterCard, or changes in card association and debit network fees or products or interchange rates, could materially adversely affect our results of operations, business and financial position.

We, and the banks that issue our prepaid debit cards, are subject to Visa and MasterCard association rules that could subject us to a variety of fines or penalties that may be levied by the card associations or networks for acts or omissions by us or businesses that work with us, including card processors, such as Fidelity National Information Services. The termination of the card association registrations held by us or any of the banks that issue our cards, or any changes in card association or other debit network rules or standards, including interpretation and implementation of existing rules or standards that increase the cost of doing business or limit our ability to provide our products and services, could have a material adverse effect on our results of operations, financial condition, business and prospects. In addition, from time-to-time, card associations increase the organization or processing fees that they charge, which could increase our operating expenses, reduce our profit margin and materially adversely affect our results of operations, financial condition, business and prospects.

Our results of operations, financial condition, business and prospects could be materially adversely affected if we experience unanticipated delays in rollouts by our employer clients of services to their employee participants.

We generally do not earn fees from our employer clients until our services are available to their employee participants. If our infrastructure capacity is insufficient to meet our needs, we may experience delays in deploying our programs to new employer clients, or expanding the services we offer to existing employer clients, and on-boarding their employee participants. If the rollout of our services to our employer clients and, subsequently, their employee participants is delayed, our results of operations, financial condition, business and prospects could be materially adversely affected.

We have entered into outsourcing and other agreements with third parties related to certain of our business operations, and any difficulties experienced in these arrangements could result in additional expense, loss of revenue or an interruption of our services.

We have entered into outsourcing agreements with third parties to provide certain customer service and related support functions to our employer clients and their participant employees. As a result, we rely on third parties over which we have limited control to perform certain of our operations. If these third parties are unable

[Table of Contents](#)

to perform to our requirements or to provide the level of service required or expected by our employer clients and their employee participants, our operating results, financial condition, business, prospects and reputation may be materially harmed and we may be forced to pursue alternative strategies to provide these services, which could result in delays, interruptions, additional expenses and loss of clients and related revenues.

If our intellectual property and technology are not adequately protected to prevent use or appropriation by our competitors, our business and competitive position could be materially adversely affected.

We rely on a combination of copyright, trademark and trade secret laws, as well as confidentiality procedures and contractual provisions, to establish and protect our intellectual property rights in the United States.

The efforts we have taken to protect our intellectual property may not be sufficient or effective, and our trademarks and copyrights may be held invalid or unenforceable. We may not be effective in policing unauthorized use of our intellectual property, and even if we do detect violations, litigation may be necessary to enforce our intellectual property rights. Any enforcement efforts we undertake, including litigation, could be time consuming and expensive, could divert our management's attention and may result in a court determining that our intellectual property rights are unenforceable. If we are not successful in cost-effectively protecting our intellectual property rights, our results of operations, financial condition, business and prospects could be materially adversely affected.

Our ability to use net operating loss carryforwards to offset future taxable income may be limited.

As of December 31, 2012, we had \$38.2 million of federal and \$36.9 million of state net operating loss carryforwards available to offset future taxable income. These net operating loss carryforwards will expire beginning in 2023 through 2029 for U.S. federal income tax purposes and beginning in 2017 through 2031 for state income tax purposes, if not fully utilized. In addition, we have federal and state research and development credit carryforwards of approximately \$2.6 million and \$1.4 million respectively. The federal research credit carryforwards expire beginning in 2022 through 2031, if not fully utilized. The California research credit carries forward indefinitely. Our ability to utilize net operating loss and tax credit carryforwards are subject to limitations in the event of an ownership change as defined in Section 382 of the Internal Revenue Code ("IRC") of 1986, as amended, and similar state tax law. In general, an ownership change occurs if the aggregate stock ownership of certain stockholders increases by more than 50 percentage points over such stockholders' lowest percentage ownership during the testing period (generally three years). The Company completed Section 382 studies through December 31, 2011, and updated the analysis encompassing all common stock transactions through October 9, 2012, the date of the Company's follow-on public offering. There were no material common stock transactions between October 9, 2012 and December 31, 2012 that would have caused another ownership change. The ownership change did not result in a limitation of the Company's utilization of its net operating loss or in its research and development credits expiring unused.

If one or more jurisdictions successfully assert that we should have collected or in the future should collect additional sales and use taxes on our fees, we could be subject to additional liability with respect to past or future sales and the results of our operations could be adversely affected.

We do not collect sales and use taxes in all jurisdictions in which our employer clients are located, based on our belief that such taxes are not applicable. Sales and use tax laws and rates vary by jurisdiction and such laws are subject to interpretation. Jurisdictions in which we do not collect sales and use taxes may assert that such taxes are applicable, which could result in the assessment of such taxes, interest and penalties, and we could be required to collect such taxes in the future. This additional sales and use tax liability could adversely affect the results of our operations.

[Table of Contents](#)

Third parties may assert intellectual property infringement claims against us, or our services may infringe the intellectual property rights of third parties, which may subject us to legal liability and materially adversely affect our reputation.

Assertion of intellectual property infringement claims against us could result in litigation. We might not prevail in any such litigation or be able to obtain a license for the use of any infringed intellectual property from a third party on commercially reasonable terms, or at all. Even if obtained, we may be unable to protect such licenses from infringement or misuse, or prevent infringement claims against us in connection with our licensing efforts. Any such claims, regardless of their merit or ultimate outcome, could result in substantial cost to us, divert management's attention and our resources away from our operations and otherwise adversely affect our reputation. Our process for controlling our own employees' use of third-party proprietary information may not be sufficient to prevent assertions of intellectual property infringement claims against us.

We rely on insurance to mitigate some risks of our business and, to the extent the cost of insurance increases or we maintain insufficient coverage, our results of operations, business and financial condition may be materially adversely affected.

We contract for insurance to cover a portion of our potential business risks and liabilities. In the current environment, insurance companies are increasingly specific about what they will and will not insure. It is possible that we may not be able to obtain sufficient insurance to meet our needs, may have to pay very high prices for the coverage we do obtain or may not acquire any insurance for certain types of business risk. This could leave us exposed, and to the extent we incur liabilities and expenses for which we are not adequately insured, our results of operations, business and financial condition could be materially adversely affected. Also, to the extent the cost of maintaining insurance increases, our operating expenses will rise, which could materially adversely affect our results of operations, financial condition, business and prospects.

VantagePoint Capital Partners holds a high percentage of our common stock, which may limit the ability of our public stockholders to affect significant corporate actions.

As of December 31, 2012, funds affiliated with VantagePoint Capital Partners, or VantagePoint, held approximately 36.8% of our outstanding common stock. In addition, we and VantagePoint are parties to a stockholder agreement related to a number of board of directors, stockholder and related governance matters.

The stockholder agreement provides that the following actions by us require the approval of VantagePoint for so long as VantagePoint owns 25% or more of our outstanding shares of common stock:

- any amendment of our bylaws;
- the issuance of any securities with economic rights senior to our common stock or with voting rights different than our common stock, subject to certain exceptions;
- the incurrence or guarantee of any debt in excess of \$20.0 million;
- the issuance of equity or debt, or any securities convertible into equity or debt, for consideration in excess of 12.5% of our market capitalization;
- the acquisition or disposition of stock or assets, including through a license or lease, for consideration in excess of 12.5% of our market capitalization;
- the adoption of a stockholder rights plan;
- the approval of any "golden parachute" or other compensatory plan contingent upon a change in control of us for any of our executive officers valued in excess of \$1 million for an individual officer or \$5 million for a group of officers, at the time such compensatory arrangement is adopted; or
- any change in the number of authorized directors.

[Table of Contents](#)

Accordingly, our ability to engage in significant transactions, such as a merger, acquisition or liquidation, is limited without the consent of VantagePoint. Conflicts of interest could arise between us and VantagePoint, and any conflict of interest may be resolved in a manner that does not favor us. VantagePoint may decide not to consent to a transaction in which you would receive consideration for your common shares that is higher than the cost to you or the then-current market price of those shares. Any decision that VantagePoint may make at some future time regarding their ownership of us will be in their absolute discretion.

In addition, our stockholder agreement with VantagePoint and our amended and restated certificate of incorporation and amended and restated bylaws provide the following additional rights to VantagePoint:

- so long as VantagePoint owns more than 30% of our outstanding voting stock, a special meeting of our stockholders may be called by either VantagePoint or any two members of our board of directors, whether or not VantagePoint designees;
- so long as VantagePoint owns more than 40% of our outstanding voting stock, our stockholders may act by written consent to change the number of authorized directors, remove a director without cause or fill a vacancy on our board of directors (following the closing of our follow-on offering on October 9, 2012, VantagePoint held approximately 31.8% of our outstanding common stock);
- we may not amend any provision of our certificate of incorporation or bylaws relating to VantagePoint's rights without VantagePoint's consent; and
- VantagePoint and its representatives will have access to our books and records, subject to customary confidentiality and non-disclosure provisions.

VantagePoint has the right to designate (and remove or replace) three of the members of our board of directors if VantagePoint owns at least 50% or more of our outstanding shares, two members of our board of directors if VantagePoint owns between 20% and 50% of our outstanding shares, and one member of our board of directors if VantagePoint owns between 10% and 20% of our outstanding shares (following the closing of our follow-on offering on October 9, 2012, VantagePoint held approximately 31.8% of our outstanding common stock). VantagePoint also has the right to select one of its board designees to serve on our compensation committee, our nominating and corporate governance committee and any other special committee of our board of directors, so long as it continues to hold at least 10% of our outstanding shares.

VantagePoint is not prohibited from selling its interest in us to a third party.

We will continue to incur increased costs and demands upon management as a result of complying with the laws and regulations that affect public companies, which could materially adversely affect our results of operations, financial condition, business and prospects.

As a public company and particularly after we cease to be an "emerging growth company," we will continue to incur significant legal, accounting and other expenses that we did not incur as a private company, including costs associated with public company reporting and corporate governance requirements. These requirements include compliance with Section 404 and other provisions of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, as well as rules implemented by the SEC and the NYSE. In addition, our management team will also have to continue to adapt to the requirements of being a public company. We expect that compliance with these rules and regulations will substantially increase our legal and financial compliance costs and will make some activities more time-consuming and costly.

The increased costs associated with operating as a public company will decrease our net income or increase our net loss, and may require us to reduce costs in other areas of our business or increase the prices of our products or services. Additionally, if these requirements divert our management's attention from other business concerns, they could have a material adverse effect on our results of operations, financial condition, business and prospects.

[Table of Contents](#)

However, for as long as we remain an “emerging growth company” as defined in the Jumpstart our Business Startups Act of 2012, or JOBS Act, we plan to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not “emerging growth companies” including 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 shareholder approval of any golden parachute payments not previously approved. We may continue to take advantage of these reporting exemptions until we are no longer an “emerging growth company.”

We will remain an “emerging growth company” for up to five years from the date of our initial public offering, although if the market value of our common stock that is held by non-affiliates exceeds \$700 million as of any June 30 before that time, we would cease to be an “emerging growth company” as of the following December 31, or if we issue more than \$1 billion in non-convertible debt in a three-year period, we would cease to be an “emerging growth company” immediately.

As a public company, we also expect that it may be more difficult and expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified individuals to serve on our board of directors or as our executive officers.

As a public company, we are required to maintain a system of effective control over financial reporting. In the past significant deficiencies in our internal control over financial reporting have been identified. If our internal controls are not effective, there may be errors in our financial information that could require a restatement or delay our SEC filings, and investors may lose confidence in our reported financial information, which could lead to a decline in our stock price.

We have, in the past, experienced issues with our internal control over financial reporting. For example, three significant deficiencies were identified in internal controls in connection with the preparation of our financial statements and the audit of our financial results for 2010. We had significant deficiencies relating to: the completion of our financial reporting cycle within the expected period and our ability to produce reliable financial statements in the period that would normally be expected of a public company; our ability to timely integrate accounting functions of certain of our portfolio purchases; and certain inconsistencies and omissions in some of our key documents and agreements. The lack of timely financial reporting involved adjustments of a bonus accrual that was not timely made and the number of errors, missing disclosures and incorrect numbers in the financial statements we delivered to our independent registered public accounts for audit. The inability to timely integrate the accounting function of portfolio purchases related to our inability through March 2011 to reconcile an opening balance sheet for our PBS acquisition on August 31, 2010. The inconsistencies and omissions in key documents related to certain agreements that were not appropriately documented or referred to other agreements that did not exist, including agreements relating to our acquisition of the CDB assets of FBM.

In connection with the preparation of our financial statements and the audit of our financial results for 2011, it was determined that we remediated the significant deficiency relating to lack of timely financial reporting and reliable financial statements by the hiring of additional qualified accounting personnel. It was also determined that we remediated the significant deficiency related to inconsistencies and omissions in some of our key documents and agreements.

Since we did not complete any portfolio purchases in 2011, we were unable to remediate the significant deficiency with respect to timely integration of the accounting function of portfolio purchases in 2011; however, in connection with the preparation of our financial statements and the audit of our financial results for 2012, it was determined that we remediated this significant deficiency by assessing earlier the accounting function at the company from which the portfolio is purchased and allocation of needed resources, including the hiring of consultants, to assure timely integration. For example, for the acquisition and portfolio purchases that we have

[Table of Contents](#)

completed in 2012, we have assigned a full-time accounting resource and a consultant to lead the accounting integration of CS, TC and BCI.

It is possible that we may discover significant deficiencies or material weaknesses in our internal control over financial reporting in the future. Any failure to maintain or implement required new or improved controls, or any difficulties we encounter in their implementation, could cause us to fail to meet our periodic reporting obligations, or result in material misstatements in our financial information. Any such delays or restatements could cause investors to lose confidence in our reported financial information and lead to a decline in our stock price.

We will not be required to comply with certain provisions of the Sarbanes-Oxley Act for as long as we remain an “emerging growth company.”

As long as we remain an “emerging growth company” we will not be required to comply with certain of the SEC rules that implement Section 404 of the Sarbanes-Oxley Act, and require us to make a formal assessment of the effectiveness of our internal control over financial reporting. Though we will be required to disclose changes made in our internal control procedures on a quarterly basis, we will not be required to make our first annual assessment of our internal control over financial reporting pursuant to Section 404 until the later of the year following our first annual report required to be filed with the SEC, or the date we are no longer an “emerging growth company” as defined in the JOBS Act. We will remain an “emerging growth company” for up to five years, although if the market value of our common stock that is held by non-affiliates exceeds \$700 million as of any June 30 before that time, we would cease to be an “emerging growth company” as of the following December 31, or if we issue more than \$1 billion in non-convertible debt in a three-year period, we would cease to be an “emerging growth company” immediately.

Our independent registered public accounting firm is not required to formally attest to the effectiveness of our internal control over financial reporting until the later of the year following our first annual report required to be filed with the SEC, or the date we are no longer an “emerging growth company.” At such time, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our controls are documented, designed or operating.

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, and we plan to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not “emerging growth companies” including 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 shareholder approval of any golden parachute payments not previously approved. We cannot predict whether investors will find our common stock less attractive because we may 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.

In addition, Section 107 of the JOBS Act also provides that an “emerging growth company” can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. An “emerging growth company” can therefore delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. However, we are choosing to “opt out” of such extended transition period, and as a result, we will comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies. Section 107 of the JOBS Act provides that our decision to opt out of the extended transition period for complying with new or revised accounting standards is irrevocable.

[Table of Contents](#)

Our stock price has been volatile, may continue to be and may decline regardless of our financial performance.

The market price of our common stock has fluctuated and may continue to fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

- actual or anticipated fluctuations in our financial results;
- the financial projections we 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 newly public companies generally, or those in our industry in particular;
- price and volume fluctuations in the overall stock market, including as a result of trends in the global economy;
- any major change in our board of directors or management;
- lawsuits threatened or filed against us; and
- other events or factors, including those resulting from war, incidents of terrorism or responses to these events.

In addition, the stock market in general, and the market for newly public companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may seriously affect the market price of companies' stock, including ours, regardless of actual operating performance. In addition, in the past, following periods of volatility in the overall market and the market price of a particular company's securities, securities class action litigation has often been instituted against such a company. If securities class action litigation is instituted against us, it could result in substantial costs and a diversion of our management's attention and resources and could materially adversely affect our operating results.

Anti-takeover provisions contained in our amended and restated certificate of incorporation and amended and restated bylaws, as well as provisions of Delaware law, could impair a takeover attempt.

Our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law contain provisions that could have the effect of delaying, preventing or rendering more difficult an acquisition of us if such acquisition is deemed undesirable by our board of directors. Our corporate governance documents include provisions that:

- create a classified board of directors whose members serve staggered three-year terms;
- authorize "blank check" preferred stock, which could be issued by the board of directors without stockholder approval and may contain voting, liquidation, dividend and other rights superior to our common stock;
- limit the ability of our stockholders to call and bring business before special meetings;
- limit the ability of stockholders to act by written consent to such periods during which VantagePoint Capital Partners and its affiliates hold 40% or more of our outstanding common stock;

[Table of Contents](#)

- require advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our board of directors;
- control the procedures for the conduct and scheduling of board of directors and stockholder meetings; and
- provide the board of directors with the express power to postpone previously scheduled annual meetings and to cancel previously scheduled special meetings.

These provisions, alone or together, could delay or prevent unsolicited takeovers and changes in control or changes in our management.

As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation Law, which prevents some stockholders holding more than 15% of our outstanding common stock from engaging in certain business combinations without approval of the holders of substantially all of our outstanding common stock.

Any provision of our amended and restated certificate of incorporation or amended and restated bylaws or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock and could also affect the price that some investors are willing to pay for our common stock.

If securities or industry analysts do not publish or cease publishing research or reports about us, our business or our market, or if they change their recommendations regarding our stock adversely, our stock price and trading volume could decline.

The trading market for our common stock is influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If any of the analysts who may cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, our stock price would likely decline. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

We do not expect to declare any dividends in the foreseeable future.

We do not anticipate declaring any cash dividends to holders of our common stock in the foreseeable future. In addition, our existing credit facility prohibits us from paying cash dividends, and any future financing agreements may prohibit us from paying any type of dividends. Consequently, investors may need to 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 investment. Investors seeking cash dividends should not purchase our common stock.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Facilities

We do not currently own any of our facilities. Our corporate headquarters are located in San Mateo, California where we occupy approximately 38,249 square feet of space under a lease that expires in December 2014. We have additional facilities in Arizona, California, Colorado, Florida, Kansas, New York, Rhode Island, Vermont and Wisconsin under various leases that will expire between June 2013 and February 2023. We believe that our facilities are adequate for our current needs and that suitable additional or substitute space will be available as needed to accommodate planned expansion of our operations.

[Table of Contents](#)

Item 3. Legal Proceedings

From time-to-time, we may be subject to various legal proceedings and claims that arise in the normal course of our business activities. As of the filing of this Annual Report on Form 10-K, we are not a party to any litigation whereby the outcome of such litigation, if determined adversely to us, would individually or in the aggregate be reasonably expected to have a material adverse effect on our results of operations, prospects, cash flows or financial position.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

Item 5. Market For Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

Our common stock has traded on the New York Stock Exchange, or the NYSE, under the symbol "WAGE" since May 2012. The following table sets forth the range of high and low sales prices on the NYSE of our common stock for the periods indicated, as reported by the NYSE.

	Price Range	
	High	Low
Fiscal 2012:		
Second Quarter (from May 10, 2012 - June 30, 2012)	\$ 15.40	\$ 10.12
Third Quarter (July 1, 2012 - September 30, 2012)	\$ 18.87	\$ 12.36
Fourth Quarter (October 1, 2012 - December 31, 2012)	\$ 19.79	\$ 17.01

Stockholders

As of February 20, 2013, according to the records of our transfer agent, there were 45 holders of record of our common stock. The number of beneficial stockholders is substantially greater than the number of holders of record because a large portion of our common stock is held through brokerage firms.

Dividends

We have never declared nor paid any cash dividend on our common stock. We currently intend to retain any future earnings and do not currently plan to pay any dividends in the immediate future. The payment of future dividends on the common stock and the rate of such dividends, if any and when not restricted, will be determined by our board of directors in light of our results of operations, financial condition, capital requirements, and any other relevant factors. Currently, our credit facility with Union Bank, N.A. prohibits our payment of any dividends without obtaining its prior written consent, other than dividends payable solely in our common stock.

Sales of Unregistered Securities

On October 25, 2012, we issued and sold an aggregate of 10,057 shares of common stock to two accredited investors in connection with the investors' cash exercises of outstanding warrants to purchase an aggregate of 10,057 shares of common stock at a per share exercise price of \$4.58. The aggregate purchase price paid was \$46,061.

On October 29, 2012, we issued and sold 42,834 shares of common stock to ORIX Ventures, LLC, or ORIX, pursuant to the cashless net exercise of an outstanding warrant to purchase 75,000 shares of common stock at a purchase price of \$8.20 per share. The number of shares issued upon the net exercise of ORIX's warrant was reduced by 32,166 shares to effect the net exercise of the warrant in accordance with its terms. We did not receive any cash proceeds from the cashless net exercise of ORIX's warrant.

On November 14, 2012, we issued and sold an aggregate of 2,659,619 shares of common stock to VantagePoint Venture Partners IV, L.P., VantagePoint Venture Partners IV (Q), L.P. and VantagePoint Venture Partners IV Principals Fund, L.P., or collectively, VPCP, pursuant to the cashless net exercise of outstanding warrants held by VPCP. The warrants were exercisable for an aggregate of 3,514,131 shares of common stock and each had an exercise price of \$4.58 per share. The number of shares issued to VPCP upon the net exercise of the warrants was reduced by an aggregate of 854,512 shares to effect the net exercise of the warrants in accordance with their terms. We did not receive any cash proceeds from the cashless net exercise of these warrants.

[Table of Contents](#)

No underwriters were involved in the foregoing sales of securities. These issuances were undertaken in reliance upon the exemption from registration requirements of Section 4(2) of the Securities Act of 1933, as amended. The recipients of these shares of common stock represented their intentions to acquire the shares for investment only and not with a view to or for sale in connection with any distribution, and appropriate restrictions were set out in the award agreements issued in these transactions. All recipients had adequate access, through their relationships with us, to information about us.

Use of Proceeds from Public Offering of Common Stock

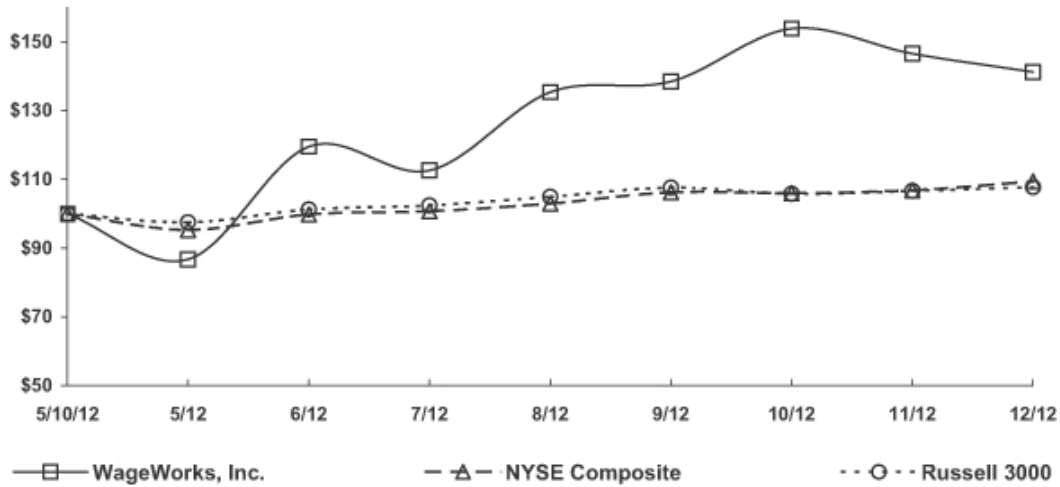
On May 15, 2012, we closed our initial public offering and sold 7,475,000 shares of common stock (inclusive of 975,000 shares of common stock from the full exercise of the overallotment option of shares granted to the underwriters). All of the shares offered and sold in the initial public offering were registered under the Securities Act pursuant to a registration statement on Form S-1 (File No. 333-173709), which the SEC declared effective on May 9, 2012. William Blair & Company, L.L.C.; Stifel, Nicolaus & Company, Incorporated; JMP Securities LLC and Needham & Company, LLC acted as the underwriters. The public offering price of the shares sold in the offering was \$9.00 per share. The total gross proceeds from the offering to us were \$67.3 million. After deducting underwriting discounts and commissions of \$4.7 million and offering expenses payable by us of \$5.5 million, we received approximately \$57.0 million. No payments were made by us to directors, officers or persons owning ten percent or more of our common stock or to their associates, or to our affiliates, other than payments in the ordinary course of business to officers for salaries. There has been no material change in the planned use of proceeds from our initial public offering as described in our final prospectus filed with the SEC on May 10, 2012 pursuant to Rule 424(b) of the Securities Act. We invested the funds received in registered money market funds.

[Table of Contents](#)

Stock Performance Graph

This performance graph shall not be deemed “filed” for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities under that Section, and shall not be deemed to be incorporated by reference into any of our filings under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

The following graph compares the cumulative total return of our common stock with the total return for the New York Stock Exchange Composite Index (the “NYSE Composite”) and the Russell 3000 Index (the “Russell 3000”) from May 10, 2012 (the date our common stock commenced trading on the NYSE) through December 31, 2012. The chart assumes \$100 was invested on May 10, 2012, in the common stock of WageWorks, Inc., the NYSE Composite and the Russell 3000, and assumes reinvestment of any dividends. The stock price performance on the following graph is not necessarily indicative of future stock price performance.



Issuer Purchases of Equity Securities

None.

[Table of Contents](#)

Item 6. Selected Financial Data

The following selected consolidated financial data (presented in thousands, except per share amounts) is derived from our consolidated financial statements. As our operating results are not necessarily indicative of future operating results, this data should be read in conjunction with the consolidated financial statements and notes thereto, and with Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations.

	Years Ended December 31,				
	2008	2009	2010	2011	2012
(in thousands, except per share data)					
Operations:					
Revenues	\$ 103,273	\$ 108,461	\$ 115,047	\$ 135,637	\$ 177,282
Operating expenses:					
Cost of revenues (excluding amortization of internal use software)	49,298	46,802	50,205	55,651	64,647
Sales and marketing, technology and development and general and administrative	49,552	52,792	49,044	55,099	78,029
Amortization and contingent consideration	7,987	8,398	7,764	11,327	15,674
Total operating expense	106,837	107,992	107,013	122,077	158,350
Income (loss) from operations	(3,564)	469	8,034	13,560	18,932
Other income (expense):					
Interest income	1,368	851	220	36	36
Interest expense	(1,570)	(1,102)	(188)	(494)	(1,772)
Interest expense: amortization of convertible debt discount	—	(71)	(21,107)	—	—
Other, net	(72)	(286)	(5,413)	351	429
Income (loss) before income taxes	(3,838)	(139)	(18,454)	13,453	17,625
Income tax (provision) benefit	(487)	(495)	1,204	19,868	(7,126)
Net income (loss)	(4,325)	(634)	(17,250)	33,321	10,499
Accretion of redemption premium (expense) benefit	(3,130)	1,037	(6,740)	(6,209)	(2,301)
Net income (loss) attributable to common stockholders	\$ (7,455)	\$ 403	\$ (23,990)	\$ 27,112	\$ 8,198
Net income (loss) per share attributable to common stockholders:					
Basic	\$ (4.45)	\$ 0.25	\$ (15.70)	\$ 17.65	\$ 0.45
Diluted	\$ (4.45)	\$ (0.04)	\$ (15.70)	\$ 1.43	\$ 0.33
Shares Outstanding					
Basic	1,674	1,606	1,528	1,536	18,138
Diluted	1,674	16,864	1,528	20,086	24,414
Consolidated Balance Sheet Data:					
Cash and cash equivalents	\$ 72,102	\$ 93,261	\$ 104,280	\$ 154,621	\$ 305,052
Working capital	(54,300)	(44,788)	(43,311)	(35,816)	45,908
Total assets	159,615	171,478	206,831	278,696	518,767
Total liabilities	167,892	167,430	182,254	218,584	362,356
Total redeemable convertible preferred stock	49,080	48,043	75,960	82,169	—
Total stockholder's equity (deficit)	(57,357)	(43,995)	(51,383)	(22,057)	156,411

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and related notes appearing elsewhere in this Annual Report on Form 10-K. The following discussion and analysis contains forward-looking statements that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. Statements that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Forward-looking statements are often identified by the use of words such as, but not limited to, "anticipate," "believe," "can," "continue," "could," "estimate," "expect," "intend," "may," "plan," "project," "seek," "should," "target," "will," "would" and similar expressions or variations intended to identify forward-looking statements. Such statements include, but are not limited to, statements concerning market opportunity, our future financial and operating results, investment strategy, sales and marketing strategy, management's plans, beliefs and objectives for future operations, technology and development, economic and industry trends or trend analysis, expectations about seasonality, opportunity for portfolio purchases, use of non-GAAP financial measures, operating expenses, anticipated income tax rates, capital expenditures, cash flows and liquidity. These statements are based on the beliefs and assumptions of our management based on information currently available to us. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those discussed in the section titled "Risk Factors" included under Part I, Item 1A above. Furthermore, such forward-looking statements speak only as of the date of this report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such events.

Overview

We are a leading on-demand provider of tax-advantaged programs for consumer-directed health, commuter and other employee spending account benefits, or CDBs, in the United States. We administer and operate a broad array of CDBs, including spending account management programs such as health and dependent care Flexible Spending Accounts, or FSAs, Health Savings Accounts, or HSAs, Health Reimbursement Arrangements, or HRAs, and commuter benefits, such as transit and parking programs.

We deliver our CDB programs through a highly scalable delivery model that employer clients and their employee participants may access through a standard web browser on any internet-enabled device including computers, smart phones and other mobile devices such as tablet computers. Our on-demand delivery model eliminates the need for our employer clients to install and maintain hardware and software in order to support CDB programs and enables us to rapidly implement product enhancements across our entire user base.

Our CDB programs assist employees and their families to save money by using pre-tax dollars to pay for certain of their healthcare and commuter expenses. Employers financially benefit from our programs through reduced payroll taxes, even after factoring in our fees. Under our FSA, HSA and commuter programs, employee participants contribute funds from their pre-tax income to pay for qualified out-of-pocket healthcare expenses not fully covered by insurance, such as co-pays, deductibles and over-the-counter medical products or for commuting costs.

These employee contributions result in savings to both employees and employers. As an example, based on our average employee participant's annual FSA contribution of approximately \$1,400 and an assumed personal combined federal and state income tax rate of 35%, an employee participant will reduce his or her taxes by approximately \$490 per year by participating in an FSA. Our employer clients also realize payroll tax (i.e., FICA and Medicare) savings on the pre-tax contributions made by their employees. In the above FSA example, an employer client would save approximately \$64 per participant per year, even after the payment of our fees.

[Table of Contents](#)

Under our HRA programs, employer clients provide their employee participants with a specified amount of available reimbursement funds to help their employee participants defray out-of-pocket medical expenses such as deductibles, co-insurance and co-payments. All amounts paid by the employer into HRAs are deductible by the employer as an ordinary business expense and are tax-free to the employee.

Our company was founded in 2000 to provide the administration of tax-free commuter benefits. In early 2003, we expanded our business to include the administration of tax-advantaged healthcare programs with our FSA program. As a result of subsequent portfolio purchases made through 2006, we have broadened our CDB offerings to include HRA, HSA and Consolidated Omnibus Budget Reconciliation Act, or COBRA, programs. In 2007 we purchased MHM Resources, or MHM. The MHM small- and medium-sized business, or SMB, portfolio expanded our existing client base and the MHM technology platform enhanced our service offering to SMBs. Between 2008 and 2010, we made three portfolio purchases that have added to our client base and broadened our opportunities with public sector employers. We completed two additional portfolio purchases in January 2012 and December 2012, completed an acquisition in February 2012 and entered into a channel partner arrangement in April 2012.

We market and sell our CDB programs through multiple channels, including direct sales to large enterprises, direct sales and through brokers to SMBs, direct sales to industry purchasing and affiliate groups and through channel partners. Our enterprise sales force targets Fortune 1000 companies and generates new large account relationships through employer prospecting, consultant relationships and strategic partnerships. Our SMB distribution channel complements our enterprise sales channel. It consists of third-party advisors and institutional brokers that sell our CDB programs along with their own complementary products to SMBs. We also sell our services through group purchasing organizations of industry-specific employers with which we negotiate a standard service contract that covers their member entities. Our average sales cycle ranges from approximately two months for SMBs to six to nine months for our large institutional clients.

Our CDB agreements with our larger employer clients, which we refer to as enterprise clients, are typically for three-year terms and provide for monthly fees based on the number of employee participants enrolled in our programs. We price our services based on the estimated number and types of claims, whether payment processing and client support activities will be provided within or outside of the United States, the estimated number of calls to our customer support center and any specific client requirements. Almost all of the healthcare benefit plans we service on behalf of our enterprise clients are subject to contractual minimum monthly billing amounts. Generally, such minimum billing amounts are subject to upward revision on a monthly basis as our employer clients hire new employees who elect to participate in our programs, but generally are not subject to downward revision when employees leave their employers because we continue to administer those former employee participants' accounts for the remainder of the plan year. For our SMB clients, our agreements are typically for one to three year terms and the monthly fee remains constant for the plan year. In some cases, the agreements provide that the monthly fee is subject to upward revision when there is a 10% or greater increase in the number of employee participants during the plan year.

Benefit plan years customarily run concurrently with the calendar year and have an open enrollment period that typically occurs at benefit plan year-end during the fourth quarter of the calendar year. Most of our healthcare CDB agreements are executed in the last quarter of the calendar year. Because the signing of our contract often coincides with open enrollment, employer clients are able to offer our CDB programs to their employees during open enrollment for the upcoming benefit year. As a result of this timing, we are able to obtain significant visibility into our healthcare-related revenue early on in each plan year because healthcare benefit plans are administered on an annual basis, contractual revenue is based on the number of participants enrolled in our CDB programs on a per month basis and the minimum number of enrolled participants for the plan year is usually established at the close of the open enrollment period. In contrast to healthcare CDB programs, enrollment in commuter programs occurs on a monthly basis. Therefore, there is less visibility and some variability in commuter revenue from month-to-month, particularly during the summer vacation period when employee participants are less likely to participate in commuter programs for those months.

[Table of Contents](#)

We offer prepaid debit cards for use in conjunction with almost all of the plans that we administer. These prepaid debit cards are offered in coordination with commercial banks and card associations. We receive interchange fees from employee participants' prepaid debit card transactions, which are calculated as a percentage of the expenses transacted on each card. Although the rules do not include an explicit exemption for health benefit cards, these interchange fees are exempt from the Durbin Amendment because there is an exception for general purpose reloadable prepaid cards and some of such cards also fall outside the definitions that establish the scope of coverage. In addition to interchange fees, we also derive revenue through our wholesale card program from fees we charge to assist third party administrators, or TPAs, in issuing our prepaid debit cards to their employee participant groups and in selling their administrative services utilizing our prepaid debit cards to new employee participants. We have historically experienced seasonality in healthcare interchange revenue, which is typically the highest during the first quarter of the year because participants are either using their newly available balances for the current plan year or spending any remaining funds available from the prior plan year during the prior plan year's grace period. A grace period is generally established by employer clients as January 1 through March 15 of the succeeding plan year and is the period during which employee participants can access funds from the prior plan year's FSA account. Healthcare interchange revenue generally declines through the second and third quarters and is subject to a small increase in December as some employee participants strive to use their remaining account balances before the end of the plan year.

We also offer transit passes from various transit agencies, which we purchase on behalf of employee participants. Due to our significant volume, we receive commissions on these passes which we recognize as vendor commission revenue.

Our cost of revenues typically varies with our revenue and is, therefore, impacted by the seasonality of our business. We incur higher expenses in the first quarter associated with increased headcount in the form of temporary workers, consultants and other outsourced services that are required to cover the increased call volume and activity associated with the commencement of the new plan year. The need for these resources diminishes in the second and third quarters, but increases again in the fourth quarter when we provide services to our employer clients during their open enrollment periods. We also incur higher debit card production expenses in the fourth quarter.

At the beginning of a plan year, most of our enterprise clients provide us with prefunds for their FSA programs based on a percentage of projected elections by the employee participants for the plan year ahead. This prefunding activity covers our estimate of approximately one week of spending on behalf of the employer client's employee participants. During the plan year, we process employee participants' FSA claims as they are submitted and typically seek reimbursement from our employer clients within one week after settling the claim. Employer clients generally set a time after the close of a plan year when employee participants in FSA programs are allowed to continue submitting claims for the preceding plan year, which we refer to as a run-out period. At the end of the plan year and following the grace period and run-out period, as applicable, we reconcile all claims paid against the FSA prefund and return any unused funds to the employer. Prior to that point we will have already received an entirely new FSA prefund from a continuing employer client for the new plan year.

Our growth strategy includes acquiring and integrating smaller TPAs to expand our employer client base. We refer to these acquisitions as portfolio purchases.

Consistent with this acquisition strategy, we have made six portfolio purchases since 2007, which include MHM, in September 2007, Creative Benefits, or CB, in September 2008, Planned Benefit Systems, or PBS, in August 2010, the CDB assets of a division of Fringe Benefits Management Company or FBM, in November 2010, and the assets of The Choice Care Card, LLC, also known as Choice Strategies, or CS, in January 2012 and Benefit Concept, Inc., or BCI, in December 2012. In addition, we completed one acquisition, in which we acquired TransitCenter, Inc. (a business we refer to as TransitChek or TC) in February 2012. These portfolio purchases and this acquisition have enabled us to expand our employer client base, particularly in the SMB and public sector markets, and provided an opportunity to cross-sell additional CDB services to our newly acquired employer clients. The purchases of CB and PBS increased our COBRA service offerings, and the purchase of the

[Table of Contents](#)

FBM portfolio expanded our service capabilities to public sector clients. Our model for these portfolio purchases generally involves a payment at closing of the transaction and contingent payments based on achievement of revenue growth targets. Portfolio purchases may have a material adverse impact on our results of operations, including a potential material adverse impact on our cost of revenues in the short term as we migrate acquired clients to our proprietary technology platforms, typically over the succeeding 12 to 24 months, in order to achieve additional operating efficiencies. There are several hundred regional TPA portfolios that we continually monitor and evaluate in order to maintain a robust pipeline of potential candidates for purchase and we intend to continue executing our focused strategy of portfolio purchases to broaden our employer client base. The acquisition of TC enabled us to further expand our commuter tax-advantaged benefit offerings in the SMB market with products tailored to SMB needs. We believe this acquisition will help solidify our position as a leading provider of commuter-related CDBs.

Portfolio purchases and acquisitions may have a short-term material adverse impact on our results of operations, including a potential material adverse impact on our cost of revenues, as we seek to migrate acquired employer clients to our proprietary technology platforms, typically over the succeeding 12 to 24 months, in order to achieve additional operating efficiencies. Additionally, from time to time, we may incur material costs related to consolidating our operations following our portfolio purchases and acquisitions.

Choice Strategies Portfolio Purchase

In January 2012, we acquired all of the operating assets of CS, a third party administrator of predominantly SMB HRA accounts, based in Vermont. CS added approximately 5,100 employer clients, primarily in New England, to our existing business.

TransitCenter Asset Acquisition

In February 2012, we acquired all of the operating assets of TC. TC is exclusively focused on tax advantaged programs for consumer-directed commuter benefits (transit and parking) and serves predominantly SMB employer clients largely concentrated in the New York Metropolitan market. TC offers two variations of commuter programs—TransitChek Basic and TransitChek Premium.

The aggregate non-contingent portion of the purchase price paid in cash for the CS and TC transactions totaled \$39.9 million. Of this amount, \$39.1 million was paid in January and February 2012. These payments were primarily financed through our revolving credit facility with Union Bank, N.A. In the third quarter of 2012, we paid \$5.4 million and \$5.2 million of contingent payments to TC and CS, respectively. We currently anticipate an estimated future contingent payment to CS totaling approximately \$6.7 million.

Aflac Channel Partner Arrangement

In April 2012, we entered into a channel partner arrangement with American Family Life Assurance Company, or Aflac, pursuant to which Aflac's FSA and commuter account administration business was substantially transitioned to us from July 2012 through December 2012. In conjunction with the transition, Aflac and we also entered into a separate reseller arrangement pursuant to which Aflac agents will sell our FSA, HRA, HSA, commuter and COBRA at agreed prices and commission levels to new employers going forward.

The timing of the transition of revenue to us and the one time conversion payments to Aflac are dependent upon the employer clients executing new agreements, a process controlled by our new channel partner and the particular employer client. In 2012, we paid Aflac \$6.0 million of one-time conversion payments in connection with employer clients that have transitioned to us. We expect to pay an additional \$0.8 million of one-time conversion payments to Aflac in 2013. The conversion payments are calculated as a function of the expected annual revenue for each employer client. The one-time conversion payments incurred to date have been capitalized and are being amortized over the expected life of the relationships. We have incurred approximately

[Table of Contents](#)

\$0.5 million of one-time transition costs through the year ended December 31, 2012, which are primarily cost of revenue, in advance of revenue.

Benefit Concepts, Inc. Acquisition

In December 2012, we acquired BCI, a third party administrator of Consumer-Directed Benefits, such as, Flexible Spending Accounts, Health Reimbursement Arrangements and COBRA benefits continuation services based in East Providence, Rhode Island. This acquisition added a new regional base of customers and participant relationships and further strengthens our position in the Consumer-Directed Benefits market. The aggregate noncontingent portion of the purchase price was \$17.0 million and was paid in cash on December 31, 2012.

The purchase price also includes a contingent element that requires us to pay the former owners of BCI additional amounts in 2014 and 2015 based upon annualized revenues of BCI for 2014 and 2015, respectively. The initial fair value of the contingent element totaled \$11.8 million based on BCI's forecasted annualized revenues for 2014 and 2015.

Initial Public Offering

On May 15, 2012, we closed our initial public offering, or the IPO. The offer and sale of all of the shares in the IPO were registered under the Securities Act pursuant to a registration statement on Form S-1, which was declared effective by the SEC on May 9, 2012 (the Effective Date). In connection with the IPO, we sold 7,475,000 shares of common stock to the public at a price of \$9.00 per share, which included 975,000 shares of common stock from the full exercise of the overallotment option of shares granted to the underwriters. We received aggregate proceeds of \$62.6 million from the initial public offering and the underwriters' overallotment option, net of underwriters' discounts and commissions.

Follow-On Offering

On October 9, 2012, we closed a follow-on public offering in which we sold 1,000,000 shares of common stock at a price of \$17.50 per share, which raised \$16.5 million, net of underwriters' discounts and commissions. Certain selling stockholders, including VantagePoint, sold 5,000,000 shares of common stock in the offering, including 338,566 shares of common stock which were issued upon the exercise of outstanding warrants. In addition, the underwriters exercised their overallotment option to purchase 900,000 additional shares from the selling stockholders, including 31,313 shares of common stock which were issued upon the exercise of outstanding warrants. We did not receive any proceeds from the sale of shares by the selling stockholders other than \$1.7 million representing the exercise price of the warrants that were exercised by a selling stockholder in connection with the offering.

Consolidation of Operations

We monitor our operating results and take steps to improve, redirect and consolidate our operations. In the first quarter of 2012, we closed our Troy, Michigan facility and consolidated redundant activities within our operations, which resulted in the elimination of certain personnel. The expenses related to these actions were approximately \$0.5 million.

Key Components of Our Results of Operations

Revenue

We generate revenue from three major sources: healthcare solutions, commuter solutions and other services.

[Table of Contents](#)

Healthcare Revenue

We derive our healthcare revenue from the service fees paid by our employer clients for the administration services we provide in connection with their employee participants' healthcare FSA, dependent care FSA, HRA and HSA tax-advantaged accounts. Our fee is generally fixed for the duration of the written agreement with our employer client, which is typically three years for our enterprise clients and one to three years for our SMB clients. These fees are paid to us on a monthly basis by our employer clients, and the related services are made available to employee participants pursuant to written agreements between us and each employer client. Almost all of the healthcare benefit plans we service on behalf of our enterprise employer clients are subject to contractual minimum monthly billing amounts. Generally, such minimum billing amounts are subject to upward revision on a monthly basis as our employer clients hire new employees who elect to participate in our programs, but generally are not subject to downward revision when employees leave their employers because we continue to administer those former employee participants' accounts for the remainder of the plan year. For SMB employer clients, the monthly fee remains constant for the plan year unless there is a 10% or greater increase in the number of employee participants in which case it is subject to upward revision. Revenue is recognized monthly as services are rendered under our written service agreements.

We also earn interchange revenue from debit cards used by employee participants in connection with all of our healthcare programs and through our wholesale card program, which we recognize monthly based on reports received from third parties. We also earn revenue from self-service plan kits called Premium Only Plan kits, or POP revenue.

Commuter Revenue

For our Commuter Express, COM and CAM, we derive our commuter revenue from monthly service fees paid by our employer clients, interchange revenue that we receive from debit cards used by employee participants in connection with our commuter solutions and revenue from the sale of transit passes used in our commuter solutions. Our fees from employer clients are normally paid monthly in arrears based on the number of employee participants enrolled for the month. Most agreements have volume tiers that adjust the per participant price based upon the number of participants enrolled during that month. Revenue is recognized monthly as services are rendered under these written service agreements. We earn interchange revenue from the debit cards used by employee participants in connection with our commuter programs, which we recognize monthly based on reports received from third parties. We also receive commissions from transit passes, which we purchase from various transit agencies on behalf of employee participants. Due to our significant volume, we receive commissions on these passes which we recognize as vendor commission revenue. Commission revenue is recognized on a monthly basis as transactions are placed under written purchase agreements having stipulated terms and conditions, which do not require management to make any significant judgments or assumptions regarding any potential uncertainties.

Revenue from our TC operations is derived from two programs that are similar in size: TransitChek Basic and TransitChek Premium. Revenue from the TransitChek Basic program is based on a percentage of the face value of the transit and parking passes ordered by employer clients and revenue from the TransitChek Premium program is derived from monthly service fees paid by employer clients based on the number of participants. In both programs, revenues also include interchange revenue that we receive from debit cards used by employee participants in connection with our commuter solutions. We also recognize revenue on our estimate of certain passes that will expire unused over the estimated useful life of the passes, as the amounts paid for these passes are nonrefundable to both the employer client and the employee participant.

Other Revenue

We derive other revenue primarily from our provision of COBRA administration services to employer clients for continuation of coverage for participants who are no longer eligible for the employer's health benefits, such as medical, dental, vision, and for the continued administration of the employee participants' HRAs and

[Table of Contents](#)

certain healthcare FSAs. Our agreements to provide COBRA services are not consistently structured and we receive fees based on a variety of methodologies. Other services also include enrollment and eligibility services, employee account administration (i.e., tuition and health club reimbursements) and project-related professional fees. Other services revenue is recognized as services are rendered under our written service agreements.

Costs and Expenses

Cost of Revenues (excluding the amortization of internal use software)

Cost of revenues includes the costs of providing services to our employer clients' employee participants.

The primary component of cost of revenues is personnel and the expenses related to our claims processing, product support and customer service personnel. Cost of revenues includes outsourced and temporary help costs, check/ACH payment processing services, debit card processing services, shipping and handling costs for cards and passes and employee participant communications costs.

Cost of revenues also includes the losses or gains associated with processing our large volume of transactions, which we refer to as "net processing losses or gains." In the normal course of our business, we make administrative and processing errors that we cannot bill to our employer clients. For example, we may over-reimburse employee participants for claims they submit or incur the cost of replacing commuter passes that are not received by employee participants. Upon identifying such an error, we record the expense as a processing loss. In certain circumstances, we experience recoveries with respect to these amounts which are recorded as processing gains.

Cost of revenues does not include amortization of internal use software, which is included in amortization, or the cost of operating on-demand technology infrastructure, which is included in technology and development expenses.

Technology and Development

Technology and development expenses include personnel and related expenses for our technology operations and development personnel as well as outsourced programming services, the costs of operating our on-demand technology infrastructure, depreciation of equipment and software licensing expenses. During the planning and post-implementation phases of development, we expense, as incurred, all internal use software and website development expenses associated with our proprietary scalable delivery model. During the development phase, costs incurred for internal use software are capitalized and subsequently amortized once the software is available for its intended use. See "*Amortization and Change in Contingent Consideration*" below. Expenses associated with the platform content or the repair or maintenance of the existing platforms are expensed as incurred.

Sales and Marketing

Sales and marketing expenses consist primarily of personnel and related expenses for our sales, client services and marketing staff, including sales commissions for our direct sales force and external agent/broker commission expense, as well as communication, promotional, public relations and other marketing expenses.

General and Administrative

General and administrative expenses include personnel and related expenses of and professional fees incurred by our executive, finance, legal, human resources and facilities departments.

[Table of Contents](#)

Amortization and Change in Contingent Consideration

Amortization and change in contingent consideration expense includes amortization of internal use software, amortization of acquired intangible assets and changes in contingent consideration in connection with portfolio purchases and acquisitions.

We capitalize internal use software and website development costs incurred during the development phase and we amortize these costs over the technology's estimated useful life, which is generally four years. These capitalized costs include personnel costs and fees for outsourced programming and consulting services.

We also amortize acquired intangible assets consisting primarily of employer client agreements and relationships and broker relationships. Employer client agreements and relationships and broker relationships are amortized on a straight-line basis over an average estimated life.

We measure acquired contingent consideration payable each reporting period at fair value and recognize changes in fair value in our consolidated statement of operations each period, until the final amount payable is determined. Increases or decreases in the fair value of the contingent consideration payable can result from changes in revenue forecasts and risk and probability assumptions. Significant judgment is employed in determining the appropriateness of these assumptions in each period.

Other Income (Expense)

Other income (expense) primarily consists of (i) interest income; (ii) interest expense; and (iii) gain (loss) on revaluation of warrants.

Gain (Loss) on Revaluation of Warrants

We account for freestanding warrants that are exercisable into shares of potentially redeemable preferred stock as liabilities by marking-to-market those warrants at each reporting period from the warrant issuance date until their exercise date or expiration. The changes resulting from marking-to-market are presented in our consolidated statements of operations as gain (loss) on revaluation of warrants. Upon the automatic conversion of our preferred stock into common stock in connection with the closing of our IPO in May 2012, the warrants became exercisable for shares of common stock. As the warrant is no longer exercisable into share of redeemable preferred stock, we will no longer record any mark-to-market changes in the fair value of the warrant in the consolidated statements of operations.

Provision for Income Taxes

We are subject to taxation in the United States. Income taxes are computed using the asset and liability method, under which deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to affect taxable income. As of December 31, 2012, we remain in a net deferred tax asset position. Valuation allowances are established when necessary to reduce net deferred tax assets to the amount expected to be realized.

At December 31, 2012, we had federal and state operating loss carryforwards of approximately \$38.2 million and \$36.9 million, respectively, available to offset future regular and alternative minimum taxable income. Our federal net operating loss carryforwards expire in the years 2023 through 2029, if not utilized. The state net operating loss carryforwards expire in the years 2017 through 2031. The federal and state amounts include tax deduction benefits related to stock options in the amount of \$2.7 million and \$1.2 million, respectively, that will be booked to additional paid-in capital and that will benefit the tax provision when utilized. We also have tax deductible goodwill related to asset acquisitions. The cumulative amount of amortization deductions through 2012 is \$9.3 million.

[Table of Contents](#)

The American Taxpayer Relief Act of 2012, or the Act, was enacted on January 2, 2012. The Act reinstated the research and development credit retroactively to January 1, 2012 and extended it through 2013. As the law enactment is a subsequent event, no tax benefit from claiming the federal research and development credit has been considered for 2012.

In addition, we had federal and California research and development credit carryforwards of approximately \$2.6 million and \$1.4 million respectively, available to offset future tax liabilities. The federal research credit carryforwards expire beginning in the years 2022 through 2031, if not fully utilized. The California tax credit carryforward can be carried forward indefinitely.

Our ability to utilize the net operating losses and tax credit carryforwards are subject to limitations in the event of an ownership change as defined in Section 382 of the Internal Revenue Code (“IRC”) of 1986, as amended, and similar state tax law. In general, an ownership change occurs if the aggregate stock ownership of certain stockholders increases by more than 50 percentage points over such stockholders’ lowest percentage ownership during the testing period (generally three years). We completed Section 382 studies through December 31, 2011, and updated the analysis encompassing all common stock transactions through October 9, 2012, the date of our follow-on public offering, which resulted in an ownership change. There were no material common stock transactions between October 9, 2012 and December 31, 2012 that would have caused another ownership change. The ownership change did not result in a limitation of our utilization of our net operating loss or in its research and development credits expiring unused.

We make estimates and judgments about our future taxable income that are based on assumptions that are consistent with our plans and estimates. Should the actual amounts differ from our estimates, our provision for income taxes could be materially affected.

Accretion of Redemption Premium

We accounted for redemption premium by recording accretion charges reflecting the changes in the redemption value of certain of our series of redeemable preferred stock over the period from the date of issuance to the earliest redemption date. Upon the completion of our IPO in May 2012, the redeemable preferred shares converted to common shares that are not redeemable. We performed the final re-measurement of the redeemable preferred stock at the effective date and the preferred stock was then reclassified from the mezzanine to equity. Subsequent to the effective date of the IPO, we will no longer record accretion of redeemable preferred shares.

Critical Accounting Policies and Significant Management Estimates

Our consolidated financial statements are prepared in accordance with generally accepted accounting principles, or GAAP, in the United States. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, costs and expenses and related disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. In many instances, we could have reasonably used different accounting estimates, and in other instances, changes in the accounting estimates are reasonably likely to occur from period-to-period. Accordingly, actual results could differ significantly from the estimates made by our management. To the extent that there are material differences between these estimates and actual results, our future financial statement presentation, financial condition, results of operations and cash flows will be affected.

In many cases, the accounting treatment of a particular transaction is specifically dictated by GAAP and does not require management’s judgment in its application, while in other cases, management’s judgment is required in selecting among available alternative accounting standards that allow different accounting treatment for similar transactions. We believe that there are several accounting policies that are critical to understanding our business and prospects for future performance, as these policies affect the reported amounts of revenue and

[Table of Contents](#)

other significant areas that involve management's judgment and estimates. These significant policies and our procedures related to these policies are described in detail below. In addition, please refer to the "Notes to Consolidated Financial Statements" for further discussion of our accounting policies.

Revenue Recognition

We report revenue for the following product lines: healthcare, commuter and other services.

We recognize revenue when the following criteria are met: collectability is reasonably assured, delivery has occurred, persuasive evidence of an arrangement exists and there is a fixed or determinable fee.

Healthcare and commuter programs include revenues generated from benefit service fees based on employee participant levels, fees based on a percentage of the face value of the transit and parking passes, interchange and other commission fees. The criteria above are generally met each month as we deliver services to our employer clients and their employee participants.

Most of our employee participants utilize prepaid debit cards to pay for their qualified healthcare and commuter expenses and we receive fees, known as interchange, that represent a percentage of the expenses transacted on each card. We also receive commissions from transit passes that we purchase from various transit agencies on behalf of employee participants. Due to our significant volume, we receive commissions on these passes which we recognize as vendor commission revenue. In addition, we recognize revenue on our estimate of passes that will expire unused over the estimated useful life of the passes, as the amounts paid for these passes are nonrefundable to both the employer client and the employee participant.

Valuation of Long-Lived Assets and Goodwill

Long-lived assets, such as property, equipment, acquired intangibles and capitalized internal use software subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset group may not be recoverable such as: (i) a significant adverse change in the extent or manner in which it is being used or in its physical condition, (ii) a significant adverse change in legal factors or in the business climate that could affect its value, or (iii) a current-period operating or cash flow loss combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with its use.

Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset group to estimated undiscounted future cash flows expected to be generated by the asset group. An asset group is the lowest level at which cash flows can be identified that are largely independent of the cash flows of other asset groups. If the carrying amount of an asset group exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset group exceeds the fair value of the asset group. With the exception of MHM, we have determined that the entity level is the lowest level at which cash flows can be identified that are largely independent of the cash flows of other assets and liabilities as our revenue is interdependent on the revenue-producing activities and significant shared operating activities of all long-lived assets. The entity level is the aggregation of our three revenue streams arising from the administration of employer client sponsored healthcare programs, commuter programs and other programs. We have identified the long-lived assets of MHM as a separate asset group because we believe that the financial information available is sufficient to determine the cash inflows and outflows of certain MHM assets. Management evaluates on an annual basis and tests for impairment whenever events or changes in circumstances occur that could impact the recoverability of these assets.

We perform an annual goodwill impairment test on December 31st and more frequently if events and circumstances indicate that the asset might be impaired. The impairment tests are performed in accordance with FASB ASC 350, *Intangibles—Goodwill and Other*, or ASC 350. An impairment loss is recognized to the extent

[Table of Contents](#)

that the carrying amount exceeds the reporting unit's fair value. The goodwill impairment analysis is a two-step process: First, the reporting unit's estimated fair value is compared to its carrying value, including goodwill. If we determine that the estimated fair value of the reporting unit is less than its carrying value, we move to the second step to determine the implied fair value of the reporting unit's goodwill. If the carrying amount of the reporting unit's goodwill exceeds its fair value, an impairment loss is recognized for any excess of the carrying amount of the reporting unit's goodwill over the implied fair value of the reporting unit's goodwill in a manner similar to a purchase price allocation. In September 2011, the FASB issued new guidance intended to reduce complexity and costs by allowing an entity the option to make a qualitative evaluation about the likelihood of goodwill impairment to determine whether it should calculate the fair value of a reporting unit. If impairment is deemed more likely than not, management would perform the currently prescribed two-step goodwill impairment test. Otherwise, the two-step goodwill impairment test is not required. The amendments also expand upon the examples of events and circumstances that an entity should consider between annual impairment tests in determining whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. We adopted the new guidance in the fourth quarter of 2012. In assessing the qualitative factors, we assess relevant events and circumstances that may impact the fair value and the carrying amount of the reporting unit. The identification of relevant events and circumstances and how these may impact a reporting unit's fair value or carrying amount involve significant judgments and assumptions. The judgment and assumptions include the identification of macroeconomic conditions, industry and market considerations, overall financial performance, our specific events and share price trends and making the assessment on whether each relevant factor will impact the impairment test positively or negatively and the magnitude of any such impact. At December 31, 2012, based on the qualitative evaluation performed, management determined that it is not more likely than not that goodwill is impaired and the two-step goodwill impairment test was not deemed necessary.

When reviewing goodwill for impairment, we assess whether goodwill should be allocated to operating levels lower than our single operating segment for which discrete financial information is available and reviewed for decision-making purposes. These lower levels are referred to as reporting units. Currently, our one reporting unit was determined to be the Company's one operating segment in accordance with FASB ASC 280, *Segment Reporting*.

To date, we have not made any impairment adjustments to goodwill, as the fair value of our reporting unit in all prior years has always exceeded our carrying value by a significant amount.

Income Taxes

We are subject to income taxes in the United States. Significant judgments are required in determining the consolidated provision for income taxes.

We use the asset and liability method to account for income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and net operating loss carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. We record a valuation allowance to reduce deferred tax assets to an amount whose realization is more likely than not.

During the ordinary course of business, there are many transactions and calculations for which the ultimate tax determination is uncertain. As a result, we recognize tax liabilities based on estimates of whether additional taxes and interest will be due. These tax liabilities are recognized when, despite the belief that our tax return positions are supportable, we believe that certain positions may not be more likely than not of being sustained upon review by tax authorities. As of December 31, 2012, our unrecognized tax benefits approximated \$2.5 million, and we have no uncertain tax positions that would be reduced as a result of a lapse of the applicable

[Table of Contents](#)

statute of limitations. We believe that our accruals for tax liabilities are adequate for all open audit years based on our assessment of many factors, including past experience and interpretations of tax law. This assessment relies on estimates and assumptions and may involve a series of complex judgments about future events. We do not anticipate any adjustments would result in a material change to our financial position. To the extent that the final tax outcome of these matters is different than the amounts recorded, such differences will impact income tax expense in the period in which such determination is made. We recognize accrued interest and penalties related to unrecognized tax benefits as a component of income tax expense.

Management periodically evaluates if it is more likely than not that some or all of the deferred tax assets will be realized. In making such determination, we consider all available positive and negative evidence, including scheduled reversals of deferred tax liabilities, projected future taxable income, tax planning strategies and recent financial performance. In order to support a conclusion that a valuation allowance is not needed, positive evidence of sufficient quantity and quality (objective compared to subjective) is necessary to overcome negative evidence.

In the future, if there is a significant negative change in our operating results or the other factors that were considered in making this determination, we could be required to record a valuation allowance against our deferred tax assets. Any subsequent increases in the valuation allowance will be recognized as an increase in deferred tax expense. Any decreases in the valuation allowance will be recorded either as a reduction of the income tax provision or as a credit to paid-in capital if the associated deferred tax asset relates to windfall stock option deductions on the exercise of stock options.

Stock-Based Compensation

Stock-based compensation for stock awards is estimated at the grant date based on the award's fair value as calculated by the Black-Scholes option pricing model and is recognized as an expense over the requisite service period, which is generally the vesting period. The determination of the fair value of stock-based awards on the date of grant using an option pricing model is affected by our stock price as well as assumptions regarding a number of complex and subjective variables. These variables include our expected stock price and related volatility over the expected term of the awards, actual and projected employee stock option exercise behaviors, risk-free interest rate, estimated forfeitures and expected dividends. The following table sets forth the assumptions made with respect to these issues during 2010, 2011 and 2012.

	Year Ended December 31,		
	2010	2011	2012
Weighted average fair value of underlying stock per share	\$ 5.58	\$ 11.24	\$ 10.66
Expected volatility	48.33%	55.78%	52.79%
Risk-free interest rate	2.43%	2.58%	1.26%
Expected term	6.9 years	5.9 years	6.6 years
Dividend yield	— %	— %	— %

We changed our method of estimating expected term in 2010 from using historical and observed exercises to using the "simplified" method as an estimate of expected term. We based the risk-free interest rate on zero-coupon yields implied from U.S. Treasury issues with remaining terms similar to the expected term on the options. We estimate expected volatility based on the historical volatility of comparable companies from a representative peer-group. We do not anticipate paying any cash dividends in the foreseeable future, and therefore, used an expected dividend yield of zero in the option pricing model. We are required to estimate forfeitures at the time of grant and revise those estimates in subsequent periods if actual forfeitures differ from those estimates. We true-up our forfeitures monthly to vested amounts. If we use different assumptions for estimating stock-based compensation expense in future periods, or if actual forfeitures differ materially from our estimated forfeitures, future stock-based compensation expense may differ significantly from what we have recorded in the current period and could materially affect our income from operations, net income and net income per share.

[Table of Contents](#)

Prior to the date our common stock began trading on the NYSE, the fair value of common stock had been approved by the board of directors at each grant date based on a variety of factors, including periodic valuations of our common stock, our financial position, historical financial performance, projected financial performance, valuations of publicly traded peer companies arm's-length sales of our common stock, and the illiquid nature of common stock. Since our initial public offering, we determine the fair value of our common stock based on the closing price as quoted on the NYSE, of our common stock on the stock option grant date.

Accretion of Redemption Premium

We accounted for redemption premium by recording accretion charges reflecting the changes in the redemption value of certain of our series of redeemable preferred stock over the period from the date of issuance to the earliest redemption date. Upon the closing date of our IPO in May 2012, all outstanding redeemable preferred shares were converted into shares of common stock which is non-redeemable. We performed the final re-measurement of the redemption value of the redeemable preferred stock at the effective date and the redeemable preferred stock was then reclassified from the mezzanine level of the consolidated balance sheet into equity at the closing of the IPO. We therefore did not record accretion of redeemable preferred shares during the third and fourth quarters of 2012.

Results of Operations

Revenue

	Year Ended December 31,			Change from prior year	
	2010	2011	2012	2011	2012
	(in thousands)				
Revenue:					
Healthcare	\$ 75,771	\$ 90,917	\$ 112,905	20%	24%
Commuter	29,304	33,325	51,817	14%	55%
Other	9,972	11,395	12,560	14%	10%
Total revenue	<u>\$ 115,047</u>	<u>\$ 135,637</u>	<u>\$ 177,282</u>	18%	31%

Healthcare Revenue

The \$22.0 million increase in healthcare revenue from 2011 to 2012 was primarily driven by the inclusion of a full year of post-purchase revenue of \$13.8 million for CS, which was acquired in January 2012. Healthcare revenue was further driven by a \$7.0 million increase in FSA, HRA and HSA revenue due to greater employee participation in our programs during 2012 as compared to 2011, and higher interchange fees of \$2.4 million due to increased debit card usage as well as an increase in the number of debit cards issued. The increases in healthcare revenue were partially offset by a decrease of \$1.2 million in Premium Only Plan kits, or POP, revenue during 2012 as compared to 2011. These are self-service plan kits that we provide to employer clients to initiate the deduction of healthcare premiums on a tax deferred basis.

The \$15.1 million increase in healthcare revenue from 2010 to 2011 was primarily driven by the inclusion of a full year of post-purchase revenue of \$4.4 million and \$8.9 million for PBS and FBM, which were acquired in August 2010 and November 2010, respectively. Healthcare revenue also increased due to \$1.2 million of increased revenue from SMB employer clients, which includes \$0.5 million of increased Premium Only Plan kits revenue.

Commuter Revenue

The \$18.5 million increase in commuter revenue from 2011 to 2012 was primarily driven by the inclusion of a full year of post-purchase revenue of \$17.8 million for TC, which was acquired in February 2012. Commuter revenue was further increased by \$0.4 million due to increased participation in our commuter programs and by \$0.2 million from interchange revenue as a result of increased prepaid debit card usage as well as an increase in the number of debit cards issued.

[Table of Contents](#)

The \$4.0 million increase in commuter revenue from 2010 to 2011 was primarily driven by an increased number of employee participants and the addition of a large employer client in the first quarter of 2011. Commuter interchange revenue also increased by \$0.9 million as a result of increased prepaid debit card usage.

Other Revenue

The \$1.2 million increase in other revenue from 2011 to 2012 was driven by an increase in COBRA revenue and direct billing services.

The \$1.4 million increase in other revenue from 2010 to 2011 was primarily driven by the inclusion of a full year of post-purchase COBRA revenue of \$1.6 million and \$1.4 million for PBS and FBM, respectively. These increases were offset, in part, by decreases in COBRA revenue, in part due to the loss of employee participants and, in part, due to the ending of the American Recovery and Reinvestment Act (ARRA), which provided a subsidy for COBRA benefits.

Cost of Revenue

	Year Ended December 31,			Change from prior year	
	2010	2011	2012	2011	2012
		(in thousands)			
Cost of revenues (excluding amortization of internal use software)	\$50,205	\$55,651	\$64,647	11%	16%
Percent of revenue	44%	41%	36%		

The \$9.0 million increase in cost of revenues (excluding amortization of internal use software) from 2011 to 2012 was driven by the inclusion of approximately \$9.1 million in post-purchase expenses for CS and TC, primarily related to salaries and personnel-related costs, as well as an increase of \$0.9 million in temporary workers expense and \$0.4 million in outsourcing services as a result of increased processing and client support activities. These increases were offset in part by decreases in depreciation expense of \$0.5 million, due to assets becoming fully depreciated and decreases in salaries and personnel-related costs of \$0.4 million primarily as a result of the integration of PBS and FBM. In 2012, there was a net processing loss of \$0.3 million for the year compared to a net processing loss of \$0.5 million for 2011. The lower net processing loss for 2012 was primarily the result of a favorable adjustment due to the recognition of transit agency credits. The cost of revenues decreased as a percentage of revenue for 2012 as compared to 2011 by 5%, primarily due to the TC acquisition that added to our commuter revenue, which has lower direct expenses relative to healthcare revenue which experiences higher claims processing costs.

The \$5.4 million increase in cost of revenues (excluding amortization of internal use software) from 2010 to 2011 was primarily driven by the inclusion of a full year of post-purchase expenses for PBS and FBM of \$10.4 million. These increases were offset, in part, by a \$1.7 million decrease in costs as a result of substantially completing the integration of CB and a decrease in outsourced services expense of \$0.8 million primarily related to savings from a negotiated reduction in rates with a third party vendor. In addition, payroll and related expenses and temporary worker expense decreased \$1.1 million due to operations consolidation, the termination of ARRA and a decrease in depreciation expense of \$0.5 million. The decrease in cost of revenues as a percentage of revenue was due to the significant increase in revenue and the cost reduction items discussed above.

As we continue to scale our operations, we expect our cost of revenues to increase in absolute dollars to support increased employer client and employee participant levels. Cost of revenues will continue to be affected by our portfolio purchases, acquisitions and channel partner arrangements. Prior to migrating to our proprietary technology platforms, these new portfolios often operate with higher service delivery costs that result in increased cost of revenues until we are able to complete the migration process, which typically occurs over the 12- to 24-month period following closing of the portfolio purchase or acquisition.

[Table of Contents](#)**Technology and Development**

	Year Ended December 31,			Change from prior year	
	2010	2011	2012	2011	2012
Technology and development	\$ 12,640	\$ 13,526	\$ 18,849	7%	39%
Percent of revenue	11%	10%	10%		

The \$5.3 million increase in technology and development expenses from 2011 to 2012 was driven by the inclusion of approximately \$4.0 million in post-purchase expenses for CS and TC, primarily related to salaries and personnel-related costs. This increase was also driven by an increase in temporary help, consulting services and salaries and personnel-related costs of \$3.7 million, due to continued investment in improving the functionality of our platform and mobile features. These costs were partly offset by an increase in expenditures qualifying for capitalization of \$2.4 million in 2012 related to implementation of additional features and functionality to our platform.

The \$0.9 million increase in technology and development expenses from 2010 to 2011 was primarily driven by an increase in salaries and personnel-related costs of approximately \$1.5 million, an increase in outsourced services and temporary help and consulting services of \$1.0 million related to the reporting capability and functionality of our platform and \$0.9 million in Shared Services Agreement expenses paid to FBMC for support provided to certain acquired customer contracts. These increases were partially offset by a \$2.3 million increase in the expenditures qualifying for capitalization in 2011 related to implementation of additional mobile features for our platform, mobile applications for our SMB client base as well as the development of functionality and integration of our COBRA platform. The decrease in technology and development expenses as a percentage of revenue was primarily due to the significant increase in revenue.

We intend to continue enhancing the functionality of our software platform as part of our continuous effort to improve our employer client and employee participant experience and to maintain and enhance our control and compliance environment. As a result of our focus on technology development, our CS portfolio purchase and our TC acquisition, we expect our technology and development expenses to increase in absolute dollars in future periods. The timing of development and enhancement projects, including whether they are in phases where costs are capitalized or expensed, will significantly affect our technology and development expense both in absolute dollars and as a percentage of revenue.

Sales and Marketing

	Year Ended December 31,			Change from prior year	
	2010	2011	2012	2011	2012
Sales and marketing	\$ 18,173	\$ 20,697	\$ 30,341	14%	47%
Percent of revenue	16%	15%	17%		

The \$9.6 million increase in sales and marketing expense from 2011 to 2012 was primarily due to the acquisition of CS and TC, which increased sales and marketing expense by \$8.0 million, primarily related to salaries and personnel-related costs and commission sales expense. Salaries and personnel-related costs also increased by \$1.7 million due to increased hiring of sales and marketing personnel outside of CS and TC.

The \$2.5 million increase in sales and marketing expense from 2010 to 2011 was primarily driven by \$2.5 million of additional expense arising from the acquisition of PBS and FBM. Excluding PBS and FBM, payroll and related expenses increased by approximately \$0.8 million due to increased headcount associated with the growth of our business. These increases were partially offset by decreases of \$0.4 million related to the completion of a public relations campaign and \$0.2 million of advertising expense. The decrease in sales and marketing expense as a percentage of revenue was due to the significant increase in revenue.

[Table of Contents](#)

Sales and marketing expense as a percentage of revenue increased in 2012 as compared to 2011 by 2%. This increase was primarily due to our TC acquisition and CS portfolio purchase having higher relative sales and marketing expenses as a percentage of revenue.

We intend to continue to invest in sales, client services and marketing by hiring additional direct sales personnel and continuing to build our broker and channel relationships. We also intend to promote our brand through a variety of marketing and public relations activities. As a result, we expect our sales and marketing expenses to increase in absolute dollars and as a percentage of revenue in future periods.

General and Administrative

	Year Ended December 31,			Change from prior year	
	2010	2011	2012	2011	2012
General and administrative	\$18,231	\$20,876	\$28,839	15%	38%
Percent of revenue	16%	16%	16%		

The \$8.0 million increase in general and administrative expense from 2011 to 2012 was primarily due to the inclusion of approximately \$4.8 million in post-purchase expenses for CS and TC, primarily related to salaries and personnel-related costs. General and administrative expenses also increased by \$1.4 million due to increased professional and consulting expenses and salaries and personnel-related costs, resulting from continued efforts to enhance our control environment and to meet other requirements of being a public company and other compensation costs. General and administrative expenses also increased by \$1.1 million due to additional stock-based compensation expense incurred during 2012 as a result of the vesting of performance-based option grants at the closing of our IPO, a one-time adjustment related to past grants and additional expense from stock option grants made during 2012. The remaining \$0.7 million increase in general and administrative expenses was primarily driven by increased allocation of facilities costs to general and administrative departments as a result of increased headcount.

The \$2.6 million increase in general and administrative expenses from 2010 to 2011 was primarily driven by an increase in payroll and related expenses, professional services expense and outsourced services expense aggregating approximately \$3.3 million primarily due to our preparation to become a public company. These increases were partially offset by a \$0.8 million decrease in temporary help and consulting services due to the completion of finance related infrastructure projects in 2010.

As we continue to grow, we expect our general and administrative expenses to increase in dollar amount as we expand general and administrative headcount to support our continued growth and due to the increased expenses associated with being a public company.

Amortization and Change in Contingent Consideration

	Year Ended December 31,			Change from prior year	
	2010	2011	2012	2011	2012
Amortization and change in contingent consideration	\$7,764	\$11,327	\$15,674	46%	38%

Our amortization and change in contingent consideration consists of three components: amortization of internal use software, amortization of acquired intangibles and change in contingent consideration. We capitalize our software development costs related to the development and enhancement of our business solution. When the technology is available for its intended use, the capitalized costs are amortized over the technology's estimated useful life, which is generally four years. Acquired intangibles are also amortized over their useful lives.

[Table of Contents](#)

The \$4.3 million increase in amortization and change in contingent consideration from 2011 to 2012 was primarily due to a \$3.9 million increase in amortization of acquired intangible assets driven by the CS portfolio purchase and TC acquisition.

The \$3.6 million increase in amortization and change in contingent consideration from 2010 to 2011 was primarily due to charges of \$1.4 million and \$1.3 million, respectively, for contingent consideration related to our PBS and FBM portfolio purchases. These increases were driven by increases in revenue levels achieved and forecasted to be achieved in 2012. Amortization of acquired intangible assets increased \$0.5 million due to the inclusion of a full year of post-purchase amortization of acquired intangible assets related to FBM and PBS.

Other Income (Expense)

	Year Ended December 31,		
	2010	2011	2012
	(in thousands)		
Interest income	\$ 220	\$ 36	\$ 36
Interest expense	(188)	(494)	(1,772)
Interest expense: amortization of convertible debt discount	(21,107)	—	—
Other income	—	—	48

The increase in interest expense from 2011 to 2012 was due to the increase in the amount borrowed under our credit facility with Union Bank, N.A. in 2012 to finance the TC acquisition.

The increase in interest expense from 2010 to 2011 was primarily due to the increase in the outstanding amount borrowed under our credit facility with Union Bank, N.A. in 2011 as compared to 2010.

The absence of amortization of convertible debt discount in 2011 is due to the full amortization of the convertible notes in 2010 and the conversion of the notes to equity in July 2010.

Revaluation of Warrants

	Year Ended December 31,		
	2010	2011	2012
	(in thousands)		
Gain (loss) on revaluation of warrants	\$(5,413)	\$351	\$381

Upon the closing of our IPO in May 2012 and the automatic conversion of the outstanding shares of our preferred stock into shares of common stock, the warrant for Series C redeemable preferred stock became exercisable for shares of common stock. We performed the final re-measurement of the warrant for Series C redeemable preferred stock at the closing date and the warrant was then reclassified from liability to equity. We did not record any mark-to-market changes in the fair value of these warrants in the statement of operations during the third and fourth quarters of 2012.

The mark-to-market adjustment related to our outstanding warrants for Series C redeemable preferred stock was a \$0.4 million gain for the year ended December 31, 2011 primarily due to a decline in the underlying fair market value of our Series C redeemable preferred stock.

Income Taxes

	Year Ended December 31,		
	2010	2011	2012
	(in thousands)		
Income tax (provision) benefit	\$1,204	\$19,868	\$(7,126)

[Table of Contents](#)

The change from 2011 to 2012 was primarily related to the release of the \$25.9 million valuation allowance in 2011 and the result of increases in federal income taxes, driven by higher taxable income year over year.

The change from 2010 to 2011 was primarily related to the release of the \$25.9 million valuation allowance at December 31, 2011. In the fourth quarter of 2011, we determined that the positive evidence of taxable income coupled with our forecasted profitability outweighed the negative evidence of prior losses. We deferred action on the release of the valuation allowance until the fourth quarter of 2011 when we had visibility into our 2012 enrollment levels, including enrollment and a full year of results from our 2010 portfolio purchases.

Accretion of Redemption Premium

	Year Ended December 31,		
	2010	2011	2012
Accretion of redemption premium expense	\$(6,740)	(in thousands) \$(6,209)	\$(2,301)

We accounted for redemption premium by recording accretion charges reflecting the changes in the redemption value of certain of our series of redeemable preferred stock over the period from the date of issuance to the earliest redemption date. Upon the closing date of our IPO in May 2012, all outstanding redeemable preferred shares were converted into shares of common stock which is non-redeemable. We performed the final re-measurement of the redemption value of the redeemable preferred stock at the effective date and the redeemable preferred stock was then reclassified from the mezzanine level of the consolidated balance sheet into equity at the closing of the IPO. We therefore did not record accretion of redeemable preferred shares during the third and fourth quarters of 2012.

Liquidity and Capital Resources

At December 31, 2012, our principal sources of liquidity were cash and cash equivalents totaling \$305.1 million comprised primarily of prefunds by clients of amounts to be paid on behalf of employee participants as well as, in recent years, other cash flows from operating activities. In connection with our May 2012 IPO, we raised aggregate gross proceeds of \$67.3 million; after deducting underwriting discounts and commissions of \$4.7 million and offering expenses payable by us of \$5.5 million, we received approximately \$57.0 million. In October 2012, we raised aggregate gross proceeds of \$17.5 million from our follow-on public offering; after deducting underwriting discounts and commissions of \$1.0 million and offering expenses payable by us of approximately \$0.9 million we received approximately \$15.5 million.

Prior to our public offerings, our operations had been financed primarily through cash flows from operating activities, the sale of convertible preferred stock and short and long-term borrowings.

We believe that our existing cash and cash equivalents, expected cash flow from operations, and net proceeds from our public offerings will be sufficient to meet our operating and capital requirements, as well as anticipated cash requirements for potential future portfolio purchases, over at least the next 12 months. We have historically been able to fulfill our obligations as incurred and expect to continue to fulfill our obligations in the future. Our expectation is based on our current and anticipated client retention rates and our continuing funding model in which the vast majority of our enterprise clients provide us with prefunds as more fully described below under “—*Prefunds.*” To the extent these current and anticipated future sources of liquidity are insufficient to fund our future business activities and requirements, including any potential portfolio purchases; we may need to raise additional funds through public or private equity or debt financing. We cannot provide assurance that we will be able to raise additional funds on favorable terms, if at all.

Prefunds

Under our contracts with the vast majority of our enterprise employer clients, we receive prefunds that have been and are expected to continue to be a significant source of cash flows from operating activities. Each prefund is reflected in cash and cash equivalents on our balance sheet with an equivalent customer obligation recorded as a liability as the prefund is received. Changes in these prefunds and corresponding customer obligations are reflected in our cash flows from operating activities. The substantial majority of our SMB employer clients deposit funds into a separate custodial account, and those funds are neither a source of cash flows from operating activities nor reflected on our balance sheet. These SMB employer clients are responsible for maintaining an adequate balance in those custodial accounts to cover their employee participants' claims. We only pay SMB employee participant claims from amounts in the custodial accounts.

The operation of these prefunds for our enterprise employer clients throughout the year typically is as follows: at the beginning of a plan year, these employer clients provide us with prefunds for their FSA and HRA programs based on a percentage of projected spending by the employee participants for the plan year. In the case of our commuter program, at the beginning of each month we receive prefunds based on the employee participants' monthly elections. These prefunds are typically replenished on a weekly basis by our FSA and HRA employer clients and on a monthly basis by our commuter employer clients, in each case, after we have advanced the funds necessary to process employee participants' FSA and HRA claims as they are submitted to us and to pay vendors relating to our commuter programs. As a result, our cash balances can vary significantly depending upon the timing of invoicing of, and payment by, our employer clients of reimbursement for payments we have made on behalf of employee participants. This prefunding activity covers our estimate of approximately one week of spending on behalf of the employer client's employee participants. We do not require a prefund to administer any of our HSA programs because employee participants in these programs only have access to funds they have previously contributed.

By way of example, a new FSA enterprise employer client with a plan year starting January 1 will typically provide between 4-6% of the projected annual election for its employee participants as a prefund. In this example, we would typically receive this prefunding in late December. Once the new plan year starts, the employee participants can immediately access all elected funds of their FSA benefit even before any payroll deductions have commenced. This access to funds differs from our HSA programs where available funds are added to employee participants' accounts only as payroll deductions occur and HRA programs where funds are only available as contributions are made.

Following the run-out period and grace period, the FSA prefunds from the prior plan year are reconciled and funds are returned to the employer clients, resulting in a substantial decline in our cash position. The cycle then repeats itself in each plan year as participants enroll in programs and prefunds are received in the fourth quarter for the new plan year. In a majority of cases, new FSA prefunds for the succeeding plan year are received prior to a plan year's prefund being fully paid out in the form of benefits for employee participants or being returned to the employer client. Because participant activity in our commuter programs varies monthly, prefunds for these programs fluctuate monthly.

Our enterprise client contracts do not contain restrictions on our use of enterprise client prefunds and, as a result, these prefunds are reflected as cash and cash equivalents on our balance sheet and changes in prefunds are recorded as an element of our cash flow from operating activities. The timing of when employer clients make their prefunds as well as the timing of when we make payments on behalf of employee participants can significantly affect our cash flows.

Union Bank Credit Facility

In the fourth quarter of 2012, the Company entered into a Credit Agreement, or Revolver, with Union Bank, N.A., or UB to amend and restate the Company's existing credit facility and increase the aggregate principal amount that could be borrowed to \$75.0 million from \$50.0 million. As of December 31, 2012, the Company had

[Table of Contents](#)

\$44.6 million outstanding under the Revolver with UB. UB had issued a letter of credit for \$5.4 million in the first quarter of 2012 related to a contingent payment for the TC acquisition. In the third quarter of 2012, the Company used its existing cash to pay the \$5.4 million and the letter of credit was allowed to expire. As collateral for the Revolver, the Company granted UB a security interest in all of the Company's assets. All of the Company's material existing and future subsidiaries are required to guaranty the Company's obligations under the Revolver. Such guarantees by existing and future material subsidiaries are and will be secured by substantially all of the property of such material subsidiaries.

Under the amended terms of the Revolver, each new loan under the credit facility bears interest at a fluctuating rate per annum equal to a base rate determined in accordance with the credit agreement, plus 0.25%, or, at the Company's option, an interest rate equal to the LIBOR rate determined in accordance with the credit agreement, plus 2.50%. The interest rate applicable to loans outstanding at December 31, 2012 ranged from 2.81% to 3.23%. Principal, together with all accrued and unpaid interest, is due and payable on December 31, 2015.

The Revolver contains customary affirmative and negative covenants and also has financial covenants relating to a liquidity ratio, a ratio of indebtedness to EBITDA, a debt service coverage ratio and a minimum consolidated net worth covenant. The Company is obligated to pay customary commitment fees and letter of credit fees for a facility of this size and type.

The Revolver contains customary events of default, including, among others, payment defaults, covenant defaults, inaccuracy of representations and warranties, cross-defaults to other material indebtedness, judgment defaults, a change of control default and bankruptcy and insolvency defaults. Under certain circumstances, a default interest rate will apply on all obligations during the existence of an event of default under the loan agreement at a per annum rate of interest equal to 2.00% above the applicable interest rate. Upon an event of default, the lenders may declare the outstanding obligations payable by the Company to be immediately due and payable and exercise other rights and remedies provided for under the credit facility.

Cash Flows

The following table presents information regarding our financial position including cash and cash equivalents as of December 31, 2011 and 2012:

	December 31, 2011	December 31, 2012
	(in thousands)	
Cash and cash equivalents, end of year	\$ 154,621	\$ 305,052
Working capital	(35,816)	45,908
Total stockholder's equity (deficit)	(22,057)	156,411

The following table presents information regarding our cash flows for the years ended December 2010, 2011 and 2012:

	Year Ended December 31,		
	2010	2011	2012
	(in thousands)		
Net cash provided by operating activities	\$ 20,476	\$ 55,189	\$ 56,133
Net cash used in investing activities	(12,299)	(12,594)	(8,295)
Net cash provided by financing activities	2,842	7,746	102,593
Net increase in cash and cash equivalents	\$ 11,019	\$ 50,341	\$ 150,431

[Table of Contents](#)***Cash Flows from Operating Activities***

	Year Ended December 31,		
	2010	2011	2012
	(in thousands)		
Net cash provided by operating activities	\$20,476	\$55,189	\$56,133

Net cash provided by operating activities in 2012 resulted primarily from our net income of \$10.5 million being adjusted for the following non-cash items: depreciation, amortization and change in contingent consideration aggregating \$18.6 million, deferred taxes of \$6.7 million and stock-based compensation of \$3.8 million. Cash from operating activities increased by \$23.7 million for customer obligations primarily due to the increase in prefun­ds and the timing of our billings and employer client payments. Operating cash flow was further increased by changes in accounts payable and accrued expenses of \$5.1 million primarily from an increase in transit agency payables as a result of the TC acquisition. These cash flows were offset in part by increases in accounts receivable balance of approximately \$5.5 million due to the timing of collections and overall increases from the various 2012 acquisitions, \$3.4 million in charges to the statement of operations for changes in the value of contingent consideration in excess of the initial measurement and \$2.7 million due to net changes in prepaid expenses and other current assets driven by offering costs related to our initial public offering and follow-on offering.

Net cash provided by operating activities in 2011 resulted primarily from our net income of \$33.3 million being adjusted for the following non-cash items: depreciation, amortization and change in contingent consideration aggregating \$14.5 million and stock-based compensation of \$2.2 million offset by a \$20.2 million increase in deferred tax assets, primarily as a result of releasing the valuation allowance. Cash from operating activities was further increased by \$28.9 million of customer obligations primarily due to the increase in our commuter elections, an increase in prefun­ds and the timing of our billings and employer client payments. These cash flows were offset in part by a \$4.0 million increase in prepaid expenses and other current assets, primarily due to prepaid expenses related to our public offering.

Net cash provided by operating activities in 2010 resulted primarily from our net loss of \$17.3 million being adjusted for the following non-cash items: amortization of convertible debt discount of \$21.1 million, depreciation and amortization of \$11.9 million, change in the fair value of our Series C and Series E-1 warrants of \$5.4 million and stock-based compensation of \$2.4 million. We also experienced a \$1.5 million increase in prefun­ds due to the timing of our billings and employer client payments as discussed in "Liquidity and Capital Resources—Prefunds." These cash flows were offset in part by a \$1.3 million change in deferred taxes primarily related to our PBS acquisition and a \$2.1 million increase in accounts receivable attributable to our increased revenue volume.

Cash Flows from Investing Activities

	Year Ended December 31,		
	2010	2011	2012
	(in thousands)		
Net cash used in investing activities	\$(12,299)	\$(12,594)	\$(8,295)

Net cash used in investing activities in 2012 was primarily the result of \$12.3 million of capitalized internal use software and purchased equipment, which was largely related to further upgrades to our product platform. In connection with the Aflac channel partner arrangement, we also paid Aflac \$6.0 million for the employer clients that have transitioned to us. These outflows were partially offset by cash acquired in connection with our CS and BCI portfolio purchases as well as the TC acquisition exceeding the cash payments made for these acquisitions.

[Table of Contents](#)

Net cash used in investing activities in 2011 was primarily a result of \$9.4 million of capitalized internal use software and purchased equipment principally related to enhancing the functionality of our platform and a \$1.9 million cash payment, net of cash received, made in connection with our FBM portfolio purchase. We also used cash to increase our restricted cash by \$1.3 million, in preparation for our CS portfolio purchase on January 3, 2012.

Net cash used in investing activities in 2010 was primarily a result of \$7.3 million of capitalized internal use software and purchased equipment, which was largely related to further upgrades to our product platform and control environment. Some of our major projects for the year included the implementation of mobile features for our platform, such as our mobile application for use on Apple iPhone® and iPad® devices, the final stage of the daily settlement system implementation, increased automation for our COBRA services and significant platform changes to accommodate unique client requirements. We also used \$5.0 million of cash, net of cash received, for payments made in connection with the purchases of CB, PBS and FBM.

Cash Flows from Financing Activities

	Year Ended December 31,		
	2010	2011	2012
	(in thousands)		
Net cash provided by financing activities	\$2,842	\$7,746	\$102,593

Net cash provided by financing activities in 2012 was due to \$62.6 million and \$16.5 million received in connection with our initial public offering and follow-on offering, respectively, as well as \$29.5 million in draw downs on our credit facility to fund payments for our TC acquisition and CS portfolio purchase that took place in the first quarter of 2012. Financing inflows were further increased by \$7.0 million from cash received from the exercise of warrants, exercise of stock options and the issuance of common stock related to our employee stock purchase plan, partially offset by contingent consideration payments of \$14.7 million related to PBS, CS, TC and FBM transactions.

Net cash provided by financing activities in 2011 was due to \$12.1 million in draw downs on our credit facility to fund payments related to our contingent consideration payments for FBM and PBS portfolio purchases that took place in 2010, partially offset by the FBM contingent consideration payment of \$2.3 million and the PBS contingent consideration payment of \$2.0 million.

Net cash provided in financing activities in 2010 was due to drawing down on our credit facility to fund our acquisition of PBS.

Recently Issued Accounting Pronouncements

See Note 1 of our accompanying consolidated financial statements for a full description of recent accounting pronouncements and our expectation of their impact, if any, on our results of operations and financial condition.

Contractual Obligations

The following table describes our contractual obligations as of December 31, 2012:

	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Long-term debt obligations (1)	\$ 44,600	\$ —	\$44,600	\$ —	\$ —
Interest on long-term debt obligations (2)	1,425	475	950	—	—
Operating lease obligations (3)	23,409	5,352	6,958	3,080	8,019
Acquisition payments (4)	21,248	7,248	13,800	200	—
Total	\$ 90,682	\$13,075	\$ 66,308	\$3,280	\$ 8,019

[Table of Contents](#)

- (1) Credit facility: \$75.0 million credit facility with a variable interest rate of base rate plus 0.25% per annum or LIBOR plus 2.50% per annum, and a maturity date of December 31, 2015. See Note 8 of our consolidated financial statements. The \$44.6 million outstanding principal amount is recorded net of debt issuance costs on our balance sheet and the debt issuance costs are not included in the table above.
- (2) Estimated interest payments assume the current weighted average interest rate of 3.20% per annum on a \$44.6 million principal amount.
- (3) We lease facilities under non-cancelable operating leases expiring at various dates through 2023.
- (4) Estimated undiscounted contingent consideration for companies acquired in 2010 and 2012. See Note 3 to our consolidated financial statements.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Market risk represents the risk of loss that may affect our financial position due to adverse changes in financial market prices and rates. We are exposed to market risks related to changes in interest rates.

As of December 31, 2012, we had cash and cash equivalents of \$305.1 million. These amounts consist of cash on deposit with banks and money market funds. The cash and cash equivalents are held for working capital purposes. We do not enter into investments for trading or speculative purposes. Due to the short-term nature of these investments, we do not believe that changes in interest rates would have a material impact on our financial position and results of operations. However, declines in interest rates and cash balances will reduce future investment income.

The primary objective of our investment activities is to preserve principal while maximizing yields without significantly increasing risk. This objective is accomplished by making diversified investments, consisting only of investment grade securities. The decrease in interest income from the effect of a hypothetical decrease in short-term interest rates of 10% would not have a material impact on our net income and cash flows.

Our exposure to market risk also relates to the increase or decrease in the amount of interest expense we must pay on our outstanding debt instruments. As of December 31, 2012, we had outstanding principal of \$44.6 million under our credit facility. The interest rate applicable to loans outstanding at December 31, 2012 ranged from 2.81% to 3.23%. New loans under the credit facility bears interest at a fluctuating rate per annum equal to a base rate determined in accordance with the credit agreement, plus 0.25%, or, at our option, an interest rate equal to the LIBOR rate determined in accordance with the credit agreement, plus 2.50%. If market interest rates on our debt increase or decrease by 1%, the increase or decrease in annual interest expense on our debt would increase or decrease future earnings and cash flows by approximately \$0.4 million, respectively.

[Table of Contents](#)

Item 8. Financial Statements and Supplementary Data

**WageWorks, Inc. and Subsidiaries
Index To Consolidated Financial Statements**

	<u>Page</u>
Report of Independent Registered Public Accounting Firm	65
Consolidated Balance Sheets	66
Consolidated Statements of Operations	67
Consolidated Statements of Stockholders' Equity (Deficit)	68
Consolidated Statements of Cash Flows	69
Notes to Consolidated Financial Statements	70

Report of Independent Registered Public Accounting Firm

The Board of Directors
WageWorks, Inc.:

We have audited the accompanying consolidated balance sheets of WageWorks, Inc. and subsidiaries (the Company) as of December 31, 2011 and 2012, and the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2012. In connection with our audits of the consolidated financial statements, we also have audited the financial statement schedule. These consolidated financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule 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 financial position of WageWorks, Inc. and subsidiaries as of December 31, 2011 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, 2012, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the related financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, present fairly, in all material respects, the information set forth therein.

/s/ KPMG LLP

San Francisco, California
February 25, 2013

WAGeworks, INC.
Consolidated Balance Sheets
(In thousands, except per share amounts)

	<u>December 31, 2011</u>	<u>December 31, 2012</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 154,621	\$ 305,052
Restricted cash, current portion	2,383	1,147
Accounts receivable, less allowance for doubtful accounts of \$69 and \$403 at December 31, 2011 and December 31, 2012, respectively	15,647	22,924
Deferred tax assets—current	1,291	11,855
Prepaid expenses and other current assets	5,887	6,309
Total current assets	179,829	347,287
Restricted cash, net of current portion	2,526	2,432
Property and equipment, net	19,014	24,777
Goodwill	46,233	94,827
Acquired intangible assets, net	12,555	47,506
Deferred tax asset	16,978	—
Other assets	1,561	1,938
Total assets	\$ 278,696	\$ 518,767
Liabilities, Redeemable Convertible Preferred Stock, and Stockholders' Equity (Deficit)		
Current liabilities:		
Accounts payable and accrued expenses	\$ 21,415	\$ 42,034
Customer obligations	169,959	249,801
Short-term contingent payment	8,976	6,818
Short-term debt	14,901	—
Other current liabilities	394	2,726
Total current liabilities	215,645	301,379
Long-term debt	—	44,371
Warrants	1,119	—
Long-term contingent payment, net of current portion	—	11,772
Deferred tax liability	—	2,450
Other non-current liability	1,820	2,384
Total liabilities	218,584	362,356
Redeemable convertible preferred stock:		
Redeemable convertible preferred stock, Series C (\$24,999 liquidation preference). Authorized 6,306 shares; issued and outstanding 5,882 shares at December 31, 2011 and no shares outstanding at December 31, 2012	36,570	—
Redeemable convertible preferred stock, Series D (\$15,998 liquidation preference). Authorized 2,465 shares; issued and outstanding 2,465 shares at December 31, 2011 and no shares outstanding at December 31, 2012	17,771	—
Redeemable convertible preferred stock, Series E (\$21,179 liquidation preference). Authorized 5,295 shares; issued and outstanding 5,295 shares at December 31, 2011 and no shares outstanding at December 31, 2012	27,828	—
Total redeemable convertible preferred stock	82,169	—
Stockholders' equity (deficit):		
Convertible preferred stock, \$0.001 par value (\$31,916 liquidation preference). Authorized 26,392 shares, outstanding 17,645 shares at December 31, 2011 and no shares outstanding at December 31, 2012	33,965	—
Common stock, \$0.001 par value. Authorized 1,000,000 shares; issued 1,738 shares at December 31, 2011 and 31,771 shares at December 31, 2012	2	32
Treasury stock at cost 192 shares at December 31, 2011 and 200 shares at December 31, 2012	(433)	(546)
Additional paid-in capital	19,029	221,046
Accumulated deficit	(74,620)	(64,121)
Total stockholders' equity (deficit)	(22,057)	156,411
Total liabilities, redeemable convertible preferred stock, and stockholders' equity (deficit)	\$ 278,696	\$ 518,767

The accompanying notes are an integral part of the consolidated financial statements.

WAGeworks, INC.
Consolidated Statements of Operations
(In thousands, except per share amounts)

	Year Ended December 31,		
	2010	2011	2012
Revenues:			
Healthcare	\$ 75,771	\$ 90,917	\$ 112,905
Commuter	29,304	33,325	51,817
Other	9,972	11,395	12,560
Total revenue	<u>115,047</u>	<u>135,637</u>	<u>177,282</u>
Operating expenses:			
Cost of revenues (excluding amortization of internal use software)	50,205	55,651	64,647
Technology and development	12,640	13,526	18,849
Sales and marketing	18,173	20,697	30,341
General and administrative	18,231	20,876	28,839
Amortization and change in contingent consideration	7,764	11,327	15,674
Total operating expenses	<u>107,013</u>	<u>122,077</u>	<u>158,350</u>
Income from operations	8,034	13,560	18,932
Other income (expense):			
Interest income	220	36	36
Interest expense	(188)	(494)	(1,772)
Interest expense: amortization of convertible debt discount	(21,107)	—	—
Gain (loss) on revaluation of warrants	(5,413)	351	381
Other income	—	—	48
Income (loss) before income taxes	(18,454)	13,453	17,625
Income tax benefit (provision)	1,204	19,868	(7,126)
Net income (loss)	(17,250)	33,321	10,499
Accretion of redemption premium expense	(6,740)	(6,209)	(2,301)
Net income (loss) attributable to common stockholders	\$ (23,990)	\$ 27,112	\$ 8,198
Basic net income (loss) per share attributable to common stockholders	\$ (15.70)	\$ 17.65	\$ 0.45
Diluted net income (loss) per share attributable to common stockholders	\$ (15.70)	\$ 1.43	\$ 0.33
Shares used in basic net income (loss) per share calculations	1,528	1,536	18,138
Shares used in diluted net income (loss) per share calculations	1,528	20,086	24,414

The accompanying notes are an integral part of the consolidated financial statements.

WAGeworks, INC.
Consolidated Statements of Stockholders' Equity (Deficit)
(In thousands)

	Convertible preferred stock		Common stock		Treasury Stock		Additional paid-in capital	Accumulated deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount	Shares	Amount			
Balance at December 31, 2009	17,645	\$ 33,965	1,712	\$ 2	(187)	\$ (376)	\$ 13,105	\$ (90,691)	\$ (43,995)
Exercise of stock options	—	—	6	—	—	—	5	—	5
Stock-based compensation	—	—	—	—	—	—	2,404	—	2,404
Modification of warrants	—	—	—	—	—	—	14,193	—	14,193
Accretion of redemption premium	—	—	—	—	—	—	(6,740)	—	(6,740)
Net loss	—	—	—	—	—	—	—	(17,250)	(17,250)
Balance at December 31, 2010	17,645	\$ 33,965	1,718	\$ 2	(187)	\$ (376)	\$ 22,967	\$ (107,941)	\$ (51,383)
Exercise of stock options	—	—	20	—	—	—	27	—	27
Share repurchases	—	—	—	—	(5)	(57)	—	—	(57)
Stock-based compensation	—	—	—	—	—	—	2,244	—	2,244
Accretion of redemption premium	—	—	—	—	—	—	(6,209)	—	(6,209)
Net income	—	—	—	—	—	—	—	33,321	33,321
Balance at December 31, 2011	17,645	\$ 33,965	1,738	\$ 2	(192)	\$ (433)	\$ 19,029	\$ (74,620)	\$ (22,057)
Issuance of common stock in May 2012 initial public offering at \$9.00 per share, net of issuance costs of \$5,527	—	—	7,475	7	—	—	57,023	—	57,030
Issuance of common stock in October 2012 follow-on offering at \$17.50 per share, net of issuance costs of \$903	—	—	1,000	1	—	—	15,546	—	15,547
Conversion of preferred stock to common stock	(17,645)	(33,965)	17,688	18	—	—	118,416	—	84,469
Conversion of preferred stock warrants to common stock warrants	—	—	—	—	—	—	738	—	738
Exercise of stock options	—	—	701	1	—	—	4,391	—	4,392
Exercise of Investor Warrant	—	—	3,039	3	—	—	1,737	—	1,740
Exercise of ORIX Warrant	—	—	43	0	—	—	—	—	—
Issuance of common stock under Employee Stock Purchase Plan	—	—	87	0	—	—	852	—	852
Share repurchases	—	—	—	—	(8)	(113)	—	—	(113)
Tax benefit from the exercise of stock options	—	—	—	—	—	—	1,865	—	1,865
Stock-based compensation	—	—	—	—	—	—	3,750	—	3,750
Accretion of redemption premium	—	—	—	—	—	—	(2,301)	—	(2,301)
Net income	—	—	—	—	—	—	—	10,499	10,499
Balance at December 31, 2012	—	\$ —	31,771	\$ 32	(200)	\$ (546)	\$ 221,046	\$ (64,121)	\$ 156,411

The accompanying notes are an integral part of the consolidated financial statements.

WAGeworks, INC.
Consolidated Statements of Cash Flows
(In thousands)

	Year Ended December 31,		
	2010	2011	2012
Cash flows from operating activities:			
Net income (loss)	\$ (17,250)	\$ 33,321	\$ 10,499
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation	4,164	3,199	2,950
Amortization and change in contingent consideration	7,764	11,327	15,674
Stock-based compensation	2,404	2,244	3,750
Revaluation of warrants	5,413	(351)	(381)
Amortization of debt discount	21,107	—	—
Loss on disposal of fixed assets	—	51	178
Loss on impairment of long-lived assets	120	116	—
Payment of contingent consideration in excess of initial measurement	—	(662)	(3,361)
Provision for doubtful accounts	66	61	(261)
Deferred taxes	(1,334)	(20,198)	6,688
Excess tax benefit from the exercise of stock options	—	—	(1,901)
Changes in operating assets and liabilities:			
Accounts receivable	(2,109)	475	(5,538)
Prepaid expenses and other current assets	(324)	(3,996)	(2,659)
Other assets	(303)	204	(160)
Accounts payable and accrued expenses	344	(29)	5,075
Customer obligations	1,522	28,917	23,680
Other liabilities	(1,108)	510	1,900
Net cash provided by operating activities	<u>20,476</u>	<u>55,189</u>	<u>56,133</u>
Cash flows used in investing activities:			
Purchases of property and equipment	(7,257)	(9,408)	(12,291)
Cash consideration for business acquisitions, net of cash acquired	(5,012)	(1,852)	8,212
Cash paid for acquisition of client contracts	—	—	(6,006)
Change in restricted cash	(30)	(1,334)	1,790
Net cash used in investing activities	<u>(12,299)</u>	<u>(12,594)</u>	<u>(8,295)</u>
Cash flows from financing activities:			
Proceeds from debt	2,837	12,064	29,470
Proceeds from initial public offering net of underwriters commissions and discounts	—	—	62,557
Proceeds from follow-on offering net of underwriters commissions and discounts	—	—	16,450
Proceeds from exercise of warrants	—	—	1,740
Proceeds from exercise of common stock options	5	27	4,392
Proceeds from issuance of common stock (Employee Stock Purchase Plan)	—	—	852
Payment of contingent consideration	—	(4,288)	(14,656)
Purchase of treasury stock	—	(57)	(113)
Excess tax benefit from the exercise of stock options	—	—	1,901
Net cash provided by financing activities	<u>2,842</u>	<u>7,746</u>	<u>102,593</u>
Net increase in cash and cash equivalents	11,019	50,341	150,431
Cash and cash equivalents at beginning of period	93,261	104,280	154,621
Cash and cash equivalents at end of period	<u>\$ 104,280</u>	<u>\$ 154,621</u>	<u>\$ 305,052</u>
Supplemental cash flow disclosure:			
Cash paid during the period for:			
Interest	\$ 189	\$ 368	\$ 1,094
Taxes	383	442	583
Noncash financing and investing activities:			
Conversion of convertible debt and accrued interest into Series E preferred stock	21,178	—	—
Accretion of redemption premium	6,740	6,209	2,301
Reduction in FBM contingent consideration due to re-negotiated lease	—	—	528
Reduction in FBM contingent consideration due to post-purchase price adjustment	—	—	2,316
Conversion of preferred stock to common stock	—	—	118,434
Conversion of preferred stock warrants to common stock warrants	—	—	738
PBS acquisition adjustment	—	590	—
Modification of warrants	14,193	—	—

The accompanying notes are an integral part of the consolidated financial statements.

WAGeworks, INC.

Notes to Consolidated Financial Statements

(1) Summary of Business and Significant Accounting Policies

Business

We are a leading on-demand provider of tax-advantaged programs for consumer-directed health, commuter and other employee spending account benefits, or CDBs, in the United States. We administer and operate a broad array of CDBs, including spending account management programs such as health and dependent care Flexible Spending Accounts, or FSAs, Health Savings Accounts, or HSAs, Health Reimbursement Arrangements, or HRAs, and commuter benefits, such as transit and parking programs.

We deliver our CDB programs through a highly scalable delivery model that employer clients and their employee participants may access through a standard web browser on any internet-enabled device including computers, smart phones and other mobile devices such as tablet computers. Our on-demand delivery model eliminates the need for our employer clients to install and maintain hardware and software in order to support CDB programs and enables us to rapidly implement product enhancements across our entire user base.

Our CDB programs assist employees and their families to save money by using pre-tax dollars to pay for certain of their healthcare and commuter expenses. Employers financially benefit from our programs through reduced payroll taxes, even after factoring in our fees. Under our FSA, HSA and commuter programs, employee participants contribute funds from their pre-tax income to pay for qualified out-of-pocket healthcare expenses not fully covered by insurance, such as co-pays, deductibles and over-the-counter medical products or for commuting costs.

The Company operates as a single reportable segment on an entity level basis. The Company generates revenue from the administration of healthcare, commuter and other employer sponsored tax-advantaged benefit services. The entity level is the aggregation of these three revenue streams.

Initial Public Offering

On May 15, 2012, the Company closed its initial public offering (IPO). The offer and sale of all of the shares in the initial public offering were registered under the Securities Act pursuant to a registration statement on Form S-1, which was declared effective by the SEC on May 9, 2012 (the Effective Date). In connection with the IPO the Company sold 7,475,000 shares of common stock to the public at a price of \$9.00 per share, which included 975,000 shares of common stock from the full exercise of the overallotment option of shares granted to the underwriters. The Company received aggregate proceeds of \$62.6 million from the initial public offering and the underwriters' overallotment option, net of underwriters' discounts and commissions. Upon the closing of the IPO, all shares of the Company's previously outstanding preferred stock automatically converted into shares of common stock and outstanding warrants to purchase the Company's preferred stock automatically became exercisable for shares of common stock.

Follow-On Public Offering

On October 9, 2012, the Company closed its follow-on public offering and sold 1,000,000 shares of common stock at a price of \$17.50 per share, which raised \$15.5 million, net of underwriters' discounts and commissions and estimated offering costs. Certain selling stockholders, including VantagePoint, sold 5,000,000 shares of common stock in the offering, including 338,566 shares of common stock which were issued upon the exercise of outstanding warrants. In addition, the underwriters exercised their overallotment option to purchase 900,000 additional shares from the selling stockholders, including 31,313 shares of common stock which were issued upon the exercise of outstanding warrants. The Company did not receive any proceeds from the sale of

WAGeworks, INC.

Notes to Consolidated Financial Statements

shares by the selling stockholders other than \$1.7 million representing the exercise price of the warrants that were exercised by a selling stockholder in connection with the offering.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. Acquisitions of businesses are accounted for as business combinations, and accordingly, the results of operations of acquired businesses are included in the consolidated financial statements from the date of acquisition. All significant intercompany accounts and transactions have been eliminated in consolidation.

Reclassifications

Certain immaterial prior period amounts within our consolidated balance sheet have been reclassified to conform to current period presentation.

Use of Estimates

The preparation of financial statements in conformity with U.S. 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 financial statements and the reported amounts of revenue and expenses during the reporting period. Significant estimates in these consolidated financial statements include allowances for doubtful accounts, valuation of intangible assets acquired including estimates of cash flows associated with the assets, asset impairments, useful lives for depreciation and amortization, loss contingencies, expired and unredeemed products, deferred tax assets, reserve for income tax uncertainties, the assumptions used for stock-based compensation, and contingent consideration associated with acquisitions and purchase accounting. Actual results could differ from those estimates. In making its estimates, the Company considers the current economic and legislative environment in the estimates and has considered those factors when reviewing the assumptions and estimates.

Cash, Cash Equivalents, and Restricted Cash

The Company considers all highly liquid investments with an original maturity of 90 days or less to be cash equivalents. Cash and cash equivalents, which consist of cash on deposit with banks and money market funds, are stated at cost. To the extent the Company's contracts do not provide for any restrictions on the Company's use of cash that it receives from clients the cash is recorded as cash and cash equivalents.

In all cases, the Company recognizes a related liability to its customers, classified as customer obligations in the accompanying consolidated balance sheets.

Restricted cash represents cash used to collateralize standby letters of credit. The current portion of restricted cash matures in 2013 and is therefore classified as a current asset at December 31, 2012.

Fair Value of Financial Instruments

Financial Accounting Standards Board (FASB) ASC 820, *Fair Value Measurements and Disclosures*, or ASC 820, provides a consistent framework to define, measure, and disclose the fair value of assets and liabilities in financial statements. ASC 820 establishes a three-level hierarchy priority for disclosure of assets and liabilities recorded at fair value. The ordering of priority reflects the degree to which objective prices in external active

WAGeworks, INC.

Notes to Consolidated Financial Statements

markets are available to measure fair value. The classification of assets and liabilities within the hierarchy is based on whether the inputs to the valuation methodology used for measurement are observable or unobservable.

The Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible. The Company determines fair value based on assumptions that market participants would use in pricing an asset or liability in the principal or most advantageous market. When considering market participant assumptions in fair value measurements, the following fair value hierarchy distinguishes between observable and unobservable inputs, which are categorized in one of the following levels:

- Level 1 Inputs: Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the reporting entity at the measurement date.
- Level 2 Inputs: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.
- Level 3 Inputs: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

The contingent consideration payable related to the Planned Benefits Systems (PBS), Fringe Benefits Management (FBM), Choice Strategies (CS), Benefit Concepts, Inc. (BCI) and TransitCheck (TC) acquisitions (see Note 3) were recorded at fair value on the acquisition date and are adjusted quarterly to fair value. The increases or decreases in the fair value of contingent consideration payable can result from changes in anticipated revenue levels and changes in assumed discount periods and rates. As the fair value measure is based on significant inputs that are not observable in the market, they are categorized as Level 3.

The Lender Warrant (see Note 9) was recorded at fair value on the grant date and was adjusted quarterly to fair value. The Company valued the Lender Warrant using a Black-Scholes option-pricing model, which incorporates assumptions about underlying asset value, volatility, expected remaining life, and risk-free interest rate. These valuation assumptions were estimated based upon management's judgment about the general industry environment. Since the valuation of the Lender Warrant involves significant unobservable inputs, it was categorized as Level 3 under the three-level hierarchy discussed above. Upon the completion of the Company's IPO in May 2012 and the conversion of the Company's outstanding shares of preferred stock into shares of common stock, the Lender Warrant, which was a warrant to purchase Series C redeemable convertible preferred stock, became exercisable for shares of common stock. As the warrant is no longer exercisable into shares of redeemable preferred stock, the warrant was reclassified from liability to equity and the Company will no longer record any mark-to-market changes in the fair value of the warrant in the statements of operations. The Company performed the final re-measurement of the Lender Warrant at the closing date of the company's IPO on May 15, 2012. The Lender Warrant was then reclassified from liability to equity on that date.

Other financial instruments not measured at fair value on the Company's consolidated balance sheet at December 31, 2012, but which require disclosure of their fair values include: cash and cash equivalents (including restricted cash), accounts receivable, accounts payable and accrued expenses and debt under the line of credit with Union Bank, N.A. The estimated fair value of such instruments at December 31, 2012 approximates their carrying value as reported on the consolidated balance sheet. The fair value of all of these instruments are categorized as Level 2 of the fair value hierarchy, with the exception of cash, which is categorized as Level 1.

WAGeworks, INC.**Notes to Consolidated Financial Statements**

The following table provides a reconciliation between the beginning and ending balances of items measured at fair value on a recurring basis that used significant unobservable inputs (Level 3) (dollars in thousands):

	<u>Lender Warrant</u>	<u>Contingent Consideration PBS</u>	<u>Contingent Consideration FBM</u>	<u>Contingent Consideration CS</u>	<u>Contingent Consideration TC</u>	<u>Contingent Consideration BCI</u>
Balances at December 31, 2010	\$ 1,470	\$ 6,361	\$ 9,573	\$ —	\$ —	\$ —
Gains or losses included in earnings:						
Gain on revaluation of warrant	(351)	—	—	—	—	—
Loss on revaluation of contingent consideration	—	1,437	1,255	—	—	—
Payment of contingent consideration for PBS	—	(2,000)	—	—	—	—
Payment of contingent consideration for FBM	—	—	(7,650)	—	—	—
Balances at December 31, 2011	<u>\$ 1,119</u>	<u>\$ 5,798</u>	<u>\$ 3,178</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>
Initial fair value of contingent consideration	—	—	—	11,054	5,314	11,772
Gains or losses included in earnings:						
Gain on revaluation of warrant	(381)	—	—	—	—	—
Loss on revaluation of contingent consideration	—	1,062	542	645	86	—
Payment of contingent consideration	—	(6,860)	(546)	(5,211)	(5,400)	—
Reclassification of warrant to additional paid-in capital	(738)	—	—	—	—	—
Reduction in FBM contingent consideration due to post-purchase price adjustment	—	—	(2,316)	—	—	—
Reduction in FBM contingent consideration due to re-negotiated lease	—	—	(528)	—	—	—
Balances at December 31, 2012	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 330</u>	<u>\$ 6,488</u>	<u>\$ —</u>	<u>\$ 11,772</u>

In the first quarter of 2012, the Company re-negotiated its lease with Fringe Benefits Management Company, or FBMC, from whom the Company leases a facility in Florida. Both parties agreed to a reduction in the rental rate for the remainder of the lease term and subsequently amended their Shared Services Agreement. In connection with this lease re-negotiation, FBMC and the Company agreed to reduce the amount of contingent consideration due to FBMC in 2012 by \$0.5 million. The Company is amortizing this amount over the remaining term of the lease.

WAGeworks, INC.**Notes to Consolidated Financial Statements***Quantitative Information About Level 3 Fair Value Measurements*

The significant unobservable inputs used in the fair value measurement of the Company's contingent consideration and Lender Warrant designated as Level 3 are as follows:

	Fair Value at December 31, 2012 (in thousands, unaudited)	Valuation Technique	Significant Unobservable Input
Contingent consideration—FBM	\$ 330	Discounted cash flow	Annualized revenue and probability of achievement
Contingent consideration—CS	\$ 6,488	Discounted cash flow	Annualized revenue and probability of achievement
Contingent consideration—BCI	\$ 11,772	Discounted cash flow	Annualized revenue and probability of achievement

Sensitivity To Changes In Significant Unobservable Inputs

As presented in the table above, the significant unobservable inputs used in the fair value measurement of contingent consideration related to the acquisitions are annualized revenue forecasts developed by the Company's management and the probability of achievement of those revenue forecasts. Significant increases (decreases) in these unobservable inputs in isolation would result in a significantly lower (higher) fair value measurement.

Accounts Receivable

Accounts receivable represent both amounts receivable in relation to fees for the Company's services and unpaid amounts by customers for benefit services of participants provided by third-party vendors, such as transit agencies and healthcare providers. The Company provides for an allowance for doubtful accounts by reference to reserves for specific accounts. The Company reviews its allowance for doubtful accounts monthly. Accounts more than 30 days past due are reviewed weekly for collectability. Account balances are written off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. Write-offs for 2010, 2011 and 2012 were not significant.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation. Depreciation on computer and equipment and furniture and fixtures is calculated on a straight-line basis over the estimated useful lives of those assets, ranging from three to five years. Leasehold improvements are amortized on a straight-line basis over the shorter of their estimated useful life or the lease term.

When assets are retired or otherwise disposed of, the cost and related accumulated depreciation are removed from their respective accounts, and any gain or loss on such sale or disposal is reflected in operating expenses.

Maintenance and repairs are expensed as incurred. Expenditures that substantially increase an asset's useful life are capitalized.

Software and Web Site Development Costs

The Company recognizes internal use software and Web site development costs in accordance with FASB ASC Subtopic 350-40, Internal-Use Software, and FASB ASC Subtopic 350-50, Intangibles—Website

WAGeworks, INC.

Notes to Consolidated Financial Statements

Development Costs, respectively. As such, the Company expenses all costs incurred that relate to the planning and post implementation phases of development. Costs incurred in the development phase are capitalized and recognized over the technology's estimated useful life, generally four years, as amortization in the accompanying consolidated statements of operations. Costs associated with the platform content or the repair or maintenance of the existing platforms are expensed as incurred.

The Company accounts for interest costs related to internal use software and Web site development costs in accordance with the provisions of FASB ASC Subtopic 835-20, Interest—Capitalization of Interest, which require capitalization of interest on major construction or acquisition projects where the financial statement effect of capitalization versus current expense recognition is likely to be material. Capitalized interest related to software and development costs was immaterial for all years.

Accounting for Impairment of Long-Lived Assets

In accordance with FASB ASC Subtopic 360-10, Property, Plant and Equipment, the Company evaluates the recoverability of property and equipment and other assets, including identifiable intangible assets with definite lives, whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets held and used is measured by comparison of the carrying amount of an asset or an asset group to estimated undiscounted future net cash flows expected to be generated by the asset or asset group. If the carrying amount of an asset exceeds these estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the assets exceeds the fair value of the asset or asset group, based on discounted cash flows. Assets to be disposed of are reported at the lower of their carrying amount or fair value less cost to sell. Impairment adjustments related to software development costs were not significant for 2010, 2011 and 2012. There were no other impairments recorded for the remaining other long-lived assets for 2010, 2011 and 2012.

Acquisitions and Goodwill

The Company has accounted for all of its acquisitions using the purchase method as required under the provisions of FASB ASC 805, Business Combinations, or ASC 805. The cost of acquisition is allocated to the assets acquired and liabilities assumed based on fair values at the date of acquisition. Goodwill represents the excess cost over the fair value of net assets acquired in the acquisition.

The Company performs a goodwill impairment test annually on December 31st and more frequently if events and circumstances indicate that the asset might be impaired. The impairment tests are performed in accordance with FASB ASC 350, Intangibles—Goodwill and Other, or ASC 350. The following are examples of triggering events (none of which occurred in 2011 or 2012) that could indicate that the fair value of a reporting unit has fallen below the unit's carrying amount:

- A significant adverse change in legal factors or in the business climate
- An adverse action or assessment by a regulator
- Unanticipated competition
- A loss of key personnel
- A more-likely than-not expectation that a reporting unit or a significant portion of a reporting unit will be sold or otherwise disposed of

An impairment loss is recognized to the extent that the carrying amount exceeds the reporting unit's fair value. When reviewing goodwill for impairment, the Company assesses whether goodwill should be allocated to

WAGeworks, INC.

Notes to Consolidated Financial Statements

operating levels lower than the Company's single operating segment for which discrete financial information is available and reviewed for decision-making purposes. These lower levels are referred to as reporting units. The Company's chief operating decision maker, the Chief Executive Officer, does not allocate resources or assess performance at the individual healthcare, commuter or other revenue stream level, but rather at the operating segment level. Discrete financial information is therefore not maintained at the revenue stream level. The Company's one reporting unit was determined to be the Company's one operating segment.

The goodwill impairment analysis is a two-step process: first, the reporting unit's estimated fair value is compared to its carrying value, including goodwill. If the Company determines that the estimated fair value of the reporting unit is less than its carrying value, the Company moves to the second step to determine the implied fair value of the reporting unit's goodwill. If the carrying amount of the reporting unit's goodwill exceeds its fair value, an impairment loss is recognized for any excess of the carrying amount of the reporting unit's goodwill over the implied fair value of the reporting unit in a manner similar to a purchase price allocation. In September 2011, the FASB issued new guidance intended to reduce complexity and costs by allowing an entity the option to make a qualitative evaluation about the likelihood of goodwill impairment to determine whether it should calculate the fair value of a reporting unit. If impairment is deemed more likely than not, management would perform the currently prescribed two-step goodwill impairment test. Otherwise, the two-step goodwill impairment test is not required. The amendments also expand upon the examples of events and circumstances that an entity should consider between annual impairment tests in determining whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. The Company adopted the new guidance in the fourth quarter of 2012. In assessing the qualitative factors, the Company assesses relevant events and circumstances that may impact the fair value and the carrying amount of the reporting unit. The identification of relevant events and circumstances and how these may impact a reporting unit's fair value or carrying amount involve significant judgments and assumptions. The judgment and assumptions include the identification of macroeconomic conditions, industry and market considerations, overall financial performance, Company specific events and share price trends and making the assessment on whether each relevant factor will impact the impairment test positively or negatively and the magnitude of any such impact. Based on the qualitative evaluation performed, management determined that it is not more likely than not that goodwill is impaired and the two-step goodwill impairment test was not deemed necessary.

To date, the Company has not made any impairment adjustments to goodwill as the fair value of its reporting unit in all prior years has always exceeded its carrying value by a significant amount.

Income Taxes

The Company reports income taxes in accordance with FASB ASC 740, Income Taxes, which requires an asset and liability approach in accounting for income taxes. Deferred tax assets and liabilities arise from the differences between the tax basis of an asset or liability and its reported amount in the consolidated financial statements, as well as from net operating loss and tax credit carryforwards. Deferred tax amounts are determined by using the tax rates expected to be in effect when the taxes will actually be paid or refunds received, as provided under current enacted tax law. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance reduces the deferred tax assets to the amount that is more likely than not to be realized.

The Company uses financial projections to support its net deferred tax assets, which contain significant assumptions and estimates of future operations. If such assumptions were to differ significantly, it may have a material impact on the Company's ability to realize its deferred tax assets. At the end of each period, the Company assesses the ability to realize the deferred tax benefits. If it is more likely than not that the Company

WAGeworks, INC.

Notes to Consolidated Financial Statements

would not realize the deferred tax benefits, then the Company would establish a valuation allowance for all or a portion of the deferred tax benefits.

Under ASC Subtopic 740-10, the Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained on examination by the taxing authorities, based on the technical merits of the position. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs.

The Company records interest and penalties related to uncertain tax positions in income tax expense.

Revenue Recognition

The Company reports revenue based on the following product lines: Healthcare, Commuter, and Other services. Healthcare and Commuter include revenues generated from benefit service fees based on client employee (known as participant) participation levels and interchange and other commission revenues. Interchange and other commission revenues are based on a percentage of total healthcare and commuter dollars transacted pursuant to written purchase agreements with certain vendors and banks. Other revenue includes services related to Consolidated Omnibus Budget Reconciliation Act, or COBRA, enrollment and eligibility, non-healthcare, and employee account administration (i.e., tuition and health club reimbursements) and project-related professional services.

The Company recognizes all revenue streams in accordance with FASB ASC 605, Revenue Recognition. As such, the Company recognizes revenue when collectability is reasonably assured, service has been performed, persuasive evidence of an arrangement exists, and there is a fixed or determinable fee.

Benefit service fees are recognized on a monthly basis as services are rendered and earned under service arrangements where fees and commissions are fixed or determinable and collectability is reasonably assured. Benefit service fees are based on a fee for service model (e.g., monthly fee per participant) in which revenue is recognized on a monthly basis as services are rendered under price quotations or service agreements having stipulated terms and conditions, which do not require management to make any significant judgments or assumptions regarding any potential uncertainties. Fees received for initial setup of new clients and annual renewal fees are deferred and recognized on a monthly basis as services are rendered over the agreed benefit period. The initial setup fees are not considered separable from the ongoing services provided for which benefit service fees are earned.

Vendor and bank interchange revenues are attributed to revenue sharing arrangements the Company enters into with certain banks and card associations, whereby the Company shares a portion of the transaction fees earned by these financial institutions on debit cards the Company issues to its employee participants based on a percentage of total dollars transacted as reported on third-party reports. Commission revenue entails the Company purchasing passes on behalf of its employee participants from various transit agencies and due to the significant volume of purchases, the Company receives commissions on these passes which the Company records on a net basis. Commission revenue is recognized on a monthly basis as transactions are placed under written purchase agreements having stipulated terms and conditions, which do not require management to make any significant judgments or assumptions regarding any potential uncertainties. In addition, the Company recognizes revenue on our estimate of passes that will expire unused over the estimated useful life of the passes, as the amounts paid for these passes are nonrefundable to both the employer client and the employee participant.

Professional service fees are related to projects provided to the Company's existing employer clients that last up to two months to accommodate their changing reporting and file transfer requirements and recognized

WAGeworks, INC.

Notes to Consolidated Financial Statements

upon completion of services and projects. These projects are discrete contracts and are not entered into contemporaneously with any other services the Company provides. The professional services are rendered with written price quotations or service agreements having stipulated terms and conditions, which do not require management to make any significant judgments or assumptions regarding any potential uncertainties and where fees are fixed or determinable and collectability is reasonably assured.

Stock-Based Compensation

The Company accounts for stock-based compensation costs in accordance with FASB ASC 718, *Compensation—Stock Compensation*, (ASC 718). Under ASC 718, stock-based compensation cost is measured at the grant date, based on the estimated fair value of the award at that date, and is recognized as expense over the employee's requisite service period (generally over the vesting period of the award) on a straight-line basis.

ASC 718 requires the benefits of tax deductions in excess of the compensation cost recognized for those options to be classified as financing cash inflows rather than operating cash inflows. There were no material excess tax benefits in the years ended December 31, 2010 and 2011 and \$1.9 million of excess tax benefits in the year ended December 31, 2012.

Accretion of Redemption Premium

The Company accounted for redemption premium by recording accretion charges reflecting the changes in the redemption value of certain of its series of redeemable preferred stock over the period from the date of issuance to the earliest redemption date. Upon the closing date of the Company's IPO in May 2012, all outstanding redeemable preferred shares were converted into shares of common stock which is non-redeemable. The Company performed the final re-measurement of the redemption value of the redeemable preferred stock at the effective date and the redeemable preferred stock was then reclassified from the mezzanine level of the consolidated balance sheet into equity at the closing of the IPO. The Company therefore did not record accretion of redeemable preferred shares during the third and fourth quarters of 2012.

Recently Issued Accounting Pronouncements

In December 2010, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update, or ASU 2010-28, *Intangibles—Goodwill and Other (Topic 350)—When to Perform Step 2 of the Goodwill Impairment Test for Reporting Units with Zero or Negative Carrying Amounts*. ASU 2010-28 modifies Step 1 of the goodwill impairment test for reporting units with zero or negative carrying amounts. For those reporting units, an entity is required to perform Step 2 of the goodwill impairment test if it is more likely than not that a goodwill impairment exists. In determining whether it is more likely than not that a goodwill impairment exists, an entity should consider whether there are any adverse qualitative factors indicating that an impairment may exist such as if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. The Company adopted ASU 2010-28 in fiscal 2012 and this adoption did not have a significant impact on the Company's financial position or results of operations.

In September 2011, the FASB issued Accounting Standards Update, or ASU 2011-08, *Intangibles—Goodwill and Other (Topic 350): Testing Goodwill for Impairment*. The guidance in ASU 2011-08 is intended to reduce complexity and costs by allowing an entity the option to make a qualitative evaluation about the likelihood of goodwill impairment to determine whether it should calculate the fair value of a reporting unit. If impairment is deemed more likely than not, management would perform the currently prescribed two-step goodwill impairment test. Otherwise, the two-step goodwill impairment test is not required. The amendments

WAGeworks, INC.**Notes to Consolidated Financial Statements**

also expand upon the examples of events and circumstances that an entity should consider between annual impairment tests in determining whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. Also, the amendments add examples of events and circumstances that an entity having a reporting unit with a zero or negative carrying amount should consider in determining whether to measure an impairment loss, if any, under the second step of the goodwill impairment test. The amendments in this ASU are effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. The adoption of ASU 2011-08 did not have a material impact on the Company's financial position or results of operations.

In July 2012, the FASB issued Accounting Standards Update, or ASU 2012-02, *Intangibles—Goodwill and Other (Topic 350): Testing Indefinite-Lived Intangible Assets for Impairment*. ASU 2012-02 allows an entity to first assess qualitative factors to determine whether it is necessary to perform the quantitative impairment test for indefinite-lived intangible assets. An organization that elects to perform a qualitative assessment no longer is required to perform the quantitative impairment test for an indefinite-lived intangible asset if it is more likely than not that the asset is not impaired. The ASU, which applies to all public, private, and not-for-profit organizations, is effective for annual and interim impairment tests performed for fiscal years beginning after September 15, 2012. The adoption of ASU 2012-02 in the first quarter of 2013 will not have a significant impact on the Company's financial position or results of operations.

(2) Net Income (Loss) Per Share

The following table sets forth the computation of basic and diluted net income (loss) per share attributable to Common Stockholders:

	Year Ended December 31,		
	2010	2011	2012
	(in thousands, except per share data)		
Numerator (basic and diluted):			
Net income (loss)	\$(17,250)	\$ 33,321	\$ 10,499
Less: accretion of redemption premium expense	(6,740)	(6,209)	(2,301)
Net income (loss) attributable to common stockholders for basic EPS	<u>\$(23,990)</u>	<u>\$ 27,112</u>	<u>\$ 8,198</u>
Add back: accretion of redemption premium related to dilutive redeemable preferred stock	—	1,587	(260)
Net income (loss) attributable to common stockholders for diluted EPS	<u>\$(23,990)</u>	<u>\$28,699</u>	<u>\$ 7,938</u>
Denominator (basic):			
Weighted average common shares outstanding	<u>1,528</u>	<u>1,536</u>	<u>18,138</u>
Denominator (diluted):			
Weighted average common shares outstanding	1,528	1,536	18,138
Dilutive stock options and awards outstanding	—	1,010	1,377
Weighted average common shares from stock warrants	—	2,500	403
Weighted average common shares from preferred stock	—	15,040	4,496
Net weighted average common shares outstanding	<u>1,528</u>	<u>20,086</u>	<u>24,414</u>
Net income (loss) per share attributable to holders of common stock:			
Basic	\$ (15.70)	\$ 17.65	\$ 0.45
Diluted	\$ (15.70)	\$ 1.43	\$ 0.33

WAGeworks, INC.**Notes to Consolidated Financial Statements**

Diluted net income (loss) per share does not include the effect of the following anti-dilutive common equivalent shares (in thousands):

	Year Ended December 31,		
	2010	2011	2012
Stock options outstanding	4,507	152	31
Common equivalent shares from stock warrants	4,653	—	—
Common shares from convertible preferred stock	17,688	2,648	2,077
Total common stock equivalents	<u>26,848</u>	<u>2,800</u>	<u>2,108</u>

(3) Acquisitions and Channel Partner Arrangement*Planned Benefits Systems and Fringe Benefits Management Acquisitions*

On August 31, 2010 and November 30, 2010, the Company acquired 100% of the outstanding common shares of Planned Benefits Systems (PBS) and a division (FBM) in a carve out from Fringe Benefits Management Company (FBMC), respectively. The purchase prices included contingent consideration elements that required the Company to pay in 2012 the former owners of PBS and FBMC additional amounts based upon annualized revenues of PBS and FBM, respectively, for 2012. The initial fair value of the contingent considerations were determined from forecasts developed by management based upon existing business, customer relationships and historical growth rates. The Company measures acquired contingent consideration payable each reporting period at fair value, and recognizes changes in fair value in earnings each period in the amortization and change in contingent consideration line item on the statement of operations, until the contingency is resolved. Increases or decreases in the fair value of the contingent consideration payable can result from changes in anticipated revenue levels and changes in assumed discount periods and rates. Significant judgment is employed in determining the appropriateness of these assumptions each period. The Company recorded \$1.4 million and \$1.3 million in charges related to the change in fair value of the contingent considerations for PBS and FBM during 2011, respectively, due to increased revenue levels being achieved. The Company recorded \$1.1 million and \$0.5 million in charges related to the change in fair value of the contingent considerations for PBS and FBMC, respectively, during 2012, due to increased revenue levels estimated to be achieved. The charges related to the change in the fair value of the contingent considerations are recorded in the amortization and change in contingent consideration line item in the Company's consolidated statements of operations. As the fair value measure is based on significant inputs that are not observable in the market, the Company categorizes the inputs as Level 3 inputs under ASC 820.

The contingent payment to PBS for 2012 of \$6.3 million was paid in May 2012. There was also an amount of \$0.6 million related to PBS, which was held back from the initial consideration paid, to account for possible future contingencies and was paid in the third quarter of 2012. In the fourth quarter of 2012, the Company made a balance sheet reclass to reduce the FBM contingent consideration by \$2.3 million related to liabilities that were underestimated and assumed by the Company at the time of acquisition. A contingent payment of \$0.5 million was paid to FBMC in October 2012 and the fair value of the remaining contingent element owed to FBMC at December 31, 2012 was estimated at \$0.3 million.

The Choice Care Card, LLC Acquisition

On January 3, 2012, the Company acquired the operating assets and certain liabilities of The Choice Care Card, LLC, or CS, a Vermont limited liability company. CS administers tax-advantaged, consumer-driven health care programs, primarily HRAs, through a debit card or direct-pay to provider or member platform. This

WAGeworks, INC.

Notes to Consolidated Financial Statements

acquisition added a new regional base of customers and participant relationships. The aggregate non-contingent portion of the purchase price paid in cash was \$8.7 million of which \$8.3 million was paid at closing.

The Company accounted for the acquisition of CS as a purchase of a business under ASC 805. The results of operations for CS have been included in the Company's financial results since the acquisition.

The purchase price included a contingent consideration element that requires the Company to pay in 2012 and 2013 the former owners of CS additional amounts based upon annualized revenues of CS for 2012 and 2013 respectively. The Company determined that the total initial fair value for both contingent payments as of the acquisition date was \$11.1 million. In August 2012, the Company paid the \$5.2 million contingent payment due in 2012. The Company recorded its estimate of the fair value of the contingent consideration based on a weighted average probability evaluation of various revenue forecasts developed by management. The resulting liability was discounted to present value at 5.3% to reflect the time value of money.

Significant judgment is employed in determining the fair value each period. In 2012, the Company recorded \$0.6 million in charges, in the amortization and change in contingent consideration line item in the Company's accompanying consolidated statements of operations related to the change in fair value of the CS contingent consideration due to increased revenue levels estimated to be achieved. As the fair value measure is based on significant inputs that are not observable in the market, the Company categorizes the inputs as Level 3 inputs under ASC 820.

The following table summarizes the allocation of the purchase price at the date of acquisition (in millions):

	<u>Amount</u>	<u>Weighted Average Useful Life (in years)</u>
Other net assets acquired	\$ 0.6	
Customer relationships	9.2	10
Developed technology	0.6	2
Goodwill	<u>9.4</u>	
Total allocation of purchase price	<u>\$19.8</u>	

As part of the purchase price allocation, the Company determined that CS's separately identifiable intangible assets were its customer relationships and developed technology. The Company used the income approach to value the customer relationships. This approach calculates fair value by discounting the after-tax cash flows back to a present value. The baseline data for this analysis was the cash flow estimates used to price the transaction. Cash flows were forecasted and then discounted using a discount rate for customer relationships of 13%, based on the estimated weighted average cost of capital, which employs an estimate of the required equity rate of return and after-tax cost of debt.

Goodwill recognized from the transaction results from the acquired workforce, the opportunity to expand our client base and achieve greater long-term growth opportunities than either company had operating alone. All of the recognized goodwill is expected to be deductible for tax purposes.

TransitChek Acquisition

On February 1, 2012, the Company acquired the commuter benefit services business TransitChek, or TC, from TransitCenter, Inc., or TCI, a New York-based not for profit entity that provided commuter benefit services

WAGeworks, INC.**Notes to Consolidated Financial Statements**

predominantly to small- and medium-sized business, or SMB, employer clients in the New York tri-state area. This acquisition added a new base of transit customers and participant relationships. The aggregate non-contingent portion of the purchase price was \$31.1 million of which \$30.8 million was paid at closing.

The Company accounted for the acquisition of TC as a purchase of a business under ASC 805. The results of operations for TC have been included in the Company's financial results since the acquisition. The Company concluded that the acquisition of TC represented a material business combination for the purposes of pro forma financial statement disclosure and therefore, pro forma financial information has been provided herein.

The purchase price included an additional future payment of \$0.7 million that was discounted to present value and will be paid over the next four years to a promotional fund in furtherance of TCI's mission of raising awareness of the benefits of mass transit. The purchase price also included a contingent consideration element that requires the Company to pay an additional amount in July 2012 to the former owners of TCI, based on the achievement of certain revenue levels for the six months following the closing. The Company paid the \$5.4 million contingent consideration in the third quarter of 2012. In 2012, the Company recorded \$0.1 million in charges related to the change in fair value of the contingent consideration as a result of the passage of time, in the amortization and change in contingent consideration line item in the Company's accompanying consolidated statements of operations. As the fair value measure is based on significant inputs that are not observable in the market, the Company categorizes the inputs as Level 3 inputs under ASC 820.

As part of the purchase price allocation, the Company determined that TC's separately identifiable intangible assets were its customer relationships, developed technology, trade names and a favorable lease. The Company used the income approach to value the customer relationships and trade name. This approach calculates fair value by discounting the after-tax cash flows back to a present value. The baseline data for this analysis was the cash flow estimates used to price the transaction. Cash flows were forecasted and then discounted using a discount rate for customer relationships and trade name of 16% and 15%, respectively, based on the estimated weighted average cost of capital, which employs an estimate of the required equity rate of return and after-tax cost of debt. The Company used a replacement cost approach to estimate the fair value of developed technology in which estimates of development time and cost per man month are used to calculate total replacement cost. The Company estimated the fair value of the favorable lease terms by discounting the amount by which the stated lease payments differ from current estimated market rates at the acquisition date over the remaining lease term.

Goodwill recognized from the transaction results from the acquired workforce, the opportunity to expand our client base and achieve greater long-term growth opportunities than either company had operating alone. All of the recognized goodwill is expected to be deductible for tax purposes.

The following table summarizes the allocation of the purchase price at the date of acquisition (in millions):

	<u>Amount</u>	<u>Weighted Average Useful Life (in years)</u>
Other net assets acquired	\$ 1.7	
Customer relationships	8.8	8.7
Developed technology	4.4	3.0
Trade names	0.9	10.0
Favorable lease	1.1	11.0
Goodwill	<u>20.2</u>	
Total allocation of purchase price	<u>\$ 37.1</u>	

WAGeworks, INC.
Notes to Consolidated Financial Statements

Other net assets acquired in the acquisition of TC primarily related to the following (in millions):

	<u>Amount</u>
Cash	\$ 48.3
Restricted cash	0.5
Accounts receivable	0.9
Inventory	3.9
Prepays and other assets	0.1
Property and equipment	1.4
Customer obligations	(51.0)
Accounts payable and accrued expenses	(2.4)
Total allocation to purchase price	<u>\$ 1.7</u>

Aflac Channel Partner Arrangement

In April 2012, the Company entered into a channel partner arrangement with American Family Life Assurance Company, or Aflac, pursuant to which Aflac's FSA and commuter account administration business was substantially transitioned to the Company from July 2012 through December 2012. In conjunction with the transition, Aflac and the Company also entered into a separate reseller arrangement pursuant to which Aflac agents will sell the Company's FSA, HRA, HSA, commuter and COBRA at agreed prices and commission levels to new employers going forward.

The timing of the transition of revenue to the Company and the one time conversion payments to Aflac are dependent upon the employer clients executing new agreements, a process controlled by the Company's new channel partner and the particular employer client. The conversion payments were calculated as a function of the expected annual revenue for each employer client. In 2012, the Company has paid Aflac \$6.0 million in connection with employer clients that have transitioned to the Company. The Company has capitalized these payments as an intangible asset, under client contracts in the table in Note 4, and will amortize the asset over an expected life of 7 years.

The Company also incurred approximately \$0.5 million of one-time transition costs in 2012, which are primarily cost of revenue, in advance of revenue.

Benefit Concepts, Inc. Acquisition

On December 31, 2012, the Company acquired Benefit Concepts, Inc., or BCI, a third party administrator of Consumer-Directed Benefits, such as, Flexible Spending Accounts, Health Reimbursement Arrangements and COBRA benefits continuation services based in East Providence, Rhode Island. The Company accounted for the acquisition of BCI as a purchase of a business under ASC 805. At December 31, 2012, the acquisition of BCI did not have an impact on the Company's results of operations. This acquisition added a new regional base of customers and participant relationships and further strengthens the Company's position in the Consumer-Directed Benefits market. The goodwill of \$19.0 million arising from the acquisition was attributed to the premium paid for the opportunity to expand and better serve small and medium-sized businesses and achieve greater long-term growth opportunities than either company had operating alone. The aggregate non-contingent portion of the purchase price was \$17.0 million and was paid in cash on December 31, 2012.

The purchase price also includes a contingent element that requires the Company to pay the former owners of BCI additional amounts in 2014 and 2015 based upon annualized revenues of BCI for 2014 and 2015,

WAGeworks, INC.

Notes to Consolidated Financial Statements

respectively. The initial fair value of the contingent element totaled \$11.8 million based on forecasted annualized revenues for 2014 and 2015. The fair value was determined from forecasts developed by management based upon existing business and relationships and projected growth rates. The Company discounted these forecasts using time value discount present value factor of 6.5%. As the fair value measure is based on significant inputs that are not observable in the market, the Company categorizes the inputs as Level 3 inputs under ASC 820.

The following table summarizes the consideration for BCI and the amounts of estimated fair value of the assets acquired and liabilities assumed at the acquisition date.

Goodwill	\$ 19.0
Customer relationships	8.0
Developed technology	2.4
Other intangibles	0.2
Other net assets acquired	3.2
Deferred income taxes	(4.0)
Total allocation of purchase price	<u>\$ 28.8</u>

The acquired intangible assets, all of which are being amortized, have a weighted average useful life of approximately 6.7 years. The intangible assets include customer relationships of \$8.0 million (8.0-year weighted average useful life), developed technology of \$2.4 million (2.9-year weighted average useful life) and other intangible assets of \$0.2 million (2.8-year weighted average useful life).

Since the acquisition was a stock purchase, assets acquired cannot be revalued for tax purposes; accordingly, a deferred tax liability of \$4.0 million was recorded at the date of acquisition for the book tax cost basis difference related to the assets.

Goodwill was calculated as the difference between the acquisition-date fair value of the consideration transferred and the provisional values assigned to the assets acquired and liabilities assumed. None of the goodwill is expected to be deductible for tax purposes. The recognized amount of goodwill is provisional and subject to change pending the completion of the allocation of the consideration transferred to the assets acquired and liabilities assumed.

The valuation of acquired payments to or from participants are provisional and are based on the information that was available as of the acquisition date to estimate the fair value of these assets acquired and liabilities assumed. The Company believes that information provides a reasonable basis for estimating the fair value but the Company is waiting for additional information necessary to finalize those amounts. Thus, the provisional measurements of fair value reflected are subject to change. Such changes could be significant. The Company expects to finalize the valuation and complete the purchase price allocation as soon as practicable but no later than one year from the acquisition date.

WAGeworks, INC.
Notes to Consolidated Financial Statements

Pro Forma

The following unaudited pro forma financial information presents the consolidated results of operations of the Company and TC as if the acquisition had occurred at the beginning of fiscal 2011 with pro forma adjustments to give effect to amortization of intangible assets and an increase in interest expense due to financing costs in connection with the acquisition. The pro forma financial information is presented for informational purposes only and may not be indicative of the results of operations that would have been achieved if the acquisition had taken place at the beginning of the related fiscal years.

	<u>Year Ended December 31,</u>	
	<u>2011</u>	<u>2012</u>
	(In thousands, except per share data) (Unaudited)	
Total revenue	\$ 166,820	\$ 179,082
Net income attributable to common stockholders	\$ 35,256	\$ 7,927
Net income per share attributable to common stockholders:		
Basic	\$ 22.95	\$ 0.44
Diluted	\$ 1.76	\$ 0.32

The following unaudited pro forma financial information presents the consolidated results of operations of the Company and CS and BCI as if the portfolio purchases had occurred at the beginning of fiscal 2011 with pro forma adjustments to give effect to amortization of intangible assets. The pro forma financial information is presented for informational purposes only and may not be indicative of the results of operations that would have been achieved if the acquisition had taken place at the beginning of the related fiscal years.

	<u>Year Ended December 31,</u>	
	<u>2011</u>	<u>2012</u>
	(In thousands, except per share data) (Unaudited)	
Total revenue	\$ 164,696	\$ 192,744
Net income attributable to common stockholders	\$ 25,454	\$ 5,641
Net income per share attributable to common stockholders:		
Basic	\$ 16.57	\$ 0.31
Diluted	\$ 1.27	\$ 0.23

(4) Goodwill and Intangible Assets

The changes in the carrying amount of goodwill for the years ended December 31, 2011 and 2012 is as follows (dollars in thousands):

	<u>December 31,</u>	
	<u>2011</u>	<u>2012</u>
Balance at beginning of year	\$46,806	\$ 46,233
Additions	17	48,594
PBS acquisition adjustment	(590)	—
Balance at end of year	<u>\$ 46,233</u>	<u>\$94,827</u>

WAGeworks, INC.**Notes to Consolidated Financial Statements**

In 2012, the increase in goodwill is attributed to the acquisitions of CS, TC and BCI (see Note 3).

At December 31, 2011, the Company recorded a \$0.6 million PBS acquisition adjustment related to customer obligation balances recorded as of the acquisition date. This adjustment was primarily due to the Company's reliance on reports that incorrectly stated customer obligations at the acquisition date. The correction of these balances is considered a purchase price adjustment.

Acquired intangible assets at December 31, 2011 and December 31, 2012 were comprised of the following (dollars in thousands):

	December 31, 2011			December 31, 2012		
	Gross carrying amount	Accumulated amortization	Net	Gross carrying amount	Accumulated amortization	Net
Amortizable intangible assets:						
Client contracts and broker relationships	\$26,534	\$ 15,206	\$ 11,328	\$ 58,410	\$ 19,273	\$ 39,137
Trade names	1,020	542	478	2,180	792	1,388
Technology	2,580	2,177	403	9,946	4,316	5,630
Noncompete agreements	2,011	1,665	346	2,012	1,705	307
Favorable lease	—	—	—	1,137	93	1,044
Total	<u>\$ 32,145</u>	<u>\$ 19,590</u>	<u>\$ 12,555</u>	<u>\$ 73,685</u>	<u>\$ 26,179</u>	<u>\$ 47,506</u>

Amortization expense for acquired intangible assets totaled \$2.2 million, \$2.7 million and \$6.6 million in 2010, 2011 and 2012, respectively.

The estimated expected amortization expense in future periods at December 31, 2012 is as follows (dollars in thousands):

2013	\$ 8,667
2014	7,947
2015	6,451
2016	5,381
2017	5,068
Thereafter	13,992
Total	<u>\$ 47,506</u>

(5) Accounts Receivable

Accounts receivable at December 31, 2011 and 2012 were comprised of the following (dollars in thousands):

	December 31,	
	2011	2012
Trade receivables	\$ 11,128	\$ 14,965
Unpaid amounts for benefit services	4,588	8,362
	15,716	23,327
Less allowance for doubtful accounts	(69)	(403)
Accounts receivable, net	<u>\$ 15,647</u>	<u>\$ 22,924</u>

WAGeworks, INC.
Notes to Consolidated Financial Statements

(6) Property and Equipment

Property and equipment at December 31, 2011 and 2012 were comprised of the following (dollars in thousands):

	December 31,	
	2011	2012
Computers and equipment	\$ 8,799	\$ 10,877
Software and development costs	43,922	54,274
Furniture and fixtures	3,046	3,291
Leasehold improvements	6,752	7,039
	<u>\$62,519</u>	<u>\$ 75,481</u>
Less accumulated depreciation and amortization	(43,505)	(50,704)
Property and equipment, net	<u>\$ 19,014</u>	<u>\$ 24,777</u>

During 2010, 2011 and 2012, the Company capitalized software development costs of \$5.5 million, \$8.3 million and \$10.5 million, respectively. Amortization expense related to capitalized software development costs was \$5.6 million, \$6.0 million, and \$6.7 million for 2010, 2011, and 2012 respectively. These costs are included in amortization and change in contingent consideration in the accompanying consolidated statements of operations. At December 31, 2012, the unamortized software development costs included in property and equipment in the accompanying consolidated balance sheet was \$18.7 million.

Total depreciation expense, including amortization of internal use software, for the years ended December 31, 2010, 2011 and 2012 was \$9.7 million, \$9.2 million and \$9.7 million, respectively.

(7) Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses at December 31, 2011 and 2012 were comprised of the following (dollars in thousands):

	December 31,	
	2011	2012
Accounts payable	\$ 910	\$ 2,020
Payable to benefit providers and transit agencies	6,491	17,519
Accrued payables	5,843	6,239
Accrued compensation and related benefits	6,926	12,153
Other accrued expenses	792	1,994
Deferred revenue	453	2,109
Accounts payable and accrued expenses	<u>\$21,415</u>	<u>\$ 42,034</u>

The increase in payable to benefit providers and transit agencies is due to the TransitChek acquisition.

(8) Debt

In the fourth quarter of 2012, the Company entered into a Credit Agreement, or Revolver, with Union Bank, N.A., or UB to amend and restate the Company's existing credit facility and increase the aggregate principal amount that could be borrowed to \$75.0 million from \$50.0 million. As of December 31, 2012, the Company had \$44.6 million outstanding under the Revolver with UB. UB had issued a letter of credit for \$5.4 million in the

WAGeworks, INC.

Notes to Consolidated Financial Statements

first quarter of 2012 related to a contingent payment for the TC acquisition. In the third quarter of 2012, the Company used its existing cash to pay the \$5.4 million and the letter of credit was allowed to expire. As collateral for the Revolver, the Company granted UB a security interest in all of the Company's assets. All of the Company's material existing and future subsidiaries are required to guaranty the Company's obligations under the Revolver. Such guarantees by existing and future material subsidiaries are and will be secured by substantially all of the property of such material subsidiaries.

Under the amended terms of the Revolver, each new loan under the credit facility bears interest at a fluctuating rate per annum equal to a base rate determined in accordance with the credit agreement, plus 0.25%, or, at the Company's option, an interest rate equal to the LIBOR rate determined in accordance with the credit agreement, plus 2.50%. The interest rate applicable to loans outstanding at December 31, 2012 ranged from 2.81% to 3.23%. Principal, together with all accrued and unpaid interest, is due and payable on December 31, 2015.

The Revolver contains customary affirmative and negative covenants and also has financial covenants relating to a liquidity ratio, a ratio of indebtedness to EBITDA, a debt service coverage ratio and a minimum consolidated net worth covenant. The Company is obligated to pay customary commitment fees and letter of credit fees for a facility of this size and type.

The Revolver contains customary events of default, including, among others, payment defaults, covenant defaults, inaccuracy of representations and warranties, cross-defaults to other material indebtedness, judgment defaults, a change of control default and bankruptcy and insolvency defaults. Under certain circumstances, a default interest rate will apply on all obligations during the existence of an event of default under the loan agreement at a per annum rate of interest equal to 2.00% above the applicable interest rate. Upon an event of default, the lenders may declare the outstanding obligations payable by the Company to be immediately due and payable and exercise other rights and remedies provided for under the credit facility.

(9) Warrants

(a) Warrant to Purchase Common Stock

On September 27, 2007, the Company granted ORIX a warrant for 75,000 shares of Common Stock at a purchase price of \$8.20 per share in connection with a debt facility that was repaid in December 2009.

On October 29, 2012, the Company issued and sold 42,834 shares of Common Stock to ORIX pursuant to the cashless net exercise of ORIX's warrant. The number of shares issued upon the net exercise of the warrant was reduced by 32,166 shares to effect the net exercise of the warrant in accordance with its terms.

(b) Lender Warrant

On May 23, 2005, the Company entered into a Senior Loan and Security Agreement with Hercules (the "Hercules Debt"). On September 27, 2007, the Company repaid the loan to Hercules. In connection with the Hercules Debt financing, the Company granted Hercules a warrant to purchase 423,529 shares of Series C Redeemable Preferred Stock at a purchase price of \$4.25 per share. The warrant is exercisable, in whole or in part, for a period ending November 2013. Upon the automatic conversion of the Company's preferred stock into common stock in connection with the closing of the Company's IPO on May 15, 2012, the Lender Warrant became exercisable for 211,764 shares of common stock at a purchase price of \$8.50 per share. The Company performed the final re-measurement of the Lender Warrant at the closing date and the Lender Warrant was then reclassified from liability to equity. As the warrant is no longer exercisable into shares of redeemable preferred stock but into shares of common stock which is non-redeemable, the Company will no longer record any mark-

WAGeworks, INC.**Notes to Consolidated Financial Statements**

to-market changes in the fair value of the warrant in the statements of operations. The Company recorded a mark-to-market loss of \$0.4 million for the year ended December 31, 2010 and a mark-to-market gain of \$0.4 million for the year ended December 31, 2011. At the closing date of the IPO in 2012, the Company recorded a mark-to-market gain of \$0.4 million. The fair value of the Lender Warrant at the final re-measurement date was approximately \$0.7 million. The warrant does not entitle the holder to any voting rights or other rights as a stockholder of the Company prior to exercise.

(c) Investor Warrants

On December 28, 2009, in connection with the Company entering into certain convertible note agreements with several existing Preferred Stockholders, the Company granted to the instrument holders warrants, or Investor Warrants, to purchase Series E Preferred Stock (later amended to Series E-1 Preferred Stock).

Upon the automatic conversion of the Company's preferred stock into common stock in connection with the closing of the Company's IPO on May 15, 2012, the Investor Warrants became exercisable for 4,366,803 shares of common stock.

In November 2012, the Company issued common shares, net of shares withheld, in connection with the exercise of the Investor Warrants by certain stockholders. The common shares were issued at an exercise price of \$4.58 per share. Following this exercise, there are remaining warrants held by stockholders to acquire 472,736 of common shares. The following table summarizes the warrant activity related to the Investor Warrants during 2012:

<u>Date</u>	<u>Exercise Price per Share</u>	<u>Warrants Exercised</u>	<u>Shares Withheld</u>	<u>Total Shares Issued</u>	<u>Proceeds Received</u> (Dollars in thousands)
October 12, 2012 *	\$ 4.58	369,879	—	369,879	\$ 1,694
October 25, 2012	\$ 4.58	10,057	—	10,057	\$ 46
November 14, 2012 **	\$ 4.58	3,514,131	(854,512)	2,659,619	\$ —

* The October 12, 2012 warrant exercise was made in connection with our follow-on public offering (See Note 1).

** The warrant was net exercised at a fair market value of \$18.84 per share, resulting in the Company withholding 854,512 shares to settle the exercise price owed by exercising stockholders.

WAGeworks, INC.**Notes to Consolidated Financial Statements****(10) Redeemable and Convertible Preferred Stock**

Upon the closing of the IPO in May 2012, all outstanding redeemable and convertible preferred stock was converted into shares of common stock which is non-redeemable as shown below. We performed the final re-measurement of the redemption value of the redeemable preferred stock at the effective date and the redeemable preferred stock was then reclassified from the mezzanine level of the consolidated balance sheet into equity. Subsequent to the effective date, we will no longer record accretion of redeemable preferred shares. The convertible preferred stock was converted into shares of common stock at the following contractual conversion ratios:

	Shares Outstanding	Number of shares of Common Stock Received Upon Conversion
Series A	50,000	42,603
Series A-1	1,725,792	2,537,916
Series A-2	998,661	850,923
Series B	14,870,179	7,435,088
Series C	5,882,353	2,941,171
Series D	2,465,514	1,232,659
Series E	5,294,514	2,647,252

As of the closing date of the IPO, no dividends were ever declared or paid.

(11) Common Stock***(a) Authorized Shares***

On May 15, 2012, the certificate of incorporation was amended to authorize the issuance of 1.1 billion shares of capital stock. The total number of shares of common stock authorized was 1.0 billion shares.

(b) Initial Public Offering

On May 15, 2012, the Company closed its IPO. In connection with the IPO, the Company sold 7,475,000 shares of common stock to the public at a price of \$9.00 per share, which included 975,000 shares of common stock from the full exercise of the overallotment option of shares granted to the underwriters. The Company received aggregate proceeds of \$62.6 million from the initial public offering and the underwriters' overallotment option, net of underwriters' discounts and commissions.

Additionally, the Company incurred aggregate offering costs of \$5.5 million related to the IPO. The aggregate proceeds from the IPO have been recorded in stockholders' equity, net of the offering costs, which have been reclassified from prepaid expenses and other current assets and offset against additional paid-in capital.

On October 9, 2012, the Company closed its follow-on public offering and sold 1,000,000 shares of common stock at a price of \$17.50 per share, which raised \$15.5 million, net of underwriters' discounts and commissions and estimated offering costs. Certain selling stockholders, including VantagePoint, sold 5,000,000 shares of common stock in the offering, including 338,566 shares of common stock which were issued upon the exercise of outstanding warrants. In addition, the underwriters exercised their overallotment option to purchase 900,000 additional shares from the selling stockholders, including 31,313 shares of common stock which were issued upon the exercise of outstanding warrants. The Company did not receive any proceeds from the sale of

WAGeworks, INC.

Notes to Consolidated Financial Statements

shares by the selling stockholders other than \$1.7 million representing the exercise price of the warrants that were exercised by a selling stockholder in connection with the offering.

Upon the closing of the Company's IPO, our certificate of incorporation, bylaws and stockholder agreement between the Company and funds affiliated with VantagePoint Capital Partners (VantagePoint), provide for a number of board of director, stockholder and related governance matters.

Funds affiliated with VantagePoint owned approximately 36.8% of our outstanding common stock at December 31, 2012.

The following actions by the Company will require the approval of VantagePoint for so long as VantagePoint owns at least 25% or more of the Company's outstanding shares of common stock: (i) any amendment of our bylaws; (ii) the issuance of any securities with economic rights senior to our common stock or with voting rights different than our common stock, subject to certain exceptions; (iii) the incurrence or guarantee of any debt in excess of \$20.0 million; (iv) the issuance of equity or debt, or any securities convertible into equity or debt, for consideration in excess of 12.5% of our market capitalization (as determined by the average trading price of our common stock over the 30 trading days prior to approval by our board of directors of such issuance); (v) the acquisition or disposition of stock or assets, including through a license or lease, for consideration in excess of 12.5% of our market capitalization (as determined by the average trading price of our common stock over the 30 trading days prior to approval by our board of directors of such transaction); (vi) the adoption of a stockholder rights plan; (vii) the approval of any "golden parachute" or other compensatory plan contingent upon a change in control of us for any of our executive officers valued in excess of \$1.0 million for an individual officer or \$5.0 million for a group of officers, at the time such compensatory arrangement is adopted; and (viii) any change in the number of authorized directors.

Amendments or modifications of our certificate of incorporation and bylaws relating to VantagePoint's rights can occur only with the approval of VantagePoint. VantagePoint and its representatives will have access to our books and records, subject to customary confidentiality and non-disclosure provisions and so long as VantagePoint owns more than 30% of our outstanding voting stock, a special meeting of our stockholders may be called by either VantagePoint or any two members of our board of directors, whether or not VantagePoint designees. So long as VantagePoint owns at least 40% of our outstanding voting stock, our stockholders may act by written consent to change the number of authorized directors, remove a director without cause or fill a vacancy on our board of directors.

VantagePoint will have the right to designate (and remove or replace) three members of our board of directors if VantagePoint owns at least 50% or more of our outstanding shares. VantagePoint will continue to have a right to designate (and remove or replace) two members of our board of directors if VantagePoint owns between 20% and 50% of our outstanding shares and will have a right to designate (and remove or replace) one member of our board of directors if VantagePoint owns between 10% and 20% of our outstanding shares. VantagePoint shall also have the right to select one of its board designees to serve on our compensation committee, our nominating and corporate governance committee and any other special committee of our board of directors so long as it continues to hold at least 10% of our outstanding shares.

(12) Employee Benefit Plans

(a) Employee Stock Option Plan

The Company's stock option program is a long-term retention program that is intended to attract, retain, and provide incentives for talented employees, officers and directors, and to align stockholder and employee interests. The Company considers its option program critical to its operation and productivity.

WAGeworks, INC.**Notes to Consolidated Financial Statements**

Currently, the Company grants options from the 2010 Equity Incentive Plan (2010 Plan). The Company's 2010 Plan was adopted on May 26, 2010, and the Company has reserved for issuance under the 2010 Plan 1.5 million common stock shares at December 31, 2012. Under the 2010 Plan, options can be granted to all employees, including executive officers, outside consultants and non-employee directors.

The Company's 2000 Stock Option/Stock Issuance Plan adopted in June 2000, as amended and restated, (2000 Plan), provides for the issuance of options and other stock-based awards. The Company has reserved for issuance under the 2000 Plan 3.2 million common stock shares at December 31, 2012. The Company issues new shares upon the exercise of stock options. Any forfeitures or shares remaining under the plan are canceled and not available for reissue.

Options under the 2000 and the 2010 Plan, or the Plans, are generally for periods not to exceed 10 years and must be issued at prices not less than 85% of the estimated fair value of the shares of Common Stock on the date of grant as determined by the plan administrator. Options become vested and exercisable at such times and under such conditions as determined by the board of directors. Options generally vest over four years with 25% vesting after one year and the balance vesting monthly over the remaining period.

In the first quarter of 2012, the Company granted a total of 320,000 performance option awards to certain executives of the Company. The performance option awards are subject to potential early vesting based upon the achievement of certain milestones as follows: 25% to vest upon an initial public offering, 25% to vest upon achieving a revenue growth rate of at least 8% per year for two consecutive years, and an additional 50% will vest upon the achievement on an initial public offering and achieving consecutive growth rates.

In the third quarter of 2012, the Company granted a total of 37,500 performance option award to an executive of the Company. The performance option award is subject to the following vesting criteria: None of the options shall vest until September 18, 2019, provided however, that the shares shall immediately vest and become exercisable upon the achievement of the following milestone: the shares shall immediately vest and become exercisable upon achieving a revenue growth rate of at least 10% per year for two consecutive years.

Stock-based compensation is classified in the consolidated statements of operations in the same expense line items as cash compensation. None of the stock-based compensation cost was capitalized as amounts were immaterial. Amounts recorded as expense in the consolidated statements of operations are as follows (in thousands):

	Year Ended December 31,		
	2010	2011	2012
Cost of revenue	\$ 312	\$ 219	\$ 282
Technology and development	282	256	323
Sales and marketing	422	391	476
General and administrative	1,388	1,378	2,669
Total	<u>\$ 2,404</u>	<u>\$ 2,244</u>	<u>\$ 3,750</u>

As of December 31, 2012, there was \$6.0 million of total unrecognized compensation cost related to unvested stock-based employee compensation arrangements that are expected to vest. The cost is expected to be recognized over a weighted average period of approximate 3.61 years, as of December 31, 2012.

WAGeworks, INC.
Notes to Consolidated Financial Statements

The following table summarizes the weighted-average fair value of stock options granted:

	Year Ended December 31,		
	2010	2011	2012
Stock options granted (in thousands)	1,137	139	983
Weighted average fair value at date of grant	\$ 2.88	\$ 6.09	\$ 5.83

Stock option activity for the year ended December 31, 2011 and 2012 is as follows (shares in thousands):

	Shares	Weighted average exercise price	Remaining contractual term (years)	Aggregate intrinsic value (dollars in thousands)
December 31, 2010	4,507	\$ 7.16	7.51	\$ 17,213
Granted	139	11.24		
Exercised	(20)	1.33		
Forfeited	(86)	7.89		
Outstanding as of December 31, 2011	4,540	\$ 7.29	6.62	\$ 10,888
Vested and expected to vest at December 31, 2011	4,327	\$ 7.28	6.54	\$ 10,008
Exercisable at December 31, 2011	4,540	\$ 7.29	6.62	\$ 10,888
Granted	983	10.66		
Exercised	(702)	6.26		
Forfeited	(206)	8.34		
Outstanding as of December 31, 2012	4,615	\$ 8.11	6.54	\$ 44,801
Vested and expected to vest at December 31, 2012	4,559	\$ 8.04	6.53	\$ 26,344
Exercisable at December 31, 2012	3,549	\$ 7.52	5.83	\$ 30,277

The total intrinsic value of options exercised during the years ended December 31, 2010, 2011 and 2012, was less than one hundred thousand dollars, \$0.2 million and \$8.1 million, respectively. Cash received from option exercise under all share-based payment arrangements for both the years ended December 31, 2010 and 2011 was less than one hundred thousand dollars and \$4.4 million for the year ended December 31, 2012. The actual tax benefit realized for the gross tax deductions from option exercise of the share-based payment arrangements totaled less than one hundred thousand dollars for the both the years ended December 31, 2010 and 2011, and \$3.2 million for the year ended December 31, 2012.

(b) Valuation Assumptions

The Company calculated the fair value of each option award on the date of grant using the Black-Scholes option pricing model with the following weighted average assumptions:

	Year Ended December 31,		
	2010	2011	2012
Weighted average fair value of underlying stock per share	\$ 5.58	\$ 11.24	\$ 10.66
Expected volatility	48.33%	55.78%	52.79%
Risk-free interest rate	2.43%	2.58%	1.26%
Expected term	6.9 years	5.9 years	6.6 years
Dividend yield	— %	— %	— %

WAGeworks, INC.

Notes to Consolidated Financial Statements

Stock-based compensation cost is measured at the grant date based on the fair value of the award. The determination of the fair value of stock-based awards on the date of grant using an option pricing model is affected by the Company's stock price as well as assumptions regarding a number of complex and subjective variables. Expected volatility is determined using weighted average volatility of peer publicly traded companies. The risk-free interest rate is determined by using published zero coupon rates on treasury notes with remaining terms similar to the expected term on the options. The dividend yield of zero is based on the fact that the Company expects to invest cash in operations and has never paid cash dividends on Common Stock. The Company uses the "simplified" method to estimate expected term as determined under SAB 107 due to the lack of option exercise history as a public company.

The fair value of each option grant under the performance share option plan was estimated on the date of grant using the same option valuation model used for options granted under the employee share option plan and assumes that performance goals will be achieved. These awards will continue to vest through a term of 7 years from date of grant. As of December 31, 2012, 0.6 million shares were unvested.

Stock-based compensation expense is recognized in the consolidated statements of operations based on awards ultimately expected to vest, it is reduced for estimated pre-vest forfeitures. ASC 718 requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. In addition, ASC 718 requires that compensation cost recognized at any date must be at least equal to the amount attributable to options that are vested at that date. The Company calculates an adjustment of its compensation costs to the vested amounts on a quarterly basis. The pre-vesting of forfeitures is estimated based on weighted average historical forfeiture rates. Under the provisions of ASC 718, the Company will record additional expense if the actual forfeiture rate is lower than estimated, and will record a recovery of prior expense if the actual forfeiture rate is higher than estimated.

(c) Employee Stock Purchase Plan

Concurrent with the closing of our IPO in May 2012, the Company established the 2012 Employee Stock Purchase Plan (ESPP) which is intended to qualify under Section 423 of the Internal Revenue Code of 1986. The ESPP allows eligible employee participants to purchase shares of the Company's common stock at a discount through payroll deductions. The Company's executive officers and all of its other employees will be allowed to participate in the ESPP. A total of 500,000 shares of the Company's common stock will be made available for sale under the ESPP. In addition, the ESPP provides for annual increases in the number of shares available for issuance under the ESPP on the first day of each fiscal year beginning with the 2012 fiscal year, equal to the least of:

- 500,000 shares of common stock;
- 1% of the outstanding shares of our common stock as of the last day of our immediately preceding fiscal year; or
- such other amount as may be determined by the board.

Under the ESPP, employees are eligible to purchase common stock through payroll deductions of up to 25% of their eligible compensation, subject to any plan limitations. The ESPP has four consecutive offering periods of approximately three months in length during the year and the purchase price of the shares will be 85% of the lower of the fair value of our common stock on the first trading day of the offering period or on the last day of the offering period.

WAGeworks, INC.**Notes to Consolidated Financial Statements****(d) 401(k) Plan**

The Company participates in the WageWorks 401(k) Plan, or 401(k) Plan, a tax-deferred savings plan covering all of its employees working more than 1,000 hours per year. Employees become participants in the 401(k) Plan on the first day of any month following the first day of employment. Eligible employees may contribute up to 85% of their compensation to the 401(k) Plan, limited to the maximum allowed under the Internal Revenue Code, or the Code. The Company, at its discretion, may match up to 25% of the first 6% of employees' contributions and may make additional contributions to the 401(k) Plan. The Company contributed approximately \$0.3 million for both 2010 and 2011 and \$0.7 million for 2012.

(13) Income Taxes

The Company provides for income taxes using an asset and liability approach, under which deferred income taxes are provided based upon enacted tax laws and rates applicable to periods in which the taxes become payable. The Company is subject to income taxes in the U.S. federal and various state jurisdictions. Presently, there is no income tax examination going on in the jurisdictions where the Company operates.

The components of the provision for income taxes for the years ended December 31, 2010, 2011 and 2012 are as follows (dollars in thousands):

	<u>2010</u>	<u>2011</u>	<u>2012</u>
Current:			
Federal	\$ —	\$ —	\$(1,667)
State	(130)	(330)	(635)
	<u>\$ (130)</u>	<u>\$ (330)</u>	<u>\$ (2,302)</u>
Deferred:			
Federal	1,404	17,854	(4,757)
State	(70)	2,344	(67)
	<u>1,334</u>	<u>20,198</u>	<u>(4,824)</u>
Total (provision) benefit for income taxes	<u>\$ 1,204</u>	<u>\$ 19,868</u>	<u>\$ (7,126)</u>

WAGeworks, INC.
Notes to Consolidated Financial Statements

Deferred tax assets (liabilities) as of December 31, 2011 and 2012 consist of the following (dollars in thousands):

	<u>2011</u>	<u>2012</u>
Deferred tax assets:		
Current:		
Accruals and reserves	\$ 1,291	\$ 1,985
Net operating loss carryforwards	—	9,870
Deferred tax assets-current	<u>1,291</u>	<u>11,855</u>
Noncurrent:		
Net operating loss carryforwards	17,139	4,255
Stock-based compensation	3,534	3,827
R&D and other credits	1,261	1,532
Property and equipment	1,000	286
Reserves-noncurrent	525	290
Deferred tax assets-noncurrent	<u>23,459</u>	<u>10,190</u>
Gross deferred tax assets	<u>24,750</u>	<u>22,045</u>
Deferred tax liabilities:		
Noncurrent		
Intangibles	(4,065)	(9,540)
Goodwill	(2,416)	(3,100)
Gross deferred tax liabilities	<u>(6,481)</u>	<u>(12,640)</u>
Net deferred tax assets and liabilities:		
Net deferred tax assets-current	1,291	11,855
Net deferred tax assets (liabilities)	<u>16,978</u>	<u>(2,450)</u>
Total net deferred tax assets	<u>\$18,269</u>	<u>\$ 9,405</u>

Reconciliation of the statutory federal income tax rate to the Company's effective tax rate for the years ended December 31, 2010, 2011 and 2012:

Tax provision (benefit) at U.S. statutory rate	(34)%	34%	35%
State income taxes, net of federal benefit	4	4	3
Warrants	31	(1)	—
Permanent items	—	8	4
R&D credits	—	(1)	—
Change in valuation allowance	(8)	(193)	—
Other	—	1	(2)
Provision (benefit) for tax	<u>(7)%</u>	<u>(148)%</u>	<u>40%</u>

The Company's accounting for deferred taxes involves the evaluation of a number of factors concerning the realizability of the Company's deferred tax assets. Assessing the realizability of deferred tax assets is dependent upon several factors, including the likelihood and amount, if any, of future taxable income in relevant jurisdictions during the periods in which those temporary differences become deductible. The Company's management forecasts taxable income by considering all available positive and negative evidence including its history of operating income or losses and its financial plans and estimates which are used to manage the business.

WAGeworks, INC.**Notes to Consolidated Financial Statements**

These assumptions require significant judgment about future taxable income. The amount of deferred tax assets considered realizable is subject to adjustment in future periods if estimates of future taxable income are reduced.

At December 31, 2012, unrecognized tax benefits approximated \$2.5 million, which would impact the income tax expense if recognized. Included in the balance at December 31, 2012 is \$0.1 million of current year tax positions, which would affect the Company's income tax expense if recognized. As of December 31, 2012, the Company has no uncertain tax positions that would be reduced as a result of a lapse of the applicable statute of limitations in the following year. The Company does not anticipate that any adjustments would result in a material change to its financial position. For the years ended December 31, 2010, 2011 and 2012, the Company did not recognize interest or penalties related to unrecognized tax benefits.

A reconciliation of the beginning and ending balances of the total amounts of gross unrecognized tax benefits is as follows:

	Year Ended December 31,		
	2010	2011	2012
	(In thousands)		
Balance, beginning of year	\$ 1,630	\$ 1,994	\$ 2,321
Increase in tax positions for prior years	117	24	15
Decrease in tax positions for prior years	—	—	—
Settlements	—	—	—
Lapse in statute of limitations	—	—	—
Increase in tax positions for current year	247	303	142
Balance, end of year	<u>\$ 1,994</u>	<u>\$ 2,321</u>	<u>\$ 2,478</u>

The Company files income tax returns in the U.S. federal jurisdiction and various states jurisdictions. As a result of the Company's net operating loss carryforwards, the 2000 through 2012 tax years are open and may be subject to potential examination in one or more jurisdictions.

At December 31, 2012, the Company had federal and state operating loss carryforwards of approximately \$38.2 million and \$36.9 million, respectively, available to offset future regular and alternative minimum taxable income. The Company's federal net operating loss carryforwards expire in the years 2023 through 2029, if not utilized. The state net operating loss carryforwards expire in the years 2017 through 2031. The federal and state amounts include tax deduction benefits related to stock options in the amount of \$2.7 million and \$1.2 million, respectively, that will be booked to additional paid-in capital and that will benefit the tax provision when utilized.

The Company also has tax deductible goodwill related to asset acquisitions. The cumulative amount of amortization deductions through 2012 is \$9.3 million

The American Taxpayer Relief Act of 2012, or the Act, was enacted on January 2, 2012. The Act reinstated the research and development credit retroactively to January 1, 2012 and extended it through 2013. As the law enactment is a subsequent event, no tax benefit from claiming the federal research and development credit has been considered for 2012.

In addition, the Company had federal and California research and development credit carryforwards of approximately \$2.6 million and \$1.4 million respectively, available to offset future tax liabilities. The federal research credit carryforwards expire beginning in the years 2022 through 2031, if not fully utilized. The California tax credit carryforward can be carried forward indefinitely.

WAGeworks, INC.

Notes to Consolidated Financial Statements

The Company's ability to utilize the net operating losses and tax credit carryforwards are subject to limitations in the event of an ownership change as defined in Section 382 of the Internal Revenue Code ("IRC") of 1986, as amended, and similar state tax law. In general, an ownership change occurs if the aggregate stock ownership of certain stockholders increases by more than 50 percentage points over such stockholders' lowest percentage ownership during the testing period (generally three years). The Company completed Section 382 studies through December 31, 2011, and updated the analysis encompassing all common stock transactions through October 9, 2012, the date of the Company's follow-on public offering, which resulted in an ownership change. There were no material common stock transactions between October 9, 2012 and December 31, 2012 that would have caused another ownership change. The ownership change did not result in a limitation of the Company's utilization of its net operating loss or in its research and development credits expiring unused.

The Company elected to follow the tax law method of determining realization of excess tax benefits for stock based compensation in accordance with ASC 718. During 2012, the Company has benefited from the excess stock option deduction of approximately \$4.8 million before net operating loss utilization and accordingly, credited additional paid in capital for approximately \$1.9 million.

(14) Commitments and Contingencies

(a) Operating Leases

The Company leases office space and equipment under noncancelable operating leases with various expiration dates through 2023. Future minimum lease payments under noncancelable operating leases are as follows (dollars in thousands):

	<u>Operating leases</u>
	<u>As of December 31,</u>
	<u>2012</u>
2013	\$ 5,352
2014	3,990
2015	2,968
2016	1,594
2017	1,486
Thereafter	8,019
Total future minimum lease payments	<u>\$ 23,409</u>

Rent expense in 2010, 2011 and 2012 was \$2.3 million, \$3.2 million and \$4.5 million, respectively.

(b) Legal Matters

The Company is involved from time to time in claims that arise in the normal course of its business. The Company is not presently subject to any material litigation nor, to management's knowledge, is any litigation threatened against the Company that collectively is expected to have a material adverse effect on the Company's cash flows, financial condition or results of operations.

(15) Related Party

The National Flex Trust, or the Trust, established by a subsidiary of the Company, is to provide reimbursement of qualified expenses to plan participants under certain employer plans that have contracted with the Company to provide the plan services using a custodial account, or the Trust Account. The client is

WAGEWORKS, INC.

Notes to Consolidated Financial Statements

responsible for maintaining the employer plan for their participants, including the establishment of eligibility and paying all eligible claim amounts owed to their participants. The Company is an independent contractor engaged to perform administration services. As an administrator, the Company does not have the power to direct the activities of the Trust that would most significantly impact the Trust's economic performance.

Under a Management Agreement for Services to the Trust, the Company is to provide services to the Trust, including accounting, treasury, tax, administration, and management. The Trust is to pay the Company monthly for the services provided based on plan participants and/or debit cards administered. For the past several years, the Trust's earnings have been insufficient to cover these costs and, consequently, the Company has not recognized these fees during this period. Amounts due to the Company from the Trust for management services have been fully written off as of December 31, 2012. Trust expenses subsidized by the Company were \$84,000, \$112,000 and \$82,000 in 2010, 2011 and 2012.

The Company has a long-term receivable due from the Trust totaling \$1.0 million which the Trust holds with its banks, as a security deposit for the settlement of participant claims. The Company has recorded this receivable within Other Assets.

WAGeworks, INC.**Notes to Consolidated Financial Statements****(16) Selected Quarterly Financial Data (unaudited)**

	Fiscal Quarter Ended							
	March 31, 2011	June 30, 2011	September, 30, 2011	December 31, 2011	March 31, 2012	June 30, 2012	September 30, 2012	December 31, 2012
Revenues	\$ 35,324	\$ 33,861	\$ 32,447	\$ 34,005	\$ 44,310	\$ 43,777	\$ 42,538	\$ 46,657
Operating expenses:								
Cost of revenues (excluding amortization of internal use software)	15,366	13,244	12,537	14,504	17,057	15,620	15,210	16,760
Sales and marketing, technology and development and general and administrative	14,103	13,760	13,299	13,937	19,027	19,214	18,635	21,153
Amortization and change in contingent consideration	2,493	2,682	2,985	3,167	4,438	4,094	3,713	3,429
Total operating expense	31,962	29,686	28,821	31,608	40,522	38,928	37,558	41,342
Income from operations	3,362	4,175	3,626	2,397	3,788	4,849	4,980	5,315
Other income (expense):								
Interest income	11	9	7	9	10	9	14	3
Interest expense	(86)	(111)	(125)	(172)	(405)	(452)	(456)	(459)
Other, net	(110)	51	627	(217)	(11)	419	19	2
Income before income taxes	3,177	4,124	4,135	2,017	3,382	4,825	4,557	4,861
Income tax (provision) benefit	(148)	(253)	(234)	20,503	(1,372)	(1,601)	(2,034)	(2,119)
Net income	3,029	3,871	3,901	22,520	2,010	3,224	2,523	2,742
Accretion of redemption premium (expense) benefit	(2,768)	(2,924)	387	(904)	(1,523)	(778)	—	—
Net income attributable to common stockholders	\$ 261	\$ 947	\$ 4,288	\$ 21,616	\$ 487	\$ 2,446	\$ 2,523	\$ 2,742
Net income per share attributable to common stockholders:								
Basic	\$ 0.17	\$ 0.62	\$ 2.79	\$ 14.02	\$ 0.32	\$ 0.17	\$ 0.09	\$ 0.09
Diluted	\$ 0.02	\$ 0.06	\$ 0.17	\$ 1.03	\$ 0.02	\$ 0.10	\$ 0.08	\$ 0.09
Shares Outstanding								
Basic	1,532	1,535	1,536	1,542	1,546	14,268	26,755	29,761
Diluted	16,143	16,450	19,379	21,825	16,986	24,349	31,632	31,898

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain “disclosure controls and procedures,” as such term is defined in Rule 13a-15(e) under the Exchange Act, that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognizes that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. Based on their evaluation at the end of the period covered by this Annual Report on Form 10-K, our chief executive officer and chief financial officer have concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

Management’s Report on Internal Control over Financial Reporting

This Annual Report on Form 10-K does not include a report of management’s assessment regarding internal control over financial reporting or an attestation report of our independent registered public accounting firm due to a transition period established by SEC rules applicable to newly public companies.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) of the Exchange Act that occurred during the quarter ended December 31, 2012 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Effectiveness of Controls and Procedures

In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Item 9B. Other Information

Approval of Form of Restricted Stock Unit Agreement

On February 26, 2013, the Compensation Committee, or the Committee of our Board of Directors, or the Board, recommended that the Board approve, and the Board approved, a form of Restricted Stock Unit Agreement which is intended to serve as a standard form agreement for restricted stock unit awards to be issued to service providers under the 2010 Equity Incentive Plan, as amended and restated.

We may in the future grant restricted stock unit awards to our service providers, including our executive officers, in accordance with the terms of the form of Restricted Stock Unit Agreement, the material terms of which are briefly described below.

[Table of Contents](#)

General Terms

The amount and terms of each award of restricted stock units will be determined by the Committee or the Board and will be set forth in an individual's restricted stock unit agreement. Each restricted stock unit constitutes a right to receive one share of our common stock once the applicable vesting criteria have been met. We may withhold a portion of the shares subject to the grant to cover applicable tax withholdings or may permit the recipient to make alternate arrangements satisfactory to us.

Vesting

The restricted stock units will vest in accordance with the individual vesting schedule established by the Committee or the Board for each grant reflected on the Restricted Stock Unit Agreement. Generally, restricted stock units that have not vested by the time of a recipient's termination of service with the company will be forfeited. However, as with our other forms of equity awards, the Committee or Board has the discretion to accelerate the vesting of these awards upon the occurrence of a change in control or termination of employment or other events, in their sole discretion.

Stockholder Rights

A restricted stock unit award recipient generally will not have any of the rights of a stockholder, including voting rights and the right to receive dividends and distributions, until after shares of common stock are issued in respect of the Restricted Stock Unit Agreement in accordance with applicable vesting criteria.

The foregoing description of the form of Restricted Stock Unit Agreement set forth above does not purport to be complete and is qualified in its entirety by reference to the full text of the Restricted Stock Unit Agreement attached hereto as Exhibit 10.30 and incorporated herein by reference.

Approval of 2013 Bonus Plan for Executive Officers

On February 26, 2013, as part of its annual review process, the Committee approved its 2013 Plan for Executive Officers, or the 2013 Bonus Plan. Members of our executive team, including Messrs. Jackson, Green and Montes and Ms. Jackson, participate in the 2013 Bonus Plan and must remain employed by us through December 31, 2013 and must remain actively employed and in good standing on the date of any bonus payout, subject to certain exceptions set forth in the 2013 Bonus Plan, to be eligible for a payout. Any new members of our executive team that may be eligible to participate in the 2013 Bonus Plan will participate on a pro rata basis if their start date is prior to October 1, 2013.

The 2013 Bonus Plan consists of one twelve-month performance period: January 1, 2013 through December 31, 2013. The bonus pool is an unfunded and unsecured payment obligation of the Company. Determination of the actual bonuses paid to each individual take into account the following three factors: (1) our financial performance, as measured by actual adjusted EBITDA against our 2013 EBITDA target (45% weighted), (2) achievement of our organic revenue growth target, subject to us meeting a minimum adjusted EBIDTA target (45% weighted) and (3) achievement of individual objectives, subject to us meeting a minimum adjusted EBIDTA target (10% weighted). In addition, the Committee may make adjustments to the factors and/or the applicable weightings in its determination of the actual bonuses (if any) to be paid to the executive officers under the 2013 Bonus Plan.

If performance as to any performance measure is below the minimum threshold, no payout will be made with respect to that measure unless the Committee exercises its discretion to pay the bonus even though the specified performance measures were not satisfied.

The foregoing description of the 2013 Bonus Plan set forth above does not purport to be complete and is qualified in its entirety by reference to the full text of the 2013 Bonus Plan attached hereto as Exhibit 10.28 and incorporated herein by reference.

[Table of Contents](#)

2012 Bonus Plan for Executive Officers

We adopted a 2012 Bonus Plan, or the 2012 Bonus Plan, which is similar to our 2013 Bonus Plan for Executive Officers. Members of the executive team, including Messrs. Jackson, Green and Montes and Ms. Jackson, participated in the 2012 Bonus Plan and were required to remain employed by us through December 31, 2012 and must remain actively employed and in good standing on the date of any bonus payout, subject to certain exceptions set forth in the 2012 Bonus Plan, to be eligible for a payout.

The 2012 Bonus Plan consists of one twelve-month performance period: January 1, 2012 through December 31, 2012. The bonus pool is an unfunded and unsecured payment obligation of the company. Determination of the actual bonuses paid to each individual take into account the following three factors: (1) our financial performance, as measured by actual adjusted EBITDA against our 2012 EBITDA target (45% weighted), (2) achievement of our organic revenue growth target, subject to us meeting a minimum adjusted EBIDTA target (45% weighted) and (3) achievement of individual objectives, subject to us meeting a minimum adjusted EBIDTA target (10% weighted).

If performance as to any performance measure is below the minimum threshold, no payout will be made with respect to that measure.

The foregoing description of the 2012 Bonus Plan set forth above does not purport to be complete and is qualified in its entirety by reference to the full text of the 2012 Bonus Plan attached hereto as Exhibit 10.27 and incorporated herein by reference.

PART III.

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this Item 10 of Form 10-K that is found in our 2013 Proxy Statement to be filed with the SEC in connection with the solicitation of proxies for the Company's 2013 Annual Meeting of Stockholders is incorporated by reference to our 2013 Proxy Statement. The 2013 Proxy Statement will be filed with the SEC within 120 days after the end of the fiscal year to which this report relates.

Item 11. Executive Compensation

The information required by this Item 11 of Form 10-K is incorporated by reference to our 2013 Proxy Statement.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this Item 12 of Form 10-K is incorporated by reference to our 2013 Proxy Statement.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this Item 13 of Form 10-K is incorporated by reference to our 2013 Proxy Statement.

Item 14. Principal Accounting Fees and Services

The information required by this Item 14 of Form 10-K is incorporated by reference to our 2013 Proxy Statement.

PART IV.

Item 15. Exhibits and Financial Statement Schedules

Documents filed as part of this report are as follows:

1. Consolidated Financial Statements:

Our Consolidated Financial Statements are listed in the “Index to Consolidated Financial Statements” in Part II, Item 8 of this Annual Report on Form 10-K.

2. Financial Statement Schedule:

SCHEDULE II—VALUATION AND QUALIFYING ACCOUNTS

December 31, 2012, 2011 and 2010

	Balance Beginning of Year	Additions Charged to Costs and Expenses	(Deductions)/ Recoveries	Balance at End of Year
(In thousands)				
Allowance for doubtful accounts:				
Year Ended December 31, 2012	\$ 69	\$ 539	\$ (205)	\$ 403
Year Ended December 31, 2011	\$ 415	\$ 292	\$ (638)	\$ 69
Year Ended December 31, 2010	\$ 349	\$ 64	\$ 2	\$415

All other financial statement schedules have been omitted because they are not applicable or the required information is shown in the Consolidated Financial Statements or Notes thereto.

3. Exhibits:

The documents listed in the Exhibit Index of this Annual Report on Form 10-K are incorporated by reference or are filed with this report, in each case as indicated therein (numbered in accordance with Item 601 of Regulation S-K).

SIGNATURES

Pursuant to the requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

WAGeworks, INC.

Date: February 26, 2013

By: /s/ RICHARD T. GREEN
Richard T. Green
Chief Financial Officer
(Principal Financial and Accounting Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Joseph L. Jackson and Richard T. Green, and each or any one of them, his or her lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Annual Report on Form 10-K and to file the same, with all exhibits thereto, and other 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 requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>/S/ JOSEPH L. JACKSON</u> Joseph L. Jackson	Chief Executive Officer and Director (Principal Executive Officer)	February 26, 2013
<u>/S/ RICHARD T. GREEN</u> Richard T. Green	Chief Financial Officer (Principal Financial and Accounting Officer)	February 26, 2013
<u>/S/ RICHARD M. BERKELEY</u> Richard M. Berkeley	Director	February 26, 2013
<u>/S/ THOMAS A. BEVILACQUA</u> Thomas A. Bevilacqua	Director	February 26, 2013
<u>/S/ BRUCE G. BODAKEN</u> Bruce G. Bodaken	Director	February 26, 2013
<u>/S/ MARIANN BYERWALTER</u> Mariann Byerwalter	Director	February 26, 2013

[Table of Contents](#)

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
/S/ <u>JEROME D. GRAMAGLIA</u> Jerome D. Gramaglia	Director	February 26, 2013
/S/ <u>JOHN W. LARSON</u> John W. Larson	Director	February 26, 2013
/S/ <u>EDWARD C. NAFUS</u> Edward C. Nafus	Director	February 26, 2013

[Table of Contents](#)**Exhibit Index**

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Form</u>	<u>Incorporated by Reference</u>		<u>Filing Date</u>
			<u>File No.</u>	<u>Exhibit</u>	
2.1	Asset Purchase Agreement, by and between Registrant and TransitCenter, Inc., dated as of November 16, 2011	S-1	333-173709	2.1	03/07/2012
3.1	Amended and Restated Certificate of Incorporation of Registrant	S-1	333-173709	3.2	07/19/2011
3.2	Amended and Restated Bylaws of Registrant	S-1	333-173709	3.4	07/19/2011
4.1	Specimen common stock certificate of Registrant	S-1	333-173709	4.1	07/19/2011
4.2	Amended and Restated Investors' Rights Agreement, dated as of December 22, 2005, between Registrant and certain holders of Registrant's capital stock named therein	S-1	333-173709	4.2	04/25/2011
4.3	Amendment No. 1 to Amended and Restated Investors' Rights Agreement, dated as of December 28, 2009, between Registrant and certain holders of Registrant's capital stock named therein	S-1	333-173709	4.3	04/25/2011
4.4	Amendment No. 2 to Amended and Restated Investors' Rights Agreement, dated as of July 30, 2010, between Registrant and certain holders of Registrant's capital stock named therein	S-1	333-173709	4.4	04/25/2011
4.5	Stockholder Agreement by and among VantagePoint Venture Partners IV (Q), L.P., VantagePoint Venture Partners IV, L.P., VantagePoint Venture Partners IV Principals Fund, L.P. and Registrant	S-1	333-173709	4.5	07/19/2011
4.6	Form of Amended and Restated Warrant to Purchase Series E-1 Preferred Stock	S-1	333-173709	4.6	04/25/2011
4.7	Warrant Agreement to Purchase Shares of the Series C Preferred Stock of Registrant issued to Hercules Technology Growth Capital, Inc., dated as of May 23, 2005	S-1	333-173709	4.7	04/25/2011
4.8	Warrant to Purchase Common Stock of Registrant issued to ORIX Venture Finance LLC, dated as of September 26, 2007	S-1	333-173709	4.8	04/25/2011
10.1*	Form of Indemnification Agreement entered into between Registrant, its affiliates and its directors and officers	S-1	333-173709	10.1	07/19/2011
10.2*	Amended and Restated 2010 Equity Incentive Plan	S-1	333-173709	10.2	07/19/2011
10.3*	Forms of Stock Option Agreements under the Amended and Restated 2010 Equity Incentive Plan	S-1	333-173709	10.3	07/19/2011
10.4*	2000 Stock Option/Stock Issuance Plan	S-1	333-173709	10.4	04/25/2011
10.5*	Form of Stock Option Agreement under the 2000 Stock Option/Stock Issuance Plan	S-1	333-173709	10.5	04/25/2011
10.6*	2012 Employee Stock Purchase Plan				

[Table of Contents](#)

Exhibit Number	Exhibit Description	Form	Incorporated by Reference		Filing Date
			File No.	Exhibit	
10.7*	Form of Subscription Agreement under 2012 Employee Stock Purchase Plan	S-1	333-173709	10.7	03/07/2012
10.8*	Second Amended and Restated Employment Agreement, dated as of November 23, 2010, between Registrant and Joseph L. Jackson	S-1	333-173709	10.8	06/08/2011
10.9*	Form of Amended and Restated Executive Severance Benefit Agreement Purchase Plan	S-1	333-173709	10.9	04/25/2011
10.10	Commercial Credit Agreement, between Registrant and Union Bank, N.A., dated as of August 31, 2010	S-1	333-173709	10.10	04/25/2011
10.10A	First Loan Modification Agreement, by and among Registrant, Union Bank, N.A. and MHM Resources, LLC, dated as of November 16, 2011	S-1	333-173709	10.10A	03/07/2012
10.10B	Second Loan Modification Agreement, by and among Registrant, Union Bank, N.A. and MHM Resources, LLC, dated as of February 14, 2012	S-1	333-173709	10.10B	03/07/2012
10.10C	Third Loan Modification Agreement, by and among Registrant, Union Bank, N.A. and MHM Resources, LLC, dated as of September 20, 2012	8-K	001-35232	10.1	09/24/2012
10.10D	Fourth Loan Modification Agreement, by and among Registrant, Union Bank, N.A. and MHM Resources, LLC, dated as of December 31, 2012				
10.11	Sublease Agreement between Oracle USA, Inc. and Registrant, dated as of September 13, 2006	S-1	333-173709	10.11	04/25/2011
10.12	First Amendment to Sublease between Oracle USA, Inc. and Registrant, dated as of October 30, 2006	S-1	333-173709	10.12	04/25/2011
10.13	Commercial Building Lease, by and between Applied Buildings, LLC and HCAP Strategies, Inc., dated as of December 17, 2004	S-1	333-173709	10.13	04/25/2011
10.14	Assignment and Assumption of Lease, between, HCAP Strategies, Inc. and Registrant, dated as of May 16, 2005	S-1	333-173709	10.14	04/25/2011
10.15	Amendment to Commercial Building Lease, between Applied Buildings, LLC and Registrant, dated as of September 8, 2005	S-1	333-173709	10.15	04/25/2011
10.16	Lease, by and between Phoenix Investors #25, L.L.C. and Registrant, dated as of July 23, 2007	S-1	333-173709	10.16	04/25/2011
10.17	First Amendment to Lease, by and between Phoenix Investors #25, L.L.C. and Registrant, dated as of May 24, 2010	S-1	333-173709	10.17	04/25/2011
10.18	Second Amendment to Lease, by and between Phoenix Investors #25, L.L.C. and Registrant, dated as of August 31, 2010	S-1	333-173709	10.18	04/25/2011

[Table of Contents](#)

Exhibit Number	Exhibit Description	Form	Incorporated by Reference		
			File No.	Exhibit	Filing Date
10.19	Sublease Agreement, dated as of June 1, 2011, by and between Fringe Benefits Management Company and Registrant	S-1	333-173709	10.19	06/08/2011
10.20	Office Lease between Revere Corporate Center, LLC and Planned Benefits Systems, Inc., dated as of May 3, 2006	S-1	333-173709	10.20	04/25/2011
10.21	Amendment to Lease Agreement, dated as of October 6, 2008, by and between Revere Corporate Center, LLC and Planned Benefits Systems, Inc.	S-1	333-173709	10.21	04/25/2011
10.22	Pinnacle Corporate Centre IV Standard Office Lease, dated as of February 8, 2008, by and between BK Pinnacle IV LLC and MHM Resources, LLC	S-1	333-173709	10.22	04/25/2011
10.23	First Amendment to Lease, dated as of April 30, 2008, by and between BK Pinnacle IV LLC and MHM Resources, LLC	S-1	333-173709	10.23	04/25/2011
10.24	Second Amendment to Lease dated as of August 12, 2008 by and between BK Pinnacle IV LLC and MHM Resources, LLC	S-1	333-173709	10.24	04/25/2011
10.25	Second Amendment to Sublease between Oracle America, Inc. and Registrant, dated as of May 1, 2011	S-1	333-173709	10.25	06/08/2011
10.26*+	2011 Bonus Plan				
10.27*+	2012 Bonus Plan				
10.28*+	2013 Bonus Plan				
10.29*	Amended Form of Stock Option Agreement under the Amended and Restated 2010 Equity Incentive Plan				
10.30*	Form of Restricted Stock Unit Agreement under the Amended and Restated 2010 Equity Incentive Plan				
21.1	List of subsidiaries of Registrant	S-1	333-173709	21.1	03/07/2012
23.1	Consent of KPMG LLP, Independent Registered Public Accounting Firm				
24.1	Power of Attorney (contained in the signature page to this Annual Report)				
31.1	Certification of the Principal Executive Officer Pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				
31.2	Certification of the Principal Financial Officer Pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				
32.1**	Certification of the Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				
101.INS††	XBRL Instance Document				

[Table of Contents](#)

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Form</u>	<u>Incorporated by Reference</u>		
			<u>File No.</u>	<u>Exhibit</u>	<u>Filing Date</u>
101.SCH††	XBRL Taxonomy Extension Schema				
101.CAL††	XBRL Taxonomy Extension Calculation Linkbase				
101.DEF††	XBRL Taxonomy Extension Definition Linkbase				
101.LAB††	XBRL Taxonomy Extension Label Linkbase				
101.PRE††	XBRL Taxonomy Extension Presentation Linkbase				

* Indicates a management contract or compensatory plan or arrangement.

+ Confidential treatment has been requested for portions of this exhibit. These portions have been omitted and have been filed separately with the Securities and Exchange Commission.

** The certifications attached as Exhibit 32.1 that accompany this Annual Report on Form 10-K, are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of WageWorks, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Form 10-K, irrespective of any general incorporation language contained in such filing.

†† XBRL (Extensible Business Reporting Language) information is furnished and not filed or a part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not otherwise subject to liability under these Sections.

WAGEWORKS, INC.

2012 EMPLOYEE STOCK PURCHASE PLAN

(All share numbers in this Plan reflect the 1-for-2 reverse stock split of the Company's shares effected in July 2011)

1. Purpose. The purpose of the Plan is to provide employees of the Company and its Designated Subsidiaries with an opportunity to purchase Common Stock through accumulated Contributions (as defined in Section 2(j) below). The Company's intention is to have the Plan qualify as an "employee stock purchase plan" under Section 423 of the Code. The provisions of the Plan, accordingly, will be construed so as to extend and limit Plan participation in a uniform and nondiscriminatory basis consistent with the requirements of Section 423 of the Code.

2. Definitions.

(a) "Administrator" means the Board or any Committee designated by the Board to administer the Plan pursuant to Section 14.

(b) "Applicable Laws" means the requirements relating to the administration of equity-based awards under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where options are, or will be, granted under the Plan.

(c) "Board" means the Board of Directors of the Company.

(d) "Change in Control" means the occurrence of any of the following events:

(i) Change in Ownership of the Company. A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("Person"), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than fifty percent (50%) of the total voting power of the stock of the Company; provided, however, that for purposes of this subsection, the acquisition of additional stock by any one Person, who, prior to such acquisition, is considered to own more than fifty percent (50%) of the total voting power of the stock of the Company will not be considered a Change in Control; or

(ii) Change in Effective Control of the Company. A change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by Directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purposes of this clause (ii), if any Person is considered to be in effective control of the Company,

the acquisition of additional control of the Company by the same Person will not be considered a Change in Control; or

(iii) Change in Ownership of a Substantial Portion of the Company's Assets. A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the twelve (12) month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than fifty percent (50%) of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; provided, however, that for purposes of this subsection (iii), the following will not constitute a change in the ownership of a substantial portion of the Company's assets: (A) a transfer to an entity that is controlled by the Company's stockholders immediately after the transfer, or (B) a transfer of assets by the Company to: (1) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock, (2) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the Company, (3) a Person, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the Company, or (4) an entity, at least fifty percent (50%) of the total value or voting power of which is owned, directly or indirectly, by a Person described in this subsection (iii)(B)(3). For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For purposes of this definition, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing, a transaction will not be deemed a Change in Control unless the transaction qualifies as a change in control event within the meaning of Code Section 409A, as it has been and may be amended from time to time, and any proposed or final U.S. Treasury Regulations and Internal Revenue Service guidance that has been promulgated or may be promulgated thereunder from time to time.

Further and for the avoidance of doubt, a transaction will not constitute a Change in Control if: (i) its sole purpose is to change the state of the Company's incorporation, or (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(e) "Code" means the U.S. Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code or U.S. Treasury Regulation thereunder will include such section or regulation, any valid regulation or other official applicable guidance promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such section or regulation.

(f) "Committee" means a committee of the Board appointed in accordance with Section 14 hereof.

(g) "Common Stock" means the common stock of the Company.

(h) “Company” means WageWorks, Inc., a Delaware corporation, or any successor thereto.

(i) “Compensation” means an Eligible Employee’s base straight time gross earnings, commissions, payments for overtime and shift premium, incentive compensation, bonuses, and other similar compensation provided to Participant pursuant to normal payroll practices. The Administrator, in its discretion, may, on a uniform and nondiscriminatory basis, establish a different definition of Compensation for a subsequent Offering Period.

(j) “Contributions” means the payroll deductions and other additional payments that the Company may permit to be made by a Participant to fund the exercise of options granted pursuant to the Plan.

(k) “Designated Subsidiary” means any Subsidiary that has been designated as eligible to participate in the Plan. The Administrator in its sole discretion determines the Subsidiaries that are eligible to participate in the Plan. Unless determined otherwise by the Administrator in its sole discretion, all Subsidiaries will be deemed Designated Subsidiaries.

(l) “Director” means a member of the Board.

(m) “Eligible Employee” means any individual who is a common law employee of the Company or a Designated Subsidiary and has completed at least ninety (90) days of service since his or her last hire date.

(i) For purposes of the Plan, the employment relationship will be treated as continuing intact while the individual is on sick leave or other leave of absence that the Employer approves or is legally protected under Applicable Laws. Where the period of leave exceeds three (3) months and the individual’s right to reemployment is not guaranteed either by statute or by contract, the employment relationship will be deemed to have terminated three (3) months and one (1) day following the commencement of such leave.

(ii) The Administrator, in its discretion, from time to time may, prior to an Enrollment Date for all options to be granted on such Enrollment Date in an Offering, determine (on a uniform and nondiscriminatory basis or as otherwise permitted by Treasury Regulation Section 1.423-2) that the definition of Eligible Employee will or will not include an individual if he or she: (1) has not completed at least two (2) years of service since his or her last hire date (or such lesser period of time as may be determined by the Administrator in its discretion), (2) customarily works not more than twenty (20) hours per week (or such lesser period of time as may be determined by the Administrator in its discretion), (3) customarily works not more than five (5) months per calendar year (or such lesser period of time as may be determined by the Administrator in its discretion), (4) is a highly compensated employee within the meaning of Section 414(q) of the Code, or (5) is a highly compensated employee within the meaning of Section 414(q) of the Code with compensation above a certain level or is an officer or subject to the disclosure requirements of Section 16(a) of the Exchange Act, provided the exclusion is applied with respect to each Offering in an identical manner to all highly compensated individuals of the Employer whose Employees are participating in that Offering. Each exclusion shall be applied with respect to an Offering in a manner complying with U.S. Treasury Regulation Section 1.423-2(e)(2)(ii).

(n) “Employer” means the employer of the applicable Eligible Employee(s).

(o) “Enrollment Date” means the first Trading Day of each Offering Period.

(p) “Exchange Act” means the Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder.

(q) “Exercise Date” means the last Trading Day of each Offering Period. The first Exercise Date under the Plan will be the last Trading Day on or before August 14, 2012.

(r) “Fair Market Value” means, as of any date and unless the Administrator determines otherwise, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the New York Stock Exchange, NASDAQ Global Select Market, the NASDAQ Global Market or the NASDAQ Capital Market of The NASDAQ Stock Market, its Fair Market Value will be the closing sales price for such stock as quoted on such exchange or system on the date of determination (or the closing bid, if no sales were reported), as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value will be the mean between the high bid and low asked prices for the Common Stock on the date of determination (or if no bids and asks were reported on that date, as applicable, on the last Trading Day such bids and asks were reported), as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof will be determined in good faith by the Administrator; or

(iv) For purposes of the Enrollment Date of the first Offering Period under the Plan, the Fair Market Value will be the initial price to the public as set forth in the final prospectus included within the registration statement on Form S-1 filed with the Securities and Exchange Commission for the initial public offering of the Common Stock (the “Registration Statement”).

(s) “Fiscal Year” means the fiscal year of the Company.

(t) “New Exercise Date” means a new Exercise Date if the Administrator shortens any Offering Period then in progress.

(u) “Offering” means an offer under the Plan of an option that may be exercised during an Offering Period as further described in Section 4. For purposes of the Plan, the Administrator may designate separate Offerings under the Plan (the terms of which need not be identical) in which Employees of one or more Employers will participate, even if the dates of the applicable Offering Periods of each such Offering are identical and the provisions of the Plan will separately apply to each Offering. To the extent permitted by U.S. Treasury Regulation

Section 1.423-2(a)(1), the terms of each Offering need not be identical provided that the terms of the Plan and an Offering together satisfy U.S. Treasury Regulation Section 1.423-2(a)(2) and (a)(3).

(v) "Offering Periods" means the periods of approximately three (3) months during which an option granted pursuant to the Plan may be exercised, (i) commencing on the first Trading Day on or after February 15, May 15, August 15 and November 15 of each year and terminating on the last Trading Day on or before May 14, August 14, November 14 and February 14, respectively, approximately three (3) months later; provided, however, that the first Offering Period under the Plan will commence with the first Trading Day on or after the date on which the Securities and Exchange Commission declares the Company's Registration Statement effective and will end on the last Trading Day on or before August 14, 2012, and provided, further, that the second Offering Period under the Plan will commence on the first Trading Day on or after August 15, 2012. The duration and timing of Offering Periods may be changed pursuant to Sections 4 and 20.

(w) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(x) "Participant" means an Eligible Employee that participates in the Plan.

(y) "Plan" means this WageWorks, Inc. 2012 Employee Stock Purchase Plan.

(z) "Purchase Price" means an amount equal to eighty-five percent (85%) of the Fair Market Value of a share of Common Stock on the Enrollment Date or on the Exercise Date, whichever is lower; provided however, that the Purchase Price may be determined for subsequent Offering Periods by the Administrator subject to compliance with Section 423 of the Code (or any successor rule or provision or any other applicable law, regulation or stock exchange rule) or pursuant to Section 20.

(aa) "Subsidiary" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code.

(bb) "Trading Day" means a day on which the national stock exchange upon which the Common Stock is listed is open for trading.

(cc) "U.S. Treasury Regulations" means the Treasury regulations of the Code. Reference to a specific Treasury Regulation or Section of the Code shall include such Treasury Regulation or Section, any valid regulation promulgated under such Section, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such Section or regulation.

3. Eligibility.

(a) First Offering Period. Any individual who is an Eligible Employee immediately prior to the first Offering Period will be automatically enrolled in the first Offering Period, subject to the requirements of Section 5(a).

(b) Subsequent Offering Periods. Any Eligible Employee on a given Enrollment Date subsequent to the first Offering Period will be eligible to participate in the Plan, subject to the requirements of Section 5(b).

(c) Non-U.S. Employees. Employees who are citizens or residents of a non-U.S. jurisdiction (without regard to whether they also are citizens or residents of the United States or resident aliens (within the meaning of Section 7701(b)(1)(A) of the Code)) may be excluded from participation in the Plan or an Offering if the participation of such Employees is prohibited under the laws of the applicable jurisdiction or if complying with the laws of the applicable jurisdiction would cause the Plan or an Offering to violate Section 423 of the Code.

(d) Limitations. Any provisions of the Plan to the contrary notwithstanding, no Eligible Employee will be granted an option under the Plan (i) to the extent that, immediately after the grant, such Eligible Employee (or any other person whose stock would be attributed to such Eligible Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company or any Parent or Subsidiary of the Company and/or hold outstanding options to purchase such stock possessing five percent (5%) or more of the total combined voting power or value of all classes of the capital stock of the Company or of any Parent or Subsidiary of the Company, or (ii) to the extent that his or her rights to purchase stock under all employee stock purchase plans (as defined in Section 423 of the Code) of the Company or any Parent or Subsidiary of the Company accrues at a rate, which exceeds twenty-five thousand dollars (\$25,000) worth of stock (determined at the Fair Market Value of the stock at the time such option is granted) for each calendar year in which such option is outstanding at any time, as determined in accordance with Section 423 of the Code.

4. Offering Periods. The Plan will be implemented by consecutive Offering Periods with a new Offering Period commencing on the first Trading Day on or after February 15, May 15, August 15 and November 15 each year, or on such other date as the Administrator will determine; provided, however, that the first Offering Period under the Plan will commence with the first Trading Day on or after the date upon which the Company's Registration Statement is declared effective by the Securities and Exchange Commission and end on the last Trading Day on or before August 14, 2012, and provided, further, that the second Offering Period under the Plan will commence on the first Trading Day on or after August 15, 2012. The Administrator will have the power to change the duration of Offering Periods (including the commencement dates thereof) with respect to future Offerings without stockholder approval if such change is announced prior to the scheduled beginning of the first Offering Period to be affected thereafter. No Offering Period may have a duration longer than twenty-seven (27) months.

5. Participation.

(a) First Offering Period. An Eligible Employee will be entitled to continue to participate in the first Offering Period pursuant to Section 3(a) only if such individual submits a subscription agreement authorizing payroll deductions in a form determined by the Administrator to the Company's designated plan administrator (i) no earlier than the effective date of the Form S-8 registration statement with respect to the issuance of Common Stock under this Plan and (ii) no later than ten (10) business days following the effective date of such S-8 registration statement or such other period of time as the Administrator may determine (the "Enrollment Window"). An Eligible

Employee's failure to submit the subscription agreement during the Enrollment Window will result in the automatic termination of such individual's participation in the first Offering Period.

(b) Subsequent Offering Periods. An Eligible Employee may participate in the Plan pursuant to Section 3(b) by (i) submitting to the Company's stock administration office (or its designee), on or before a date determined by the Administrator prior to an applicable Enrollment Date, a properly completed subscription agreement authorizing Contributions in the form provided by the Administrator for such purpose, or (ii) following an electronic or other enrollment procedure determined by the Administrator.

6. Contributions.

(a) At the time a Participant enrolls in the Plan pursuant to Section 5, he or she will elect to have payroll deductions made on each pay day or other Contributions (to the extent permitted by the Administrator) made during the Offering Period in an amount not exceeding twenty-five percent (25%) of the Compensation, which he or she receives on each pay day during the Offering Period; provided, however, that should a pay day occur on an Exercise Date, a Participant will have any payroll deductions made on such day applied to his or her account under the subsequent Offering Period. The Administrator, in its sole discretion, may permit all Participants in a specified Offering to contribute amounts to the Plan through payment by cash, check or other means set forth in the subscription agreement prior to each Exercise Date of each Offering Period, provided that payment through means other than payroll deductions shall be permitted only if the Participant has not already had the maximum permitted amount withheld through payroll deductions during the Offering Period. A Participant's subscription agreement will remain in effect for successive Offering Periods unless terminated as provided in Section 10 hereof.

(b) Payroll deductions for a Participant will commence on the first pay day following the Enrollment Date and will end on the last pay day prior to the Exercise Date of such Offering Period to which such authorization is applicable, unless sooner terminated by the Participant as provided in Section 10 hereof; provided, however, that for the first Offering Period, payroll deductions will commence on the first pay day on or following the end of the Enrollment Window.

(c) All Contributions made for a Participant will be credited to his or her account under the Plan and payroll deductions will be made in whole percentages only. A Participant may not make any additional payments into such account.

(d) A Participant may discontinue his or her participation in the Plan as provided in Section 10. If permitted by the Administrator, as determined in its sole discretion, for an Offering Period, a Participant may increase or decrease the rate of his or her Contributions during the Offering Period by (i) properly completing and submitting to the Company's stock administration office (or its designee), on or before a date determined by the Administrator prior to an applicable Exercise Date, a new subscription agreement authorizing the change in Contribution rate in the form provided by the Administrator for such purpose, or (ii) following an electronic or other procedure prescribed by the Administrator. If a Participant has not followed such procedures to change the rate of Contributions, the rate of his or her Contributions will continue at the originally elected rate throughout the Offering Period and future Offering Periods (unless terminated as provided in Section 10). The Administrator may, in its sole discretion, limit the nature and/or number of Contribution

rate changes that may be made by Participants during any Offering Period, and may establish such other conditions or limitations as it deems appropriate for Plan administration. Any change in payroll deduction rate made pursuant to this Section 6(d) will be effective as of the first full payroll period following five (5) business days after the date on which the change is made by the Participant (unless the Administrator, in its sole discretion, elects to process a given change in payroll deduction rate more quickly).

(e) Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3(b), a Participant's Contributions may be decreased to zero percent (0%) at any time during an Offering Period. Subject to Section 423(b)(8) of the Code and Section 3(b) hereof, Contributions will recommence at the rate originally elected by the Participant effective as of the beginning of the first Offering Period scheduled to end in the following calendar year, unless terminated by the Participant as provided in Section 10.

(f) Notwithstanding any provisions to the contrary in the Plan, the Administrator may allow Eligible Employees to participate in the Plan via cash contributions instead of payroll deductions if the Administrator determines that cash contributions are permissible under Section 423 of the Code.

(g) At the time the option is exercised, in whole or in part, or at the time some or all of the Common Stock issued under the Plan is disposed of (or any other time that a taxable event related to the Plan occurs), the Participant must make adequate provision for the Company's or Employer's federal, state, local or any other tax liability payable to any authority including taxes imposed by jurisdictions outside of the U.S., national insurance, social security or other tax withholding obligations, if any, which arise upon the exercise of the option or the disposition of the Common Stock (or any other time that a taxable event related to the Plan occurs). At any time, the Company or the Employer may, but will not be obligated to, withhold from the Participant's compensation the amount necessary for the Company or the Employer to meet applicable withholding obligations, including any withholding required to make available to the Company or the Employer any tax deductions or benefits attributable to sale or early disposition of Common Stock by the Eligible Employee. In addition, the Company or the Employer may, but will not be obligated to, withhold from the proceeds of the sale of Common Stock or any other method of withholding the Company or the Employer deems appropriate to the extent permitted by U.S. Treasury Regulation Section 1.423-2(f).

7. Grant of Option. On the Enrollment Date of each Offering Period, each Eligible Employee participating in such Offering Period will be granted an option to purchase on each Exercise Date during such Offering Period (at the applicable Purchase Price) up to a number of shares of Common Stock determined by dividing such Eligible Employee's Contributions accumulated prior to such Exercise Date and retained in the Eligible Employee's account as of the Exercise Date by the applicable Purchase Price; provided that in no event will an Eligible Employee be permitted to purchase during each Offering Period more than 5,000 shares of the Company's Common Stock (subject to any adjustment pursuant to Section 19) and provided further that such purchase will be subject to the limitations set forth in Sections 3(c) and 13. The Eligible Employee may accept the grant of such option (i) with respect to the first Offering Period by submitting a properly completed subscription agreement in accordance with the requirements of Section 5(a) on or before the last day of the Enrollment Window, and (ii) with respect to any subsequent Offering

Period under the Plan, by electing to participate in the Plan in accordance with the requirements of Section 5(b). The Administrator may, for future Offering Periods, increase or decrease, in its absolute discretion, the maximum number of shares of Common Stock that an Eligible Employee may purchase during each Offering Period. Exercise of the option will occur as provided in Section 8, unless the Participant has withdrawn pursuant to Section 10. The option will expire on the last day of the Offering Period.

8. Exercise of Option.

(a) Unless a Participant withdraws from the Plan as provided in Section 10, his or her option for the purchase of shares of Common Stock will be exercised automatically on the Exercise Date, and the maximum number of full shares subject to the option will be purchased for such Participant at the applicable Purchase Price with the accumulated Contributions from his or her account. No fractional shares of Common Stock will be purchased; any Contributions accumulated in a Participant's account, which are not sufficient to purchase a full share will be retained in the Participant's account for the subsequent Offering Period, subject to earlier withdrawal by the Participant as provided in Section 10. Any other funds left over in a Participant's account after the Exercise Date will be returned to the Participant. During a Participant's lifetime, a Participant's option to purchase shares hereunder is exercisable only by him or her.

(b) If the Administrator determines that, on a given Exercise Date, the number of shares of Common Stock with respect to which options are to be exercised may exceed (i) the number of shares of Common Stock that were available for sale under the Plan on the Enrollment Date of the applicable Offering Period, or (ii) the number of shares of Common Stock available for sale under the Plan on such Exercise Date, the Administrator may in its sole discretion provide that the Company will make a pro rata allocation of the shares of Common Stock available for purchase on such Enrollment Date or Exercise Date, as applicable, in as uniform a manner as will be practicable and as it will determine in its sole discretion to be equitable among all Participants exercising options to purchase Common Stock on such Exercise Date, and (x) continue all Offering Periods then in effect or (y) terminate any or all Offering Periods then in effect pursuant to Section 20. The Company may make a pro rata allocation of the shares available on the Enrollment Date of any applicable Offering Period pursuant to the preceding sentence, notwithstanding any authorization of additional shares for issuance under the Plan by the Company's stockholders subsequent to such Enrollment Date.

9. Delivery. As soon as reasonably practicable after each Exercise Date on which a purchase of shares of Common Stock occurs, the Company will arrange the delivery to each Participant of the shares purchased upon exercise of his or her option in a form determined by the Administrator (in its sole discretion) and pursuant to rules established by the Administrator. The Company may permit or require that shares be deposited directly with a broker designated by the Company or to a designated agent of the Company, and the Company may utilize electronic or automated methods of share transfer. The Company may require that shares be retained with such broker or agent for a designated period of time and/or may establish other procedures to permit tracking of disqualifying dispositions of such shares. No Participant will have any voting, dividend, or other stockholder rights with respect to shares of Common Stock subject to any option granted under the Plan until such shares have been purchased and delivered to the Participant as provided in this Section 9.

10. Withdrawal.

(a) A Participant may withdraw all but not less than all the Contributions credited to his or her account and not yet used to exercise his or her option under the Plan at any time by (i) submitting to the Company's stock administration office (or its designee) a written notice of withdrawal in the form determined by the Administrator for such purpose, or (ii) following an electronic or other withdrawal procedure determined by the Administrator. All of the Participant's Contributions credited to his or her account will be paid (without interest as set forth in Section 12 below) to such Participant promptly after receipt of notice of withdrawal and such Participant's option for the Offering Period will be automatically terminated, and no further Contributions for the purchase of shares will be made for such Offering Period. If a Participant withdraws from an Offering Period, Contributions will not resume at the beginning of the succeeding Offering Period, unless the Participant re-enrolls in the Plan in accordance with the provisions of Section 5.

(b) A Participant's withdrawal from an Offering Period will not have any effect upon his or her eligibility to participate in any similar plan that may hereafter be adopted by the Company or in succeeding Offering Periods that commence after the termination of the Offering Period from which the Participant withdraws.

11. Termination of Employment. Upon a Participant's ceasing to be an Eligible Employee, for any reason, he or she will be deemed to have elected to withdraw from the Plan and the Contributions credited to such Participant's account during the Offering Period but not yet used to purchase shares of Common Stock under the Plan will be returned to such Participant or, in the case of his or her death, to the person or persons entitled thereto under Section 15, and such Participant's option will be automatically terminated.

12. Interest. No interest will accrue on the Contributions of a participant in the Plan, except as may be required by applicable law, as determined by the Company, and if so required by the laws of a particular jurisdiction, shall apply to all Participants in the relevant Offering except to the extent otherwise permitted by U.S. Treasury Regulation Section 1.423-2(f).

13. Stock.

(a) Subject to adjustment upon changes in capitalization of the Company as provided in Section 19 hereof, the maximum number of shares of Common Stock that will be made available for sale under the Plan will be 500,000 shares of Common Stock, plus an annual increase to be added on the first day of each Fiscal Year beginning with the 2013 Fiscal Year equal to the least of (i) 500,000 shares of Common Stock, (ii) one percent (1%) of the outstanding shares of Common Stock on such date, or (iii) an amount determined by the Administrator.

(b) Until the shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), a Participant will only have the rights of an unsecured creditor with respect to such shares, and no right to vote or receive dividends or any other rights as a stockholder will exist with respect to such shares.

(c) Shares of Common Stock to be delivered to a Participant under the Plan will be registered in the name of the Participant or in the name of the Participant and his or her spouse.

14. Administration. The Plan will be administered by the Board or a Committee appointed by the Board, which Committee will be constituted to comply with Applicable Laws. The Administrator will have full and exclusive discretionary authority to construe, interpret and apply the terms of the Plan, to designate separate Offerings under the Plan, to determine eligibility, to adjudicate all disputed claims filed under the Plan and to establish such procedures that it deems necessary for the administration of the Plan (including, without limitation, to adopt such procedures and sub-plans as are necessary or appropriate to permit the participation in the Plan by employees who are foreign nationals or employed outside the U.S., the terms of which sub-plans may take precedence over other provisions of this Plan, with the exception of Section 13(a) hereof, but unless otherwise superseded by the terms of such sub-plan, the provisions of this Plan shall govern the operation of such sub-plan). Unless otherwise determined by the Administrator, the Employees eligible to participate in each sub-plan will participate in a separate Offering. Without limiting the generality of the foregoing, the Administrator is specifically authorized to adopt rules and procedures regarding eligibility to participate, the definition of Compensation, handling of Contributions, making of Contributions to the Plan (including, without limitation, in forms other than payroll deductions), establishment of bank or trust accounts to hold Contributions, payment of interest, conversion of local currency, obligations to pay payroll tax, determination of beneficiary designation requirements and withholding procedures and handling of stock certificates that vary with applicable local requirements. The Administrator also is authorized to determine that, to the extent permitted by U.S. Treasury Regulation Section 1.423-2(f), the terms of an option granted under the Plan or an Offering to citizens or residents of a non-U.S. jurisdiction will be less favorable than the terms of options granted under the Plan or the same Offering to employees resident solely in the U.S. Every finding, decision and determination made by the Administrator will, to the full extent permitted by law, be final and binding upon all parties.

15. Designation of Beneficiary.

(a) If permitted by the Administrator, a Participant may file a designation of a beneficiary who is to receive any cash in the Participant's account and shares of Common Stock, if any, from the Participant's account under the Plan (in the event of such Participant's death subsequent to an Exercise Date on which the option is exercised but prior to delivery to such Participant of such shares). The Administrator may require spousal consent with respect to a Participant who is married that designates a beneficiary who is not his or her spouse, in order for such designation to be effective.

(b) Such designation of beneficiary may be changed by the Participant at any time by notice in a form determined by the Administrator. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such Participant's death, the Company will deliver such cash and/or shares to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such cash and/or shares to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

(c) All beneficiary designations will be in such form and manner as the Administrator may designate from time to time. Notwithstanding Sections 15(a) and (b) above, the Company

and/or the Administrator may decide not to permit such designations by Participants in non-U.S. jurisdictions to the extent permitted by U.S. Treasury Regulation Section 1.423-2(f).

16. Transferability. Neither Contributions credited to a Participant's account nor any rights with regard to the exercise of an option or to receive shares of Common Stock under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 15 hereof) by the Participant. Any such attempt at assignment, transfer, pledge or other disposition will be without effect, except that the Company may treat such act as an election to withdraw funds from an Offering Period in accordance with Section 10 hereof.

17. Use of Funds. The Company may use all Contributions received or held by it under the Plan for any corporate purpose, and the Company will not be obligated to segregate such Contributions except under Offerings in which applicable local law requires that Contributions to the Plan by Participants be segregated from the Company's general corporate funds and/or deposited with an independent third party for Participants in non-U.S. jurisdictions. Until shares of Common Stock are issued, Participants will only have the rights of an unsecured creditor with respect to such shares.

18. Reports. Individual accounts will be maintained for each Participant in the Plan. Statements of account will be given to participating Eligible Employees at least annually, which statements will set forth the amounts of Contributions, the Purchase Price, the number of shares of Common Stock purchased and the remaining cash balance, if any.

19. Adjustments, Dissolution, Liquidation, Merger or Change in Control.

(a) Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Common Stock, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Common Stock or other securities of the Company, or other change in the corporate structure of the Company affecting the Common Stock occurs, the Administrator, in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, will, in such manner as it may deem equitable, adjust the number and class of Common Stock that may be delivered under the Plan, the Purchase Price per share and the number of shares of Common Stock covered by each option under the Plan that has not yet been exercised, and the numerical limits of Sections 7 and 13.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, any Offering Period then in progress will be shortened by setting a New Exercise Date, and will terminate immediately prior to the consummation of such proposed dissolution or liquidation, unless provided otherwise by the Administrator. The New Exercise Date will be before the date of the Company's proposed dissolution or liquidation. The Administrator will notify each Participant in writing or electronically, prior to the New Exercise Date, that the Exercise Date for the Participant's option has been changed to the New Exercise Date and that the Participant's option will be exercised automatically on the New Exercise Date, unless prior to such date the Participant has withdrawn from the Offering Period as provided in Section 10 hereof.

(c) Merger or Change in Control. In the event of a merger or Change in Control, each outstanding option will be assumed or an equivalent option substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the successor corporation refuses to assume or substitute for the option, the Offering Period with respect to which such option relates will be shortened by setting a New Exercise Date on which such Offering Period shall end. The New Exercise Date will occur before the date of the Company's proposed merger or Change in Control. The Administrator will notify each Participant in writing or electronically prior to the New Exercise Date, that the Exercise Date for the Participant's option has been changed to the New Exercise Date and that the Participant's option will be exercised automatically on the New Exercise Date, unless prior to such date the Participant has withdrawn from the Offering Period as provided in Section 10 hereof.

20. Amendment or Termination.

(a) The Administrator, in its sole discretion, may amend, suspend, or terminate the Plan, or any part thereof, at any time and for any reason. If the Plan is terminated, the Administrator, in its discretion, may elect to terminate all outstanding Offering Periods either immediately or upon completion of the purchase of shares of Common Stock on the next Exercise Date (which may be sooner than originally scheduled, if determined by the Administrator in its discretion), or may elect to permit Offering Periods to expire in accordance with their terms (and subject to any adjustment pursuant to Section 19). If the Offering Periods are terminated prior to expiration, all amounts then credited to Participants' accounts that have not been used to purchase shares of Common Stock will be returned to the Participants (without interest thereon, except as otherwise required under local laws, as further set forth in Section 12 hereof) as soon as administratively practicable.

(b) Without stockholder consent and without limiting Section 20(a), the Administrator will be entitled to change the Offering Periods, designate separate Offerings, limit the frequency and/or number of changes in the amount withheld during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each Participant properly correspond with Contribution amounts, and establish such other limitations or procedures as the Administrator determines in its sole discretion advisable that are consistent with the Plan.

21. Notices. All notices or other communications by a Participant to the Company under or in connection with the Plan will be deemed to have been duly given when received in the form and manner specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

22. Conditions Upon Issuance of Shares. Shares of Common Stock will not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto will comply with all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, and the requirements of any stock exchange upon which the

shares may then be listed, and will be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an option, the Company may require the person exercising such option to represent and warrant at the time of any such exercise that the shares are being purchased only for investment and without any present intention to sell or distribute such shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned applicable provisions of law.

23. Code Section 409A. The Plan is exempt from the application of Code Section 409A and any ambiguities herein will be interpreted to so be exempt from Code Section 409A. In furtherance of the foregoing and notwithstanding any provision in the Plan to the contrary, if the Administrator determines that an option granted under the Plan may be subject to Code Section 409A or that any provision in the Plan would cause an option under the Plan to be subject to Code Section 409A, the Administrator may amend the terms of the Plan and/or of an outstanding option granted under the Plan, or take such other action the Administrator determines is necessary or appropriate, in each case, without the Participant's consent, to exempt any outstanding option or future option that may be granted under the Plan from or to allow any such options to comply with Code Section 409A, but only to the extent any such amendments or action by the Administrator would not violate Code Section 409A. Notwithstanding the foregoing, the Company shall have no liability to a Participant or any other party if the option to purchase Common Stock under the Plan that is intended to be exempt from or compliant with Code Section 409A is not so exempt or compliant or for any action taken by the Administrator with respect thereto. The Company makes no representation that the option to purchase Common Stock under the Plan is compliant with Code Section 409A.

24. Term of Plan. The Plan will become effective upon the earlier to occur of its adoption by the Board or its approval by the stockholders of the Company. It will continue in effect for a term of twenty (20) years, unless sooner terminated under Section 20.

25. Stockholder Approval. The Plan will be subject to approval by the stockholders of the Company within twelve (12) months after the date the Plan is adopted by the Board. Such stockholder approval will be obtained in the manner and to the degree required under Applicable Laws.

26. Governing Law. The Plan shall be governed by, and construed in accordance with, the laws of the State of California (except its choice-of-law provisions).

27. Severability. If any provision of the Plan is or becomes or is deemed to be invalid, illegal, or unenforceable for any reason in any jurisdiction or as to any Participant, such invalidity, illegality or unenforceability shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as to such jurisdiction or Participant as if the invalid, illegal or unenforceable provision had not been included.

CREDIT AGREEMENT

Dated as of December 31, 2012

Among

WAGeworks, INC.,
as Borrower,

CERTAIN SUBSIDIARIES OF BORROWER,
as Guarantors

UNION BANK, N.A.,
as Administrative Agent and L/C Issuer,

and

THE OTHER LENDERS PARTY HERETO

TABLE OF CONTENTS

		Page
ARTICLE I	DEFINITIONS AND ACCOUNTING TERMS	1
1.01	Defined Terms	1
1.02	Interpretive Provisions	35
1.03	Accounting Terms	36
1.04	Rounding	37
1.05	Times of Day	37
1.06	Letter of Credit Amounts	37
ARTICLE II	THE COMMITMENTS AND CREDIT EXTENSIONS	37
2.01	Loans	37
2.02	Borrowings, Conversions and Continuations of Loans	37
2.03	Letters of Credit	39
2.04	[Reserved]	48
2.05	Prepayments	48
2.06	Termination or Reduction of Commitments; Increase of Commitment	49
2.07	Repayment of Loans	51
2.08	Interest	51
2.09	Fees	52
2.10	Computation of Interest and Fees	52
2.11	Evidence of Debt	53
2.12	Payments Generally; Administrative Agent's Clawback	53
2.13	Sharing of Payments	55
2.14	Replacement of Lenders	56
2.15	Cash Collateral	57
2.16	Defaulting Lenders	58
ARTICLE III	TAXES, YIELD PROTECTION AND ILLEGALITY	61
3.01	Taxes	61
3.02	Illegality	66
3.03	Inability to Determine Rates	67
3.04	Increased Costs; Reserves on Eurodollar Rate Loans	67
3.05	Compensation for Losses	69
3.06	Mitigation Obligations; Replacement of Lenders	69
3.07	Survival	70
ARTICLE IV	GUARANTY	70
4.01	The Guaranty	70
4.02	Obligations Unconditional	70
4.03	Reinstatement	72
4.04	Certain Additional Waivers	72
4.05	Remedies	73
4.06	Rights of Contribution	74
4.07	Subordination	74
4.08	Guarantee of Payment; Continuing Guarantee	75

TABLE OF CONTENTS

(continued)

	Page	
ARTICLE V	CONDITIONS PRECEDENT TO CREDIT EXTENSIONS	75
5.01	Conditions of Initial Credit Extension	75
5.02	Conditions to all Credit Extensions	77
ARTICLE VI	REPRESENTATIONS AND WARRANTIES	78
6.01	Existence, Qualification and Power	78
6.02	Authorization; No Contravention	78
6.03	Governmental Authorization; Other Consents	79
6.04	Binding Effect	79
6.05	Financial Statements; No Material Adverse Effect	79
6.06	Litigation	80
6.07	No Default	80
6.08	Ownership of Property; Liens	80
6.09	Environmental Compliance	81
6.10	Insurance	81
6.11	Taxes	81
6.12	ERISA Compliance	81
6.13	Subsidiaries; Equity Interests	82
6.14	Margin Regulations; Investment Company Act; OFAC; Patriot Act, Etc	82
6.15	Disclosure	83
6.16	Compliance with Laws	83
6.17	Solvency	83
6.18	Labor Matters	83
6.19	Business Locations	84
6.20	Intellectual Property; Licenses, Etc	84
6.21	Rights in Collateral; Priority of Liens	84
ARTICLE VII	AFFIRMATIVE COVENANTS	85
7.01	Financial Statements	85
7.02	Certificates; Other Information	86
7.03	Notices	88
7.04	Payment of Obligations	89
7.05	Preservation of Existence, Etc	89
7.06	Maintenance of Properties	90
7.07	Maintenance of Insurance	91
7.08	Subordination	91
7.09	Compliance with Laws	91
7.10	Books and Records	92
7.11	Inspection Rights	92
7.12	Use of Proceeds	92
7.13	Financial Covenants	92

TABLE OF CONTENTS

(continued)

		Page
7.14	Additional Guarantors	93
7.15	Collateral Records	93
7.16	Security Interests	94
7.17	Restricted Agreements	94
7.18	Access Agreements	94
7.19	[Reserved]	94
7.20	Further Assurances	94
ARTICLE VIII	NEGATIVE COVENANTS	95
8.01	Liens	95
8.02	Investments	97
8.03	Indebtedness	97
8.04	Fundamental Changes	98
8.05	Dispositions	98
8.06	Restricted Payments	99
8.07	Change in Nature of Business	100
8.08	Transactions with Affiliates	100
8.09	No Further Negative Pledge	100
8.10	Use of Proceeds	100
8.11	Amendment or Modification of Organization Documents	100
8.12	Accounting Changes	100
8.13	Compliance	100
8.14	Ownership of Subsidiaries	101
ARTICLE IX	EVENTS OF DEFAULT AND REMEDIES	101
9.01	Events of Default	101
9.02	Remedies Upon Event of Default	104
9.03	Application of Funds	104
ARTICLE X	AGENCY	105
10.01	Appointment and Authorization of Administrative Agent	105
10.02	Rights as a Lender	107
10.03	Exculpatory Provisions	107
10.04	Reliance by Administrative Agent	108
10.05	Delegation of Duties	109
10.06	Resignation or Removal of Administrative Agent	109
10.07	Non-Reliance on Administrative Agent and Other Lenders	110
10.08	No Other Duties, Etc	111
10.09	Administrative Agent May File Proofs of Claim	111
10.10	Guaranty Matters	112
10.11	Collateral Matters	112
10.12	Secured Cash Management Agreements and Secured Hedge Agreements	114
10.13	Legal Representation of Administrative Agent	114

TABLE OF CONTENTS

(continued)

		Page
ARTICLE XI	MISCELLANEOUS	115
11.01	Amendments, Etc	115
11.02	Notices; Effectiveness; Electronic Communications	116
11.03	No Waiver; Cumulative Remedies; Enforcement	119
11.04	Expenses; Indemnity; Damage Waiver	119
11.05	Payments Set Aside	121
11.06	Successors and Assigns	122
11.07	Treatment of Certain Information; Confidentiality	127
11.08	Right of Setoff	128
11.09	Interest Rate Limitation	129
11.10	Counterparts; Integration; Effectiveness	129
11.11	Survival of Representations and Warranties	129
11.12	Severability	129
11.13	Governing Law; Jurisdiction; Etc	130
11.14	Disputes; Waiver of Jury Trial	131
11.15	No Advisory or Fiduciary Responsibility	131
11.16	Electronic Execution of Assignments and Certain Other Documents	132
11.17	USA PATRIOT Act Notice	132
11.18	Time of the Essence	132
11.19	Effect of Restatement	132

SCHEDULES

- 1.01 Existing Letters of Credit
- 2.01 Commitments and Applicable Percentages
- 11.02 Administrative Agent's Office, Certain Addresses for Notices

EXHIBITS

- A Form of Loan Notice
- B Form of Revolving Loan Note
- C Form of Compliance Certificate
- D Form of Assignment And Assumption
- E Form of New Lender Addendum
- F Form of Guarantor Joinder
- G Form of Administrative Questionnaire
- H Form of Security Agreement
- I Form of Pledge Agreement
- J-1 U.S. Tax Compliance Certificate
- J-2 U.S. Tax Compliance Certificate
- J-3 U.S. Tax Compliance Certificate
- J-4 U.S. Tax Compliance Certificate
- K Form of Secured Party Designation Notice
- L Form of Closing Date Officer's Certificate

CREDIT AGREEMENT

CREDIT AGREEMENT (this “**Agreement**”) is entered into as of December 31, 2012, among **WAGeworks, INC.**, a Delaware corporation (“**Borrower**”), each Guarantor (as defined herein) from time to time party hereto, of Lender (as defined herein) from time to time party hereto, **UNION BANK, N.A.**, as Administrative Agent and L/C Issuer.

Borrower and Union Bank are parties to the Existing Credit Agreement, as defined below. Borrower and Union Bank wish to amend and restate, but without novation, the terms of the Existing Credit Agreement on the terms and conditions set forth herein, and Borrower has requested that the Lenders provide a revolving credit facility for the purposes set forth herein to Borrower, for itself and for the direct and indirect benefit of each Guarantor, and the Lenders are willing to do so on the terms and conditions set forth herein. In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

“**5% Subsidiary**” means a Subsidiary of Borrower that, at any time, qualifies as a Material Subsidiary, other than a Subsidiary that qualifies as a Material Subsidiary solely because it is a Domestic Subsidiary.

“**Accounts**” means all accounts, whether or not defined in the UCC, now owned or hereafter acquired, including without limitation, (a) all accounts receivable, other receivables, book debts and other forms of obligations whether arising out of goods sold or services rendered or from any other transaction (including any such obligations that may be characterized as an account or contract under the UCC), (b) all purchase orders or receipts for goods or services, (c) all rights to any goods represented by any of the foregoing (including unpaid sellers’ rights or rescission, replevin, reclamation and stoppage in transit and rights to returned or repossessed goods), (d) all monies due or to become due under all purchase orders and contracts for the sale of goods or the performance of services or both or in connection with any other transaction (whether or not yet earned by performance) now or hereafter in existence, including the right to receive the proceeds of said purchase orders and contracts, and (e) all collateral security and guaranties of any kind, now or hereafter in existence, with respect to any of the foregoing.

“**Acquired Entity**” means (a) any Person that becomes a Subsidiary of Borrower as a result of an Acquisition or (b) any business entity or division of a Person, all or substantially all of the assets and business of which are acquired by Borrower or a Subsidiary of Borrower pursuant to an Acquisition.

“**Acquisition**” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person (other than a Person that is a Subsidiary), (b) the acquisition of in excess of 50% of the capital stock, partnership interests, membership

interests or equity of any Person (other than a Person that is a Subsidiary), or otherwise causing any Person to become a Subsidiary, or (c) a merger or consolidation or any other combination with another Person (other than a Person that is a Subsidiary).

“**Administrative Agent**” or “**Agent**” means Union Bank, N.A. in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“**Administrative Agent’s Office**” means Administrative Agent’s address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as Administrative Agent may from time to time notify Borrower and Lenders.

“**Administrative Questionnaire**” means an Administrative Questionnaire in substantially the form attached hereto as **Exhibit G**, or another form as supplied by Administrative Agent.

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Aggregate Commitments**” means the Commitments of all Lenders. As of the Closing Date, the Aggregate Commitments shall be Seventy-Five Million Dollars (\$75,000,000).

“**Aggregate Consideration**” means, with respect to any Permitted Acquisition, the total aggregate cash and non-cash consideration paid or payable by Borrower and/or any of its Subsidiaries, including the sum (without duplication) of (a) the fair market value of the Equity Interests issued (or to be issued) as consideration in connection with such Permitted Acquisition, (b) the aggregate amount of all cash paid (or to be paid) by Borrower or any of its Subsidiaries as consideration in connection with such Permitted Acquisition and other Earn-Out obligations of Borrower and its Subsidiaries incurred in connection therewith, (c) the aggregate principal amount of all Indebtedness assumed, incurred and/or issued in connection with such Permitted Acquisition, and (d) the fair market value of all other consideration payable in connection with such Permitted Acquisition.

“**Agreement**” means this Credit Agreement.

“**Applicable Percentage**” means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender’s Commitment at such time, subject to adjustment as provided in Section 2.16. If the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 9.02 or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“**Applicable Rate**” means, from time to time, the following percentages per annum: (a) with respect to Base Rate Loans, one-quarter of one percent (0.25%), (b) with respect to Eurodollar Rate Loans, two and one-half of one percent (2.50%), and (c) with respect to Letters of Credit one percent (1.00%).

“**Approved Fund**” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“**Assignee Group**” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by Administrative Agent, in substantially the form of **Exhibit D** or any other form approved by Administrative Agent.

“**Attributable Indebtedness**” means, with respect to any Person, on any date, (a) in respect of any Capital Lease of such Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease and (c) in respect of any Securitization Transaction of any Person, the outstanding principal amount of such financing, after taking into account reserve accounts and making appropriate adjustments, determined by Administrative Agent in its reasonable judgment.

“**Audited Financial Statements**” means the audited consolidated balance sheet of Borrower and its Subsidiaries for the fiscal year ended December 31, 2011, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of Borrower and its Subsidiaries, including the notes thereto, audited by independent public accountants of recognized national standing and prepared in conformity with GAAP.

“**Availability Period**” means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to Section 2.06(a), and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 9.02.

“**Base Rate**” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Union Bank, N.A. as its “reference rate”, and (c) the Eurodollar Rate plus 1.00%. It is understood and agreed that the “Union Bank, N.A. Reference Rate” is one of Union Bank’s index rates and merely serves as a basis upon which effective rates of interest are calculated for loans making reference thereto and may not be the lowest or best rate at which Union Bank calculates interest or extends credit. The “Union Bank, N.A. reference The “Union Bank Reference Rate” is a rate set by Union Bank, N.A. based upon various factors including Union Bank, N.A.’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or

below such announced rate. Any change in such rate announced by Union Bank, N.A. shall take effect at the opening of business on the day specified in the public announcement of such change.

“**Base Rate Loan**” means a Loan that bears interest based on the Base Rate.

“**Borrower**” has the meaning specified in the introductory paragraph hereto.

“**Borrower Materials**” has the meaning specified in Section 7.02.

“**Borrowing**” means a borrowing consisting of simultaneous Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of California and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

“**Capital Lease**” means, as applied to any Person, any lease of any property by that Person as lessee, which, in accordance with GAAP is required to be accounted for as a capital lease on the balance sheet of that Person.

“**Capital Lease Obligations**” means all monetary obligations of a Person under any leasing or similar arrangement which, in accordance with GAAP, is classified as a Capital Lease.

“**Cash**” means unrestricted cash and Cash Equivalents.

“**Cash Collateralize**” means to pledge and deposit with or deliver to Administrative Agent, for the benefit of one or more of the L/C Issuer or the Lenders, as collateral for L/C Obligations or obligations of Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if Administrative Agent and the L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to Administrative Agent and the L/C Issuer (which documents are hereby consented to by Lenders). “**Cash Collateral**” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“**Cash Equivalents**” means, as at any date, (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (b) Dollar denominated time deposits and certificates of deposit of (i) any Lender, (ii) any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000 or (iii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody’s is at least P-1 or the equivalent thereof (any such bank being an “**Approved Bank**”), in each case with maturities of not more than 270 days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable rate notes issued by, or guaranteed by, any domestic corporation rated A-1

(or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's and maturing within six months of the date of acquisition, (d) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations and (e) Investments, classified in accordance with GAAP as current assets, in money market investment programs registered under the Investment Company Act of 1940 which are administered by reputable financial institutions having capital of at least \$500,000,000 and the portfolios of which are limited to Investments of the character described in the foregoing subdivisions (a) through (d).

"Cash Management Agreement" means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

"Cash Management Bank" means any Person that, (a) at the time it enters into a Cash Management Agreement with a Loan Party, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Cash Management Agreement with a Loan Party, in each case in its capacity as a party to such Cash Management Agreement; provided, however, that for any of the foregoing to be included as a "Secured Cash Management Agreement" on any date of determination by Administrative Agent, the applicable Cash Management Bank (other than Administrative Agent or an Affiliate of Administrative Agent) must have delivered a Secured Party Designation Notice to Administrative Agent prior to such date of determination.

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any Permitted Holder, any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), becomes the "beneficial owner" (as defined in Rules 13d 3 and 13d 5 under the Securities Exchange Act of

1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”), directly or indirectly, of 30% or more of the outstanding Voting Equity Interests of Borrower on a fully diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or

(b) during any period of 24 consecutive months, a majority of the members of the board of directors or other equivalent governing body of Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.

“**Client Trust Accounts**” means deposit accounts maintained to hold Borrower’s and its Subsidiaries’ client deposits including prefunds and any other amounts provided by such clients relating to Borrower’s and its Subsidiaries’ administration of such clients’ benefits.

“**Closing Date**” means the first date all the conditions precedent in Section 5.01 are satisfied or waived in accordance with Section 11.01.

“**Closing Date Guarantor**” means MHM RESOURCES, LLC, a Delaware limited liability company.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Collateral**” means all of the “Collateral” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of Administrative Agent for the benefit of the Secured Parties.

“**Collateral Documents**” means a collective reference to the Security Agreement (including any supplement or joinder thereto) and all other documents, instruments and agreements now or hereafter executed and delivered in connection with this Agreement pursuant to which Liens are granted or purported to be granted to Administrative Agent, for the benefit of the Secured Parties, each in form and substance satisfactory to Administrative Agent.

“**Commitment**” means, as to each Lender, its obligation to (a) make Loans to Borrower pursuant to Section 2.01, and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including but not limited to, and subject to the terms and conditions of, Section 2.06).

“Compliance Certificate” means a certificate substantially in the form of **Exhibit C** or such other form as may be acceptable to Administrative Agent, executed by Borrower’s chief financial officer or chief executive officer, certifying, among other things, that: (a) the financial statements delivered in connection therewith are true copies and fairly present the financial condition of Borrower as of such date and the results of operations for the periods presented; (ii) the representations and warranties contained herein and in the other Loan Documents remain true and correct in all material respects as of such date (except for those representations and warranties, if any, expressly referring to a specific date which shall remain true, accurate and complete in all material respects as of such date); (iii) Borrower, and each of its Subsidiaries, have timely filed all required tax returns and reports, and Borrower and such Subsidiaries have timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed, except as otherwise permitted pursuant to the terms of this Agreement; (iv) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower have not previously provided written notification to Administrative Agent; (v) Borrower is in compliance with all covenants set forth herein; and (vi) there exists no Event of Default nor any condition, act or event which with the giving of notice or the passage of time or both would constitute an Event of Default.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Funded Indebtedness” means Funded Indebtedness of Borrower and its Subsidiaries on a consolidated basis determined in accordance with GAAP.

“Consolidated Interest Expense” means, with respect to any Person for any period, as of the last day of any fiscal period, the sum of (without duplication) (a) consolidated interest expense in respect of Indebtedness of such Person and its Subsidiaries, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (Loss), including all interest, fees, charges and related expenses (in each case as such expenses are calculated according to GAAP) paid or payable (without duplication) for that fiscal period by that Person and its Subsidiaries to a lender in connection with Indebtedness (including any obligations for fees, charges and related expenses payable to the issuer of any letter of credit) plus (b) the portion of rent paid or payable (without duplication) for that fiscal period by that Person under Capital Lease Obligations that should be treated as interest in accordance with Financial Accounting Standards Board Statement No. 13, but, in each case, excluding (i) any amount not payable in Cash during the applicable period (including any such amounts attributable to original issue discount) and (ii) any one time financing fees.

“Consolidated Net Income (Loss)” means, with respect to any fiscal period of a Person, the consolidated net income (loss) of such Person and its consolidated Subsidiaries for such period, after deduction of all expenses, taxes, and other proper charges, determined in accordance with GAAP, consistently applied but excluding, in any event:

(i) any gains or losses on the sale or other disposition of assets (other than sales of inventory in the ordinary course of business), including Investments, and any taxes on the excluded gains and any tax deductions or credits on account on any excluded losses;

(ii) net earnings of any Person in which such Person has an ownership interest, unless such net earnings shall have actually been received by such Person in the form of cash distributions; and

(iii) without duplication with (i) or (ii) above, any noncash gains or losses resulting from mark to market adjustments to warrants issued by such Person.

“**Consolidated Net Worth**” means, as of any date of determination, all amounts that would, in conformity with GAAP, be included on a consolidated balance sheet of Borrower and its consolidated Subsidiaries under stockholders’ equity at such date.

“**Consolidated Scheduled Funded Debt Payments**” means for any period for Borrower and its Subsidiaries on a consolidated basis, the sum of all scheduled payments of principal on Consolidated Funded Indebtedness, as determined in accordance with GAAP. For purposes of this definition, “scheduled payments of principal” (a) shall be determined without giving effect to any reduction of such scheduled payments resulting from the application of any voluntary or mandatory prepayments made during the applicable period and (b) shall be deemed to include the Attributable Indebtedness in respect of Capital Leases, Securitization Transactions and Synthetic Leases.

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“**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. “**Controlling**” and “**Controlled**” have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

“**Controlled Account**” means each deposit account that is subject to an account control agreement in form and substance satisfactory to Administrative Agent and the L/C Issuer.

“**Copyright License**” means any written agreement providing for the grant by or to a Loan Party or any Subsidiary of any right under any Copyright.

“**Copyrights**” means (a) all proprietary rights afforded Works pursuant to Title 17 of the United States Code, including, without limitation, all rights in mask works, copyrights and original designs and all proprietary rights afforded such Works by other countries for the full term thereof (and including all rights accruing by virtue of bilateral or international treaties and conventions thereto), whether registered or unregistered, including, but not limited to, all applications for registration, renewals, extensions, reversions or restorations thereof now or hereafter provided for by law and all rights to make applications for registrations and recordings, regardless of the medium of fixation or means of expression and (b) all copyright rights under the copyright laws of the United States and other countries for the full term thereof (and including all rights accruing by virtue of bilateral or international copyright treaties and

conventions), whether registered or unregistered, including, but not limited to, all applications for registrations, renewals, extensions, reversions or restorations of copyrights now or hereafter provided for by law and all rights to make applications for copyright registrations and recordings, regardless of the medium of fixation or means of expression.

“**Credit Exposure**” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Loans and such Lender’s participation in (i.e. its Applicable Percentage of) and all L/C Obligations at such time.

“**Credit Extension**” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“**Debt Service**” means, for any date of determination, the sum of (without duplication) (a) an amount equal to one-quarter of the outstanding principal Indebtedness owing in respect of the Loans on such date, plus (b) Consolidated Interest Expense for the period of four quarters ending on such date, plus (c) projected operating lease payment obligations arising during the twelve (12) month period immediately following such date, plus (d) all Consolidated Scheduled Funded Debt Payments (including all Capital Lease Obligations, but not including the Loans) coming due within the twelve (12) month period following such date.

“**Debt Service Coverage Ratio**” means, for any date of determination, the ratio of: (a) the sum of (i) EBITDA for the period of four fiscal quarters ending on such date, plus (ii) to the extent deducted in the calculation of the EBITDA, operating lease payments made during such period, minus (iii) the sum of (A) Distributions made during such period, plus (B) payments made during such period in respect of deferred Acquisition-related obligations that constitute consideration for such Acquisition and Earn-Out Obligations, to (b) Debt Service, calculated as of such date.

“**Debtor Relief Laws**” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“**Default**” means any event or condition that constitutes an Event of Default or that, with the giving of any applicable notice, the passage of time, specified in Section 9.01, or both, would be an Event of Default.

“**Default Rate**” means (a) when used with respect to Obligations other than L/C Fees an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, in each case to the fullest extent permitted by applicable Laws, and (b) when used with respect to L/C Fees, a rate equal to the Applicable Rate plus 2% per annum.

“**Defaulting Lender**” means, subject to Section 2.16(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were

required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Administrative Agent, the L/C Issuer or any Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified Borrower, Administrative Agent or the L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by Administrative Agent or Borrower, to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent and Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) as of the date established therefor by Administrative Agent in a written notice of such determination, which shall be delivered by Administrative Agent to Borrower, the L/C Issuer and each Lender promptly following such determination.

"Designated Jurisdiction" means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

"Disclosure Letter" means the disclosure letter, dated as of the date hereof, delivered by Borrower to the Administrative Agent for the benefit of the Lenders.

"Disposition" or **"Dispose"** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, but excluding any Involuntary Disposition.

“Disqualified Stock” means any Equity Interest of a Person that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable or subject to repurchase at the option of the holder thereof, in whole or in part, or requires the payment of any cash dividend or any other scheduled payment, in each case constituting a return of capital, in each case at any time on or prior to the first anniversary of the Maturity Date or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) Indebtedness or other debt securities or (ii) any Equity Interest referred to in clause (a) above, in each case at any time prior to the first anniversary of the Maturity Date.

“Distributions” means (a) payment of distributions, dividends to any direct or indirect shareholder, partner, member or other owner of any Equity Interests in or of Borrower and (b) the redemption, retirement or repurchase of any Equity Interests in Borrower.

“Dollar” and **“\$”** mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any state or other political subdivision (including the District of Columbia) of the United States.

“Earn-Out Obligations” means, with respect to an Acquisition, all obligations of Borrower or any of its Subsidiaries to make earn out or other contingency payments, in each case, the terms of which are subject to or contingent upon the revenues, income, cash flow or profits of any person or business acquired in connection with an Acquisition. Unless otherwise specified herein, the amount of any Earn Out Obligations at the time of determination shall be the aggregate amount, if any, of such Earn Out Obligations that are required at such time under GAAP to be recognized as liabilities on the consolidated balance sheet of Borrower.

“EBITDA” means, for any period of measurement, a Person’s Consolidated Net Income (Loss) plus (a) to the extent deducted in the calculation thereof, the sum of: (i) Consolidated Interest Expense, plus (ii) the provision for federal, state, local and foreign income taxes payable by Borrower and its Subsidiaries, plus (iii) depreciation and amortization expense (including the impairment of goodwill or other intangible assets), plus (iv) non-cash charges required to be made pursuant to FAS 141R (including, non-cash changes in contingent consideration for Acquisitions), and other non-cash, items including, without limitation non-cash expenses for stock based compensation), all as determined in accordance with GAAP as applicable, for such period.

Only for purposes of calculating EBITDA for the Debt Service Coverage Ratio with respect to any reference period during which a Permitted Acquisition occurs: (i) such Permitted Acquisition and the following transactions in connection therewith shall be deemed to have occurred on the first day of the applicable reference period: (a) income statement items (whether positive or negative) attributable to the property or Acquired Entity subject to such Permitted Acquisition shall be included, (b) any retirement of Indebtedness, and (c) any Indebtedness incurred or assumed by Borrower or any of its Subsidiaries in connection therewith and if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the

applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination, and (ii) the EBITDA of the Acquired Entity so acquired that is attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the end of such reference period, shall be excluded; provided, however, only the actual historical results of operations of the Acquired Entities, without adjustment for pro forma expense savings, synergies or revenue increases, shall be used for such calculation. Accordingly, as to any such reference period Consolidated Net Income (Loss), Consolidated Interest Expense, income tax expense and each other component contained in the definition of "EBITDA" shall be deemed to include the actual results of the Permitted Acquisition on a Pro Forma Basis with Borrower as if such Permitted Acquisition had occurred on the first day of such period.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 11.06(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

"Environmental Laws" means any and all Federal, state, local, foreign and other applicable statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equipment" means all equipment now owned or hereafter acquired, wherever located, including without limitation, all machinery, computers, machine tools, motors, equipment, furniture, furnishings, fixtures, vehicles (including motor vehicles and trailers), tools, parts, dies, jugs, goods (other than consumer goods, farm products or inventory), and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“**Equity Issuance**” means any issuance by any Loan Party or any Subsidiary to any Person of its Equity Interests, other than (a) any issuance of its Equity Interests of Borrower pursuant to the exercise of options or warrants, (b) any issuance of Qualified Stock of Borrower pursuant to the conversion of any debt securities to equity or the conversion of any class equity securities to any other class of equity securities (other than Disqualified Stock) and (c) any issuance of options or warrants relating to its Equity Interests.

“**ERISA**” means the Employee Retirement Income Security Act of 1974.

“**ERISA Affiliate**” means any member of a controlled group of corporations or any trade or business (whether or not incorporated) under common control with Borrower within the meaning of Section 414(b) or (c) of the Code (and any member of a group with Borrower under Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by Borrower or any ERISA Affiliate from a Pension 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), or a cessation of operations by Borrower or any ERISA Affiliate that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by Borrower or any ERISA Affiliate from a Multiemployer Plan or notification received by Borrower or any ERISA Affiliate that a Multiemployer Plan is in reorganization under Section 4241 of ERISA; (d) the filing of a notice of intent to terminate, a Pension Plan or Multiemployer Plan, or the treatment of an amendment of a Pension Plan or Multiemployer Plan as a termination, under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Internal Revenue Code or Sections 303, 304 and 305 of ERISA; or (g) the imposition of any material liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon Borrower or any ERISA Affiliate.

“**Eurodollar Base Rate**” has the meaning specified in the definition of Eurodollar Rate.

“**Eurodollar Rate**” means for any Interest Period with respect to a Eurodollar Rate Loan, a rate per annum determined by Administrative Agent pursuant to the following formula:

$$\text{Eurodollar Rate} = \frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

Where,

“Eurodollar Base Rate” means,

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the British Bankers Association LIBOR Rate (“**BBA LIBOR**”), as published by Reuters (or such other commercially available source providing quotations of BBA LIBOR as may be designated by Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “Eurodollar Base Rate” for such Interest Period shall be the rate per annum determined by Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted by Union Bank, N.A. and with a term equivalent to such Interest Period would be offered to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest rate calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time determined two (2) London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one (1) month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate Loan being made or maintained by Union Bank, N.A. and with a term equal to one month would be offered to major banks in the London interbank Eurodollar market at their request at the date and time of determination.

“Eurodollar Reserve Percentage” means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”). The Eurodollar Rate for each outstanding Eurodollar Rate Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of the “Eurodollar Base Rate.”

“Event of Default” has the meaning specified in [Section 9.01](#).

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the

laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that otherwise are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrower under Section 2.14) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e), and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

"Existing Credit Agreement" means that certain Commercial Credit Agreement, dated as of August 31, 2010 by and between Borrower and Union Bank, as amended, supplemented, extended or otherwise modified from time to time, including by that certain First Loan Modification Agreement dated as of November 16, 2011, that certain Second Loan Modification Agreement dated as of February 14, 2012, and that certain Third Loan Modification Agreement dated as of September 20, 2012.

"Existing Letters of Credit" means the Letters of Credit, if any, listed on Schedule 1.01.

"Facility Termination Date" means the date as of which all of the following shall have occurred: (a) the Aggregate Commitments have terminated, (b) all Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted or is known to exist and (ii) obligations with respect to Cash Management Agreements) have been paid in full, (c) all Letters of Credit have terminated or expired (other than Letters of Credit as to which Cash Collateral or other arrangements with respect thereto satisfactory to Administrative Agent and the L/C Issuer shall have been made) and (d) all Secured Obligations with respect to Cash Management Agreements have been paid in full or cash collateral or other arrangements with respect thereto satisfactory to the applicable Cash Management Bank in its good faith judgment shall have been made.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day,

the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Union Bank, N.A. on such day on such transactions as determined by Administrative Agent.

“**Foreign Lender**” means (a) if Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which Borrower is resident for tax purposes (including such a Lender when acting in the capacity of the L/C Issuer). For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“**Foreign Subsidiary**” means any Subsidiary other than a Domestic Subsidiary.

“**FRB**” means the Board of Governors of the Federal Reserve System of the United States.

“**Fronting Exposure**” means, at any time there is a Defaulting Lender, with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by the L/C Issuer other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“**Fund**” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“**Funded Indebtedness**” means, with respect to any Person, at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations for borrowed money, whether current or long-term (including the Obligations) and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all purchase money Indebtedness;

(c) the principal portion of all obligations under conditional sale or other title retention agreements relating to property purchased by Borrower or any Subsidiary (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);

(d) all obligations arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;

(e) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than 90 days after the date on which such trade account payable was created), including, without limitation, any Earn-Out Obligations recognized as a liability on the balance sheet of Borrower and its Subsidiaries in accordance with GAAP;

(f) the Attributable Indebtedness of Capital Leases, Securitization Transactions and Synthetic Leases;

(g) all mandatory obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interests in such Person or any other Person prior to the Maturity Date, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends;

(h) all Funded Indebtedness of others secured by (or for which the holder of such Funded Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed;

(i) all Guarantees with respect to Funded Indebtedness of the types specified in clauses (a) through (h) above of another Person; and

(j) all Funded Indebtedness of the types referred to in clauses (a) through (i) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, except to the extent that Funded Indebtedness is expressly made non-recourse to such Person.

For purposes hereof, the amount of any direct obligation arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments shall be the maximum amount available to be drawn thereunder.

“**GAAP**” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied and as in effect from time to time. The term “**consistently applied**,” as used in connection herewith, means that the accounting principles applied are consistent in all material respects with those applied at prior dates or for prior periods

“**Governmental Authority**” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court of competent jurisdiction, central bank or other public entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantor” means, collectively, the Closing Date Guarantor, and each other Person which becomes a Guarantor in accordance with Section 7.14 hereof, together with their successors and assigns.

“Guaranty” means the Guaranty made by the Guarantors in favor of Administrative Agent, the Lenders and the other Secured Parties pursuant to Article IV (including any supplement or joinder thereto), as amended, modified, supplemented, extended or restated from time to time.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hedge Bank” means any Person that, (a) at the time it enters into an interest rate Swap Contract permitted by this Agreement, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to an interest rate Swap Contract not prohibited by this Agreement, in each case, in its capacity as a party to such Swap Contract; provided that for any of the foregoing to be included as a “Secured Hedge Agreement” on any date of determination by the Administrative Agent, the applicable Hedge Bank (other than Administrative Agent or an Affiliate of Administrative Agent) must have delivered a Secured Party Designation Notice to Administrative Agent prior to such date of determination.

“**Honor Date**” has the meaning specified in Section 2.03(c)(i).

“**Indebtedness**” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all Funded Indebtedness;
- (b) the Swap Termination Value of any Swap Contract;
- (c) all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) and (b) above of any other Person; and

(d) all Indebtedness of the types referred to in clauses (a) through (c) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which Borrower or a Subsidiary is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to Borrower or a Subsidiary.

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“**Indemnitees**” has the meaning specified in Section 11.04(b).

“**Information**” has the meaning specified in Section 11.07.

“**Interest Payment Date**” means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurodollar Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each of March, June, September and December and the Maturity Date.

“**Interest Period**” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one (1), two (2), three (3) or six (6) months thereafter, as selected by Borrower in its Loan Notice); provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Rate Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period pertaining to a Eurodollar Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there

is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date.

“Inventory” means all inventory now owned or hereafter acquired, wherever located, including without limitation all goods, merchandise and other personal property held for sale or lease or which is furnished under any contract of service or is held as raw materials, works or goods in process, materials and supplies of every nature used or consumed or to be used or consumed in the ordinary course of its business, whether now owned or hereafter acquired and the proceeds of products thereof.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other Equity Interests of another Person, (b) a loan, advance or capital contribution to, or purchase or other acquisition of any equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment. For the avoidance of doubt, prefunded investments held subject to a fiduciary duty to be used for the sole purpose of administering clients’ benefits shall not constitute Investments for purposes of this Agreement.

“Involuntary Disposition” means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Loan Party or any Subsidiary.

“IP Rights” means, collectively, with respect to any Person, all of such Person’s right, title, and interest in and to the following: (a) all Copyrights, all domain names, all websites, all Patents, all Proprietary Software, all Trademarks, all Trade Secrets and all Other Intellectual Property owned and/or used by any Loan Party or any Subsidiary; (b) all Copyright Licenses, all Patent Licenses and all Trademark Licenses; and (c) all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the L/C Application, and any other document, agreement and instrument entered into by the L/C Issuer and Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

“**Joinder Agreement**” means a joinder agreement substantially in the form of **Exhibit F** executed and delivered by a Material Domestic Subsidiary in accordance with the provisions of Section 7.14.

“**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“**L/C Advance**” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“**L/C Application**” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Borrowing.

“**L/C Credit Extension**” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“**L/C Disbursement**” means a payment or disbursement made by a L/C Issuer pursuant to a drawing under a Letter of Credit.

“**L/C Expiration Date**” means the day that is ninety (90) days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“**L/C Fee**” has the meaning specified in Section 2.03(i).

“**L/C Issuer**” means Union Bank, N.A. in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder, or such other Lender as Borrower may from time to time select as an L/C Issuer hereunder pursuant to Section 2.03; provided that such Lender has agreed to be an L/C Issuer.

“**L/C Obligations**” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“**L/C Sublimit**” means an amount equal to Fifteen Million Dollars (\$15,000,000). The L/C Sublimit is part of, and not in addition to, the Aggregate Commitments.

“**Lenders**” has the meaning specified in the introductory paragraph hereto and, includes the Persons listed on Schedule 2.01 and any other Person that shall have become party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender as set forth on the such Lender’s signature page hereto, or such other office or offices as a Lender may from time to time notify Borrower and Administrative Agent.

“**Letter of Credit**” means any standby letter of credit issued hereunder and shall include the Existing Letters of Credit.

“**Lien**” means any mortgage, pledge, hypothecation, assignment for security, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“**Liquidity Ratio**” means, as of any time of determination, the ratio of (a) the value of Borrower’s Cash and marketable securities to (b) the sum of the amount of all Borrower’s consolidated customer deposits plus the current portion of (i) all Earn Out Obligations and (ii) all other deferred Acquisition-related obligations that constitute consideration for such Acquisition owing by Borrower or any of its Subsidiaries (regardless of whether or not required to be reflected on the balance sheet of such Person).

“**Loan**” has the meaning specified in Section 2.01.

“**Loan Documents**” means this Agreement, each Note, each Issuer Document, each Joinder Agreement, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.15 of this Agreement, each Collateral Document, the Guaranty and each other document, instrument and agreement entered into in connection with the transactions contemplated by this Agreement, together with all alterations, amendments, changes, extensions, modifications, refinancings, refundings, renewals, replacements, restatements, or supplements, of or to any of the foregoing.

“**Loan Notice**” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of **Exhibit A**.

“**Loan Parties**” means, collectively, Borrower and each Guarantor.

“**London Banking Day**” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Material Adverse Effect” means a material adverse change in or a material adverse effect on (i) the business, assets, operations, liabilities, or financial condition of Borrower and its Subsidiaries, taken as a whole, or (ii) the prospect of payment or performance by Borrowers or any Guarantor of its or their respective obligations under any of the Loan Documents, or (iii) the validity or enforceability of the Loan Documents, or (iv) the rights and remedies of Administrative Agent or any Secured Party under any of the Loan Documents, or (v) any Loan Party’s interest in, or the value, perfection or priority of Bank’s security interest in the Collateral.

“Material IP Rights” means all IP Rights that are material to the business of Borrower and its Subsidiaries taken as a whole; “Material IP Right” means any IP Right that is material to the business of Borrower and its Subsidiaries taken as a whole.

“Material Subsidiary” means,

(i) as of the last day of any fiscal quarter of Borrower, any Subsidiary that meets any of the following conditions at such time: (A) such Subsidiary’s consolidated total revenues for the period of the immediately preceding four fiscal quarters is equal to or greater than 5% of the consolidated total revenues of Borrower and its Subsidiaries for such period, determined in accordance with GAAP, in each case as reflected in the most recent annual or quarterly (as applicable) financial statements required to be delivered pursuant to this Agreement; (B) such Subsidiary’s total assets, as of the last day of the immediately preceding fiscal quarter, are equal to or greater than 5% of the consolidated total assets of Borrower and its Subsidiaries as of such date, determined in accordance with GAAP, in each case as reflected in the most recent annual or quarterly (as applicable) financial statements of Borrower required to be delivered pursuant to this Agreement; or (C) such Subsidiary is a Domestic Subsidiary; and

(ii) as of any other Material Subsidiary Assessment Date, (A) any Subsidiary that has, on a Pro Forma Basis, based upon the then most recently delivered financial statements delivered pursuant to this Agreement, and after giving effect to the applicable acquisition, divestiture or creation, as though occurring on the first day of the four fiscal quarter period ending on the effective date of such delivered financial statements, (1) total revenues for the period of the immediately preceding four fiscal quarters is equal to or greater than 5% of the consolidated total revenues of Borrower and its Subsidiaries for such period, determined in accordance with GAAP, or (2) total assets equal to or greater than 5% of the consolidated total assets of Borrower and its Subsidiaries as of such date, determined in accordance with GAAP, and (B) any Subsidiary that is a Domestic Subsidiary;

provided, however, that the Closing Date Guarantor shall be deemed a “Material Subsidiary”; provided further that if at any time the Subsidiaries qualifying as Material Subsidiaries pursuant to clause (i) or (ii) above which, in the aggregate and together with the total assets and total revenues of Borrower, do not represent at least 95% of the consolidated total assets and consolidated total revenues of Borrower and its Subsidiaries (the “**95% Threshold**”), Borrower shall promptly designate additional Subsidiaries as Material Subsidiaries until the 95% Threshold is satisfied collectively by all Material Subsidiaries. Once a Subsidiary qualifies, or is designated by Borrower, a Material Subsidiary, it shall continue to constitute a Material

Subsidiary throughout the term of this Agreement. Notwithstanding the foregoing, PBS shall not be deemed to be a Material Subsidiary for purposes of Section 7.14 hereof until such time as PBS becomes a 5% Subsidiary.

“**Material Subsidiary Assessment Date**” means each of (a) the date on which Borrower delivers or is obligated to deliver to Bank financial statements pursuant to Section 7.01, (b) the date on which Borrower, directly or through one or more Subsidiaries, consummates any Acquisition, or acquires or creates any new or additional Subsidiary, and (c) the date on which Borrower, directly or through one or more Subsidiaries, sells, transfers, divests or otherwise disposes of any Subsidiary or all or substantially of the assets of any Subsidiary.

“**Maturity Date**” means December 31, 2015; provided, however, that if such date is not a Business Day, the Maturity Date shall be the preceding Business Day.

“**Minimum Collateral Amount**” means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 100% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (ii) with respect to Cash Collateral provided in accordance with Section 2.15, an amount equal to 100% of the Outstanding Amount of all L/C Obligations, and (iii) otherwise, an amount determined by Administrative Agent and the L/C Issuer in their sole discretion.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor thereto.

“**Multiemployer Plan**” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“**Multiple Employer Plan**” means a Plan which has two or more contributing sponsors (including Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064(a) of ERISA.

“**Net Cash Proceeds**” means the aggregate cash or Cash Equivalents proceeds received by any Loan Party or any Subsidiary in respect of any Equity Issuance, net of (a) direct costs incurred in connection therewith (including, without limitation, legal, accounting and investment banking fees, and sales commissions) and (b) taxes paid or payable as a result thereof.

“**New Lender**” has the meaning specified in Section 2.06(b)(ii).

“**New Lender Addendum**” means a new lender addendum entered into by and between Borrower, Administrative Agent and New Lender, in substantially the form of **Exhibit E** or any other form approved by Administrative Agent.

“**Non-Consenting Lender**” means any Lender that does not consent to or approve any consent, waiver, amendment, release or modification that (i) requires the approval of all affected Lenders in accordance with the terms of Section 11.01 or the approval of one hundred percent (100%) of the Lenders and (ii) has been approved by the Required Lenders.

“**Non-Defaulting Lender**” means, at any time, each Lender that is not a Defaulting Lender at such time.

“**Note**” means a promissory note made by Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of **Exhibit B**.

“**Obligations**” means all advances to, and debts, liabilities, obligations, covenants and duties of every kind of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit owed to Administrative Agent or the Lenders or any one or more of them, whether direct or indirect (including those acquired by assumption), absolute or contingent, liquidated or unliquidated, legal or equitable, due or to become due, now existing or hereafter arising, voluntary or involuntary and however arising, whether such Loan Party is liable individually or jointly or with others, whether incurred before, during or after any proceeding under any Debtor Relief Laws, and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. The foregoing shall also include (a) all obligations under any Swap Contract between any Loan Party and any Hedge Bank that is permitted to be incurred pursuant hereto and (b) all obligations under any Cash Management Agreement between any Loan Party and any Cash Management Bank.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Intellectual Property**” means all worldwide intellectual property rights, proprietary rights and common-law rights, whether registered or unregistered, not otherwise included in Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks, Trademark Licenses or Trade Secrets, including, without limitation, all rights to and under all new and useful inventions, discoveries, methods, processes, designs, technology, art, trade dress, algorithms, software, concepts, protocols, electronic or other databases and all improvements thereof and all know-how related thereto.

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

“**Outstanding Amount**” means (a) with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by Borrower of Unreimbursed Amounts.

“**Participant**” has the meaning specified in Section 11.06(d).

“**Participant Register**” has the meaning specified in Section 11.06(d).

“**Patent License**” means any written agreement providing for the grant by or to a Loan Party or any Subsidiary of any right under any Patent.

“**Patents**” means all patents, letters patent, patent applications and like protections in the United States and all other countries (and letters patent that issue therefrom) and all improvements divisions, continuations, renewals, reissues, reexaminations, extensions and continuations (including continuations-in-part and continuing prosecution applications) thereof, for the full term thereof.

“**Patriot Act**” means the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) and the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109-177).

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**PBS**” means Planned Benefit Systems Incorporated, a Colorado corporation.

“**Pension Plan**” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by Borrower or any ERISA Affiliate or to which Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a Multiple Employer Plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

“Permitted Acquisition” means any Acquisition by Borrower or a Subsidiary of Borrower, provided that:

(a) the Acquired Entity in the same line of business as Borrower or a business incidental or closely related thereto,

(b) Borrower (or Borrower and a Wholly Owned Subsidiary of Borrower), is the surviving and successor entity in such Acquisition (including any merger or consolidation),

(c) for any Acquisition where the Aggregate Consideration paid or payable by Borrower and its Subsidiaries in connection with such Acquisition exceeds Ten Million Dollars (\$10,000,000) Borrower shall have delivered to Administrative Agent, at least five (5) days prior to the consummation of such Acquisition:

(i) historical financial information for the Acquired Entity, including, if available, audited financial statements, quality of earnings reports and year-to-date interim financial statements,

(ii) if requested by Administrative Agent, true, correct and complete copies of all of the documents, instruments and agreements relating to such acquisition, including all related annexes, schedules and exhibits,

(iii) such other financial information and other information regarding the Acquired Entity, as Administrative Agent may reasonably request, and

(iv) a Pro Forma Compliance Certificate, duly executed by a Responsible Officer, certifying and demonstrating, among other things compliance on an actual and Pro Forma Basis with all financial covenants;

(d) the assets acquired, or owned by the Acquired Entity, will not be subject to any Lien following the effective date of such Acquisition, other than any required Lien in favor of Administrative Agent, for the benefit of the Secured Parties, and Permitted Liens;

(e) no Event of Default shall have occurred and be continuing on the effective date thereof or shall result from the consummation of such Acquisition;

(f) such Acquisition does not result in a Change of Control; and

(g) to the extent applicable, such Acquisition shall have been approved by a requisite majority of the shareholders, and a disinterested majority of the board of directors (or an equivalent governing body) of, the Acquired Entity.

“Permitted Holder” means: VantagePoint Capital Partners IV (Q), L.P., VantagePoint Capital Partners IV, L.P., VantagePoint Capital Partners IV Principals Fund, L.P. and 23-VP Assoc IV, L.L.C.

“Permitted Investments” means:

- (a) Investments existing on the Closing Date and listed on Schedule 8.02 to the Disclosure Letter;
- (b) Cash Equivalents or any Investments that are consistent with the investment policy approved by Borrower’s board of directors and approved by the Required Lenders, such approval not to be unreasonably withheld;
- (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;
- (d) Investments by Borrower or a Guarantor in (i) Guarantors or Borrower, as the case may be, and (ii) Domestic Subsidiaries of Borrower for current operating expenses, not to exceed \$1,000,000 in any fiscal year during the term hereof, incurred in the ordinary course of the businesses currently engaged in by Borrower or reasonably related thereto;
- (e) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower pursuant to employee stock purchase plans or agreements approved by Borrower’s board of directors, not to exceed \$250,000 in the aggregate in any year during the term hereof;
- (f) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;
- (g) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (g) shall not apply to Investments of Borrower in any Subsidiary;
- (h) Investments consisting of deposit accounts, provided that if required pursuant to Section 7.06, such deposit accounts shall be subject to a prior perfected security interest in favor of Bank;
- (i) Investments accepted in connection with Dispositions permitted by Section 8.05;
- (j) Permitted Acquisitions, including the creation of Subsidiaries in connection with any such Permitted Acquisitions (provided that any Material Subsidiaries are co-Borrowers or Guarantors hereunder); and
- (k) Other Investments in an aggregate amount not to exceed \$1,000,000 in any fiscal year.

“**Permitted Liens**” means those Liens permitted by Section 8.01 hereof.

“**Person**” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Plan**” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA), that is sponsored or maintained by Borrower or any ERISA Affiliate other than (i) a Multiemployer Plan established by Borrower or, (ii) with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“**Platform**” has the meaning specified in Section 11.02(c).

“**Pledge Agreement**” means that certain Pledge Agreement dated as of the Closing Date entered into among the Loan Parties and Administrative Agent, for the benefit of the Secured Parties, substantially in the form of **Exhibit I** attached hereto (including any supplement or joinders thereto) as amended, modified or restated from time to time.

“**Pro Forma Basis**” means, for purposes of calculating the financial covenants set forth in Section 7.13(c), that any Acquisition shall be deemed to have occurred as of the first day of the most recent four fiscal quarter period preceding the date of such transaction for which Borrower was required to deliver financial statements pursuant to Section 7.01(a) or (b). In connection with the foregoing, (i) with respect to any Acquisition, income statement items attributable to the Person or property acquired shall be included to the extent relating to any period applicable in such calculations to the extent (A) such items are not otherwise included in such income statement items for Borrower and its Subsidiaries in accordance with GAAP or in accordance with any defined terms set forth in Section 1.01 and (B) such items are supported by financial statements or other information satisfactory to Administrative Agent and (ii) any Indebtedness retired, incurred or assumed by Borrower or any Subsidiary (including the Person or property acquired) in connection with such transaction (A) shall be deemed to have been retired, incurred as of the first day of the applicable period and (B) if such Indebtedness has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination.

“**Pro Forma Compliance Certificate**” means a certificate of a Responsible Officer of Borrower containing reasonably detailed calculations of the financial covenants set forth in Section 7.13 as of the most recent fiscal quarter end for which Borrower was required to deliver financial statements pursuant to Section 7.01(a) or (b) after giving effect to the applicable transaction on a Pro Forma Basis.

“**Proprietary Software**” means any proprietary software owned, licensed or otherwise used by any Loan Party or any Subsidiary other than any software that is generally commercially available, including without limitation, the object code and source code forms of such software and all associated documentation.

“**Public Lender**” has the meaning specified in Section 7.02.

“**Qualified Stock**” of any Person means any Equity Interest of such Person that is not Disqualified Stock.

“**Rating Agency**” means Moody’s, S&P, Fitch Ratings Ltd. or any other nationally recognized rating agency or service.

“**Recipient**” means (a) Administrative Agent, (b) any Lender and (c) the L/C Issuer, as applicable.

“**Register**” has the meaning specified in Section 11.06(c).

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“**Reportable Event**” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“**Request for Credit Extension**” means (a) with respect to a Borrowing, conversion or continuation of Loans, a Loan Notice, and (b) with respect to an L/C Credit Extension, an L/C Application.

“**Required Lenders**” means, at any time, Lenders having more than 50.0% of the Aggregate Commitments or, if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 9.02, Lenders holding in the aggregate more than 50.0% of the Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Lender for purposes of this definition); provided that the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided, further that, when the Aggregate Commitments and/or Total Outstandings, as applicable, as of any date of determination are held by (i) four (4) Lenders, Required Lenders shall mean not less than three (3) Lenders; (ii) three (3) Lenders, Required Lenders shall mean not less than two (2) Lenders; and (iii) two (2) Lenders, Required Lenders shall mean both Lenders.

“**Responsible Officer**” means the manager, chief executive officer, president, chief financial officer, treasurer or controller of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“**Restricted Agreement**” means any license or other agreement (other than over-the-counter software that is commercially available to the public) to which Borrower is a party or under which Borrower is bound (including licenses and agreements under which Borrower is the licensee), the failure, breach or termination of which could reasonably be expected to have a Material Adverse Effect.

“**Restricted Payment**” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of Borrower or any other Person, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest or on account of any return of capital to such Person’s stockholders, partners or members (or the equivalent Person thereof).

“**S&P**” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

“**Sanction(s)**” means any international economic sanction administered or enforced by OFAC, the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“**SEC**” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“**Secured Cash Management Agreement**” means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

“**Secured Hedge Agreement**” means any interest rate Swap Contract permitted under Article VII or VIII that is entered into by and between any Loan Party and any Hedge Bank.

“**Secured Obligations**” means all Obligations, all obligations of any Loan Party arising under Secured Cash Management Agreements and Secured Hedge Agreements and all costs and expenses incurred in connection with enforcement and collection of the foregoing by any Loan Party, including the fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“**Secured Parties**” means, collectively, Administrative Agent, the Lenders, the L/C Issuer, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by Administrative Agent from time to time pursuant to Section 10.05, and the other Persons the Secured Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“**Secured Party Designation Notice**” shall mean a notice from any Lender or an Affiliate of a Lender substantially in the form of **Exhibit K**.

“**Securities Laws**” means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley and the applicable accounting and auditing principles, rules, standards and

practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

“**Securitization Transaction**” means, with respect to any Person, any financing transaction or series of financing transactions (including factoring arrangements) pursuant to which such Person or any Subsidiary of such Person may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate of such Person.

“**Security Agreement(s)**” means, individually or collectively, (a) the Security Agreement of even date herewith executed by Borrower and the other Loan Parties in favor of Bank, (b) each other pledge or security agreement executed from time to time by a Loan Party in favor of Bank, all as amended, modified, supplemented or restated from time to time

“**Solvent**” means, as of any date of determination, and as to any Person, that on such date: (a) the fair valuation of the assets of such Person is greater than the fair valuation of such Person’s probable liability in respect of existing debts; (b) such Person does not intend to, and does not believe that it will, incur debts beyond such Person’s ability to pay as such debts mature; (c) such Person is not engaged in a business or transaction, and is not about to engage in a business or transaction, which would leave such Person with assets remaining which would constitute unreasonably small capital after giving effect to the nature of the particular business or transaction; and (d) such Person is generally paying its debts as they become due. For the purpose of the foregoing (1) the “fair valuation” of any assets means the amount realizable within a reasonable time, either through collection or sale, of such assets at their regular market value, which is the amount obtainable by a capable and diligent businessman from an interested buyer willing to purchase such assets within a reasonable time under ordinary circumstances; and (2) the term “debts” includes any legal liability whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent.

“**Subject Lender**” has the meaning specified in Section 2.14.

“**Subordinated Debt**” is indebtedness incurred by each Loan Party subordinated to all of each Loan Party’s Obligations to Administrative Agent, the Lenders and the L/C Issuer on terms acceptable to Administrative Agent and the Required Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Administrative Agent entered into between Administrative Agent and the other creditor).

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Borrower.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement; provided that, for the avoidance of doubt, the following shall not be deemed a “Swap Contract”: (i) no phantom stock or similar plan (including, any stock option plan) providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries, (ii) any stock option or warrant agreement for the purchase of Equity Interests, (iii) the purchase of Equity Interests or Indebtedness (including securities convertible into Equity Interests) pursuant to delayed delivery contracts, and (iv) any of the foregoing to the extent that it constitutes a derivative embedded in a convertible security.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Synthetic Lease” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing arrangement whereby the arrangement is considered borrowed money indebtedness for tax purposes but is classified as an operating lease or does not otherwise appear on a balance sheet under GAAP.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Threshold Amount**” means One Million Dollars (\$1,000,000).

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“**Trademark License**” means any written agreement, providing for the grant by or to a Loan Party or any Subsidiary of any right to use a Trademark.

“**Trademarks**” means all statutory and common law trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and the goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications to register in connection therewith, under the laws of the United States, any state thereof or any other country or any political subdivision thereof, or otherwise, for the full term and all renewals thereof.

“**Trade Secrets**” means any data or information of any Loan Party or any Subsidiary that is not commonly known by or available to the public and which (a) derives economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“**UCC**” means the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of California; provided, that in the event by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of or remedies with respect to, Administrative Agent’s Lien, for the benefit of Administrative Agent and Lenders, on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of California, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions; provided, further, that to the extent that the UCC is used to define any term herein or in any of the Loan Documents and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern.

“**UCP**” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“**ICC**”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“**Unfunded Pension Liability**” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined as of the date of the most recent actuarial valuation of such Pension Plan in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

“**Union Bank**” means Union Bank, N.A., and its successors.

“**United States**” and “**U.S.**” mean the United States of America.

“**Unreimbursed Amount**” has the meaning specified in Section 2.03(c)(i).

“**Unrelated Person**” means any Person other than (a) Borrower or any Wholly Owned Subsidiary, or (b) an employee stock ownership plan or other employee benefit plan covering the employees of any of the Loan Parties and their Subsidiaries.

“**U.S. Borrower**” means any Borrower that is a U.S. Person.

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“**U.S. Tax Compliance Certificate**” has the meaning assigned to such term in Section 3.01(e).

“**Voting Equity Interests**” means, with respect to any Person, the Equity Interests entitled to vote for members of the board of directors or equivalent governing body of such Person.

“**Wholly Owned Subsidiary**” means any Person 100% of whose Equity Interests are at the time owned by Borrower directly or indirectly through other Persons 100% of whose Equity Interests are at the time owned, directly or indirectly, by Borrower (provided, however, that in determining the percentage ownership of any such Person, no ownership interest in the nature of “qualifying shares” or “directors shares” or other similar ownership requirements under applicable law shall be deemed to be outstanding).

“**Withholding Administrative Agent**” means Borrower and Administrative Agent.

“**Work**” means any work or subject matter that is subject to protection pursuant to Title 17 of the United States Code.

1.02 **Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the

words “hereto,” “herein,” “hereof and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all real and personal property and tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) For purposes of Section 3.01, the term “Lender” includes the L/C Issuer and the term “applicable Law” includes FATCA.

1.03 **Accounting Terms.**

(a) **Generally.** Except as otherwise specifically prescribed herein, all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein; provided, however, that calculations of Attributable Indebtedness under any Synthetic Lease or the implied interest component of any Synthetic Lease shall be made by Borrower in accordance with accepted financial practice and consistent with the terms of such Synthetic Lease.

(b) **Changes in GAAP.** If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either Borrower or the Required Lenders shall so request, Administrative Agent, Lenders and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP in effect prior to such change therein and (ii) Borrower shall provide to Administrative Agent and Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) **Consolidation of Variable Interest Entities.** All references herein to consolidated financial statements of Borrower and its Subsidiaries or to the determination of any amount for Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

1.04 **Rounding.** Any financial ratios required to be maintained by Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 **Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

1.06 **Letter of Credit Amounts.** Unless otherwise specified herein the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

ARTICLE II

THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 **Loans.** Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a “**Loan**”) to Borrower from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Commitment; provided, however, that after giving effect to any Borrowing, (i) the Total Outstandings shall not exceed the Aggregate Commitments, and (ii) the Credit Exposure of any Lender shall not exceed such Lender’s Commitment. Within the limits of each Lender’s Commitment, and subject to the other terms and conditions hereof, Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein, provided, however, all Borrowings made on the Closing Date shall be designated as Eurodollar Rate Loans.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon Borrower’s irrevocable notice to Administrative Agent, which may be given by telephone. Each such notice must be received by Administrative Agent not later than 10:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans

or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to Administrative Agent of a written Loan Notice, appropriately completed and signed by a Responsible Officer of Borrower. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of Two Million Dollars (\$2,000,000) or a whole multiple of One Million Dollars (\$1,000,000) in excess thereof. Except as provided in Section 2.03(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of One Million Dollars (\$1,000,000) or a whole multiple of Five Hundred Thousand Dollars (\$500,000) in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) whether Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If Borrower fails to specify a Type of Loan in a Loan Notice or if Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Loan Notice, Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by Borrower, Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Loan available to Administrative Agent in immediately available funds at Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 5.02 (and, if such Borrowing is the initial Credit Extension, Section 5.01), Administrative Agent shall make all funds so received available to Borrower in like funds as received by Administrative Agent either by (i) crediting the account of Borrower on the books of Union Bank, N.A. with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) Administrative Agent by Borrower; provided, however, that if, on the date the Loan Notice with respect to such Borrowing is given by Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing first, shall be applied, to the payment in full of any such L/C Borrowings, and second, shall be made available to Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders, and the Required Lenders may demand that any or all of the then outstanding Eurodollar Rate Loans be converted immediately to Base Rate Loans and Borrower agrees to pay all amounts due under Section 3.05 in accordance with the terms thereof due to any such conversion.

(d) Administrative Agent shall promptly notify Borrower and Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than six (6) Interest Periods in effect with respect to Loans at any one time.

2.03 **Letters of Credit.**

(a) **The Letter of Credit Commitment.**

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the other Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the L/C Expiration Date, to issue Letters of Credit for the account of Borrower, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of Borrower and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Outstandings shall not exceed the Aggregate Commitments, (y) the Credit Exposure of any Lender shall not exceed such Lender's Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the L/C Sublimit. Each request by Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the L/C Expiration Date, unless all the Lenders have approved such expiry date.

(iii) The L/C Issuer shall be under no obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than Five Hundred Thousand Dollars (\$500,000);

(D) such Letter of Credit is to be denominated in a currency other than Dollars;

(E) a default of any Lender's obligations to fund under Section 2.03(c) exists or any Lender is at such time a Defaulting Lender hereunder, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with Borrower or such Defaulting Lender to eliminate the L/C Issuer's risk with respect to such Lender; or

(F) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to Administrative Agent in Article X with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" or "Administrative Agent" as used in Article X included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) **Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit**.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of Borrower delivered to the L/C Issuer (with a copy to Administrative Agent) in the form of an L/C Application, appropriately completed and signed by a Responsible Officer of Borrower. Such L/C Application must be received by the L/C Issuer and Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such L/C Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such L/C Application shall specify in form and detail satisfactory to the L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the L/C Issuer may require. Additionally, Borrower shall furnish to the L/C Issuer and Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or Administrative Agent may require.

(ii) Promptly after receipt of any L/C Application at the address set forth in Section 11.02 for receiving L/C Applications and related correspondence, the L/C Issuer will confirm with Administrative Agent (by telephone or in writing) that Administrative Agent has received a copy of such L/C Application from Borrower and, if not, the L/C Issuer will provide Administrative Agent with

a copy thereof. Unless the L/C Issuer has received written notice from any Lender, Administrative Agent or any Loan Party, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions in Article V shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) If Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree (subject to the consent of Administrative Agent and the Required Lenders) to issue a Letter of Credit that has automatic extension provisions (each, an "**Auto-Extension Letter of Credit**"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "**Non-Extension Notice Date**") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from Administrative Agent, any Lender or Borrower that one or more of the applicable conditions specified in Section 5.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to Borrower and Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) **Drawings and Reimbursements; Funding of Participations.**

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify Borrower and Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an “**Honor Date**”), Borrower shall reimburse the L/C Issuer through Administrative Agent in an amount equal to the amount of such drawing. If Borrower fails to so reimburse the L/C Issuer by such time, Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the “**Unreimbursed Amount**”), and the amount of such Lender’s Applicable Percentage thereof. In such event, Borrower shall be deemed to have requested a Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 5.02 (other than the delivery of a Loan Notice). Any notice given by the L/C Issuer or Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon receipt of any notice pursuant to Section 2.03(c)(i) make funds available (and Administrative Agent may apply Cash Collateral provided for this purpose) to Administrative Agent for the account of the L/C Issuer at Administrative Agent’s Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to Borrower in such amount. Administrative Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing of Base Rate Loans because the conditions set forth in Section 5.02 cannot be satisfied or for any other reason, Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender’s payment to Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender’s Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Lender's obligation to make Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 5.02 (other than delivery by Borrower of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting any other provision of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Lender (through Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from Borrower or otherwise, including proceeds of Cash Collateral applied thereto by Administrative Agent), Administrative Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by Administrative Agent.

(ii) If any payment received by Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to Administrative Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) **Obligations Absolute.** The obligation of Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;
- (iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
- (iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice Borrower;
- (v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;
- (vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower or any Subsidiary.

Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will immediately notify the L/C Issuer. Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) **Role of L/C Issuer.** Each Lender and Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit unless the L/C Issuer is prevented or prohibited from so paying as a result of any order or directive of any court or other Governmental Authority. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for

further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication (“SWIFT”) message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) **Cash Collateral.** Borrower shall provide Cash Collateral as and when required pursuant to Sections 2.05, 2.15, 2.16 and 9.02(c).

(h) **Applicability of ISP and UCP; Limitation of Liability.** Unless otherwise expressly agreed by the L/C Issuer and Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to Borrower for, and the L/C Issuer’s rights and remedies against Borrower shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) **L/C Fees.** Borrower shall pay to Administrative Agent for the account of each Lender in accordance, subject to Section 2.16, with its Applicable Percentage an L/C fee (the “L/C Fee”) for each Letter of Credit equal to the Applicable Rate times the original face amount of such Letter of Credit. L/C Fees shall be (A) due and payable on or prior to issuance of such Letter of Credit and thereafter on demand if such Letter of Credit is amended or extended, and (B) non-refundable. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all L/C Fees shall accrue at the Default Rate.

(j) **Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer.** Borrower shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at a rate per annum agreed to by Borrower and the L/C Issuer, computed on the daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit) and on a quarterly basis in arrears. Such fronting fee shall be due and payable on the first Business Day after the end of each of March, June, September and December, in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the L/C Expiration Date, and thereafter, on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, Borrower shall pay directly to the

L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such individual customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(k) **Conflict with Issuer Documents.** In the event of any conflict between the terms hereof and the terms of any Issuer Documents, the terms hereof shall control.

2.04 **[Reserved]**.

2.05 **Prepayments.**

(a) Borrower may, upon notice to Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by Administrative Agent not later than 8:00 a.m. (A) three (3) Business Days prior to any date of prepayment of Eurodollar Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurodollar Rate Loans shall be in a principal amount of Two Million Dollars (\$2,000,000) or a whole multiple of One Million Dollars (\$1,000,000) in excess thereof or, if less, the entire principal amount thereof then outstanding; (iii) any prepayment of Base Rate Loans shall be in a principal amount of One Million Dollars (\$1,000,000) or a whole multiple of Five Hundred Thousand Dollars (\$500,000) in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by Borrower, Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.16, each such prepayment shall be applied to the Loans of Lenders in accordance with their respective Applicable Percentages.

(b) **[Reserved]**.

(c) If for any reason the Total Outstandings at any time exceed the Aggregate Commitments then in effect, Borrower shall immediately prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(c) unless after the prepayment in full of the Loans, the Total Outstandings exceed the Aggregate Commitments then in effect. All amounts required to be paid pursuant to this Section 2.05(c) shall be applied to Loans and (after all Loans have been repaid) to Cash Collateralize L/C Obligations. Within the parameters of the applications set forth above, prepayments shall be applied first to Base Rate Loans and then to Eurodollar Rate Loans in direct order of Interest Period maturities. All prepayments under this Section 2.05(c) shall be subject to Section 3.05.

2.06 **Termination or Reduction of Commitments; Increase of Commitment.**

(a) **Termination or Reduction of Commitments.** Borrower may, upon notice to Administrative Agent, terminate the Aggregate Commitments, or from time to time permanently reduce the Aggregate Commitments; provided that (i) any such notice shall be received by Administrative Agent not later than 10:00 a.m. five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of Five Million Dollars (\$5,000,000) or any whole multiple of One Million Dollars (\$1,000,000) in excess thereof, (iii) Borrower shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments, and (iv) if, after giving effect to any reduction of the Aggregate Commitments or the L/C Sublimit exceeds the amount of the Aggregate Commitments, such Sublimit shall be automatically reduced by the amount of such excess. Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Commitments, *provided*, that any such notice (whether to terminate the Aggregate Commitments or to permanently reduce the Aggregate Commitments) may state that it is conditioned upon the effectiveness of other transactions, in which case such notice may be revoked or delayed by Borrower (by notice to Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

(b) **Increase of Commitments.**

(i) If no Default or Event of Default shall have occurred and be continuing, upon written notice to Administrative Agent (each such notice, a “**Commitment Increase Notice**”), Borrower may from time to time prior to the Maturity Date, request an increase of the Aggregate Commitments (but not the L/C Sublimit) by an amount (for all such requests) not exceeding Seventy Five Million Dollars (\$75,000,000); provided that, (i) any such request for an increase shall be in a minimum amount of Twenty Five Million Dollars (\$25,000,000); and (ii) Borrower may make a maximum of two (2) such requests. Any such Commitment Increase Notice delivered with respect to any proposed increase in the Commitment may offer one or more Lenders an opportunity to subscribe for its Applicable Percentage (with respect to the existing Commitment (prior to such increase)) of the increased Aggregate Commitments. Administrative Agent shall promptly, and in any event within five (5) Business Days after receipt of a Commitment Increase Notice, notify each Lender of such request. Each Lender desiring to increase its Commitment shall notify Administrative Agent in writing no later than ten (10) Business Days after receipt of notice from Administrative Agent. Any Lender that does not notify Administrative Agent within the time period specified above that it will, in its sole discretion, increase its Commitment will be deemed to have rejected such offer. Any agreement by a Lender to increase its Commitment shall be irrevocable.

(ii) If any proposed increase in the Commitment is not fully subscribed by the existing Lenders pursuant to the procedure outlined in Section 2.06(b)(i), Borrower may, in its sole discretion, offer to any existing Lender or to one or more additional banks or financial institutions which is an Eligible Assignee (each, a “**New Lender**”) the opportunity to participate in all or a portion of such unsubscribed portion of the increased Aggregate Commitments, by notifying Administrative Agent in writing. Promptly and in any event within five (5) Business Days after receipt of notice from Borrower of its desire to offer such unsubscribed commitments to certain existing Lenders or to any New Lender identified therein, Administrative Agent shall notify such proposed lenders of the opportunity to participate in all or a portion of such unsubscribed portion of the increased Aggregate Commitments.

(iii) Any New Lender which accepts Borrower’s offer to participate in the increased Commitment shall execute and deliver to Administrative Agent and Borrower a New Lender Addendum, an Administrative Questionnaire and such other documents, instruments and agreements as Administrative Agent may reasonably request, and upon the receipt thereof and the effectiveness of such New Lender Addendum such New Lender shall become a Lender for all purposes and to the same extent as if originally a party hereto and shall be bound by and entitled to the benefits of this Agreement, and the signature pages hereof shall be deemed to be amended to add the name of such New Lender.

(iv) If the Aggregate Commitments are increased in accordance with this Section, Administrative Agent and Borrower shall determine the effective date (the “**Increase Effective Date**”) and the final allocation of such increase. Administrative Agent shall promptly notify Borrower and the Lenders of the final allocation of such increase and the Increase Effective Date.

(v) As a condition precedent to such increase, Borrower shall deliver to Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (x) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (y) in the case of Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in Article VI and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except that (x) if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation and warranty shall be required to be true and correct in all respects, (y) to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and (z) for purposes of this Section 2.06, the representations and warranties contained in subsections (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 7.01, and (B) no Default exists. Borrower shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to

Section 3.05) to the extent necessary to keep the outstanding Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Commitments under this Section.

(vi) On each Increase Effective Date, subject to the satisfaction of the terms and conditions set forth in this Section, (A) each of the existing Lenders shall assign to each of the New Lenders, and each of the New Lenders shall purchase from each of the existing Lenders, as applicable, at the principal amount thereof (together with accrued interest), such interests in the Loans outstanding on such date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Loans will be held by existing Lenders and New Lenders ratably in accordance with their Commitments after giving effect to the addition of such new Commitments to the total Aggregate Commitments hereunder, (B) each new Commitment shall be deemed for all purposes a "Commitment" and each Loan made thereunder shall be deemed, for all purposes, a "Loan", (C) each New Lender shall become a "Lender" with respect to the new Commitment and all matters relating thereto and (D) and Borrower shall compensate each Lender who shall have assigned any portion of any Eurodollar Rate Loans previously held by such Lender compensation in the amount that would have been payable to such Lender under Section 3.05 hereof had Borrower made a prepayment of such Eurodollar Rate Loans by an amount equal to such assigned portion thereof. Upon any increase in the Commitment pursuant to this Section 2.06, Schedule 2.01 shall be deemed amended to reflect such new Commitment and the Applicable Percentage of each Lender (including any New Lender), as thereby increased or decreased, as appropriate.

(vii) This Section shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

2.07 Repayment of Loans.

(a) Borrower shall repay to Lenders on the Maturity Date the aggregate principal amount of Loans outstanding on such date.

2.08 Interest.

(a) Subject to the provisions of subsection (b) below, (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 **Fees.** In addition to certain fees described in subsections (i) and (j) of Section 2.03:

(a) **Commitment Fee.** Borrower shall pay to Administrative Agent for the account of each Lender in accordance with its Applicable Percentage, a commitment fee (the "**Commitment Fee**") equal to the one-quarter of one percent (0.25%) times the actual daily amount by which the Aggregate Commitments exceed the sum of (i) the Outstanding Amount of Loans and (ii) the Outstanding Amount of L/C Obligations. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article V is not met, and shall be due and payable quarterly in arrears on the first Business Day of each of March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The Commitment Fee shall be calculated quarterly in arrears.

(b) **[Reserved]**.

(c) **Lenders' Upfront Fee.** On the Closing Date, Borrower shall pay to Administrative Agent, for the account of Union Bank, as Lender, an upfront fee in an amount equal One Hundred Twenty Five Thousand Dollars (\$125,000). Such upfront fees are for the credit facilities committed by Lenders under this Agreement and are fully earned on the date paid. The upfront fee paid to each Lender is solely for its own account and is nonrefundable for any reason whatsoever.

2.10 **Computation of Interest and Fees.**

(a) All computations of interest for Base Rate Loans when the Base Rate is determined by Union Bank, N.A.'s "reference rate" shall be made on the basis of a year of

365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one (1) day. Each determination by Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 **Evidence of Debt.**

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by Administrative Agent in the ordinary course of business. The accounts or records maintained by Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by Lenders to Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of Administrative Agent in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through Administrative Agent, Borrower shall execute and deliver to such Lender (through Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a), each Lender and Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error.

2.12 **Payments Generally; Administrative Agent's Clawback.**

(a) (i) **General.** All payments to be made by Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by Borrower hereunder shall be made to Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 12:00 noon on the date specified herein. Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by Administrative Agent after 12:00 noon shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by Borrower shall come due on a day other than a Business Day, payment shall be made on the next succeeding Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(ii) On each date when the payment of any principal, interest or fees are due hereunder or under any Note, Borrower agrees to maintain on deposit in an ordinary checking account maintained by Borrower with Administrative Agent (as such account shall be designated by Borrower in a written notice to Administrative Agent from time to time, the "**Borrower Account**") an amount sufficient to pay such principal, interest or fees in full on such date. Borrower hereby authorizes Administrative Agent (A) to deduct automatically all principal, interest or fees when due hereunder or under any Note from Borrower Account, and (B) if and to the extent any payment of principal, interest or fees under this Agreement or any Note is not made when due to deduct any such amount from any or all of the accounts of Borrower maintained at Administrative Agent. Administrative Agent agrees to provide written notice to Borrower of any automatic deduction made pursuant to this Section 2.12(a)(ii) showing in reasonable detail the amounts of such deduction. Lenders agree to reimburse Borrower based on their Applicable Percentage for any amounts deducted from such accounts in excess of amount due hereunder and under any other Loan Documents.

(b) (i) **Funding by Lenders; Presumption by Administrative Agent.** Unless Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 9:00 a.m. on the date of such Borrowing) that such Lender will not make available to Administrative Agent such Lender's share of such Borrowing, Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to Administrative Agent, then the applicable Lender and Borrower severally agree to pay to Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by Administrative Agent in connection with the foregoing and (B) in the case of a payment to be made by Borrower, the interest rate applicable to Base Rate Loans. If Borrower and such Lender shall pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable Borrowing to Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent.

(ii) **Payments by Borrower; Presumptions by Administrative Agent.** Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if Borrower has not in fact made such payment, then each of Lenders or the L/C Issuer, as the case may be, severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of Administrative Agent to any Lender or Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) **Failure to Satisfy Conditions Precedent.** If any Lender makes available to Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to Borrower by Administrative Agent because the conditions to the applicable Credit Extension set forth in Article V are not satisfied or waived in accordance with the terms hereof, Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) **Obligations of Lenders Several.** The obligations of Lenders hereunder to make Loans, to fund participations in Letters of Credit and to make payments under Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, purchase its participation or to make its payment under Section 11.04(c).

(e) **Funding Source.** Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 **Sharing of Payments.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it, or the participations in L/C Obligations held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and sub-participations in L/C Obligations of the other Lenders, or make such other adjustments as shall be equitable, so

that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations or sub-participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or sub-participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.15, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or sub-participations in L/C Obligations to any assignee or participant, other than to Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender (any such Lender, a “**Subject Lender**”), then so long as (a) no Default shall have occurred and be continuing and Borrower has obtained a commitment from another Lender or an Eligible Assignee to purchase at par the Subject Lender’s Loans and assume the Subject Lender’s Commitments and all other obligations of the Subject Lender hereunder, and (b) the Subject Lender is not the L/C Issuer with respect to any Letters of Credit outstanding (unless all such Letters of Credit are terminated or arrangements acceptable to the L/C Issuer (such as a “back-to-back” letter of credit) are made), Borrower may, at its sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.04 or Section 3.01) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(a) Borrower shall have paid to Administrative Agent the assignment fee (if any) specified in Section 11.06;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in L/C Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including all amounts under Sections 3.01, 3.04 or 3.05 (if applicable)) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable law; and

(e) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrower to require such assignment and delegation cease to apply.

2.15 Cash Collateral. If (i) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the L/C Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) Borrower shall be required to provide Cash Collateral pursuant to Section 9.02(c), or (iv) there shall exist a Defaulting Lender, Borrower shall immediately (in the case of clause (iii) above) or within one (1) Business Day (in all other cases) following any request by Administrative Agent or the L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (iv) above, after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender). In addition, Borrower shall provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount not less than five (5) Business Days prior to any cancellation or termination of the Commitments or this Agreement.

(a) **Grant of Security Interest.** Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) Administrative Agent, for the benefit of the L/C Issuer and the Lenders, and agrees to maintain, a continuing first-priority security interest in all such Cash Collateral (and all proceeds thereof) as security for the then Outstanding Amount of all L/C Obligations and any Defaulting Lender's obligation to fund participations in respect of L/C Obligations, to be applied pursuant to clause (b) below. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent and the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender). All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be

maintained in blocked, non-interest bearing deposit accounts at Union Bank. Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(b) **Application.** Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.15 or Sections 2.03, 2.05, 2.16 or 9.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(c) **Termination of Requirement.** Cash Collateral (or the appropriate portion thereof) provided to reduce the L/C Issuer's Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi)), or (ii) the determination by Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided however, (x) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (y) the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations, and provided further that to the extent that such Cash Collateral was provided by Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

2.16 **Defaulting Lenders.**

(a) **Defaulting Lender Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) **Waivers and Amendments.** Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and Section 11.01.

(ii) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article IX or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such

Defaulting Lender to the L/C Issuer; *third*, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.15; *fourth*, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *fifth*, if so determined by Administrative Agent and Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.15; *sixth*, to the payment of any amounts owing to the Lenders or the L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the L/C Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 5.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.16(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) **Certain Fees.**

(A) No Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive L/C Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.15.

(C) With respect to any fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the L/C Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) **Reallocation of Participations to Reduce Fronting Exposure.** All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless Borrower shall have otherwise notified Administrative Agent at such time, Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) **Cash Collateral.** If the reallocation described in clause (iv) above cannot, or can only partially, be effected, Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, Cash Collateralize the L/C Issuer's Fronting Exposure in accordance with the procedures set forth in Section 2.15.

(b) **Defaulting Lender Cure.** If Borrower, Administrative Agent and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting

Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) **New Letters of Credit**. So long as any Lender is a Defaulting Lender, no L/C Issuer shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes

(a) **Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.**

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Administrative Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Administrative Agent, then the applicable Withholding Administrative Agent shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) Administrative Agent shall withhold or make such deductions as are determined by Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) Administrative Agent shall timely pay the full amount deducted or withheld or deducted to the relevant Governmental Authority in accordance with the Code and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding of Indemnified Taxes or Other Taxes or the making of all required deductions of Indemnified Taxes or Other Taxes (including such deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction of Indemnified Taxes or Other Taxes been made.

(iii) If any Loan Party or Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any

payment, then (A) such Loan Party or Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding of Indemnified Taxes or Other Taxes or the making of all required deductions of Indemnified Taxes or Other Taxes (including such deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction of Indemnified Taxes or Other Taxes been made.

(b) **Payment of Other Taxes by Borrower.** Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) **Tax Indemnifications.**

(i) **Indemnification by Borrower.** Without limiting the provisions of subsection (a) or (b) above, each Loan Party shall, and does hereby, indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. Borrower shall, and does hereby, indemnify Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to Administrative Agent as required pursuant to Section 3.01(c)(ii) below.

(ii) **Indemnification by the Lenders.** Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, for (x) Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (y) Administrative Agent and Borrower, as applicable, against any Taxes attributable to such Lender's

failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (z) Administrative Agent and Borrower, as applicable, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent or Borrower in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Administrative Agent to the Lender from any other source against any amount due to Administrative Agent under this subsection (c)(ii).

(d) **Evidence of Payments.** As soon as practicable, and upon request of Administrative Agent or Borrower, as the case may be, after any payment of Taxes by any Loan Party or by Administrative Agent, to a Governmental Authority pursuant to this Section 3.01, Borrower shall deliver to Administrative Agent or Administrative Agent shall deliver to Borrower, as applicable, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(e) **Status of Lenders; Tax Documentation.**

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Administrative Agent, at the time or times required by law or reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Borrower,

(A) any Lender that is a U.S. Person shall deliver to Borrower and Administrative Agent on or prior to the date on which such Lender

becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be required by law or requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter as required by law or upon the reasonable request of Borrower or Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(II) executed originals of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit J-1** to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “**U.S. Tax Compliance Certificate**”) and (y) executed originals of IRS Form W-8BEN; or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of **Exhibit J-2** or **Exhibit J-3**, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit J-4** on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

(f) **Treatment of Certain Refunds.** Unless required by applicable Laws, at no time shall Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, as the

case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Borrower, upon the request of Administrative Agent or such Recipient, agrees to repay the amount paid over to Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to an indemnifying party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Borrower or any other Person.

(g) **Survival.** Each party's obligations under this Section 3.01 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

3.02 **Illegality.** If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to Borrower through Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies Administrative Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) Borrower shall, upon demand from such Lender (with a copy to Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans, and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such

prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted and all amounts due under Section 3.05 in accordance with the terms thereof due to such prepayment or conversion.

3.03 **Inability to Determine Rates**. If Administrative Agent determines in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Base Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan, or (c) the Eurodollar Base Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, Administrative Agent will promptly so notify Borrower and each Lender. Thereafter, (x) the obligation of Lenders to make or maintain Eurodollar Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

3.04 **Increased Costs; Reserves on Eurodollar Rate Loans**.

(a) **Increased Costs Generally**. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e) or reflected in the Eurodollar Rate) or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, the L/C Issuer or such other Recipient of

participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, L/C Issuer or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, L/C Issuer or other Recipient, Borrower will pay to such Lender, L/C Issuer or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, L/C Issuer or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) **Capital Requirements.** If any Lender or L/C Issuer determines that any Change in Law affecting such Lender or L/C Issuer or any Lending Office of such Lender or such Lender's or L/C Issuer's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or L/C Issuer's capital or on the capital of such Lender's or L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or L/C Issuer's policies and the policies of such Lender's or L/C Issuer's holding company with respect to capital adequacy), then from time to time Borrower will pay to such Lender or L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender or L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or L/C Issuer or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to Borrower, shall be conclusive absent manifest error. Borrower shall pay such Lender or L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender or L/C Issuer to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or L/C Issuer's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender or L/C Issuer pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or L/C Issuer, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) **Reserves on Eurodollar Rate Loans.** Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall

be due and payable on each date on which interest is payable on such Loan, provided Borrower shall have received at least 10 days' prior notice (with a copy to Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

3.05 **Compensation for Losses.** Upon demand of any Lender (with a copy to Administrative Agent) from time to time, Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(b) any failure by Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by Borrower pursuant to Section 2.14;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing. For purposes of calculating amounts payable by Borrower to Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Base Rate used in determining the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.06 **Mitigation Obligations; Replacement of Lenders.**

(a) **Designation of Lending Office.** If any Lender requests compensation under Section 3.04, or requires Borrower to pay any Indemnified Taxes or additional amounts to any Lender or Governmental Authority for the account of any Lender, pursuant to Section 3.01, then such Lender shall (at the request of Borrower) use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, and (b) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender, as the case may be. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under Section 3.04, or if Borrower is required to pay any Indemnified Taxes or additional amounts to

any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.06(a). Borrower may replace such Lender in accordance with Section 2.14.

3.07 **Survival**. All of Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, and repayment of all other Obligations hereunder and resignation of Administrative Agent.

ARTICLE IV

GUARANTY

4.01 **The Guaranty**. Each of the Guarantors hereby jointly and severally guarantees to each Secured Party as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Secured Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Secured Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Secured Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory Cash Collateralization or otherwise) in accordance with the terms of such extension or renewal. This Guaranty is in addition to any other guaranties of the Secured Obligations, is continuing and covers all Secured Obligations, including those arising under successive transactions which continue or increase the Secured Obligations from time to time, renew all or part of the Secured Obligations after they have been satisfied, or create new Secured Obligations. A separate action or actions may be brought and prosecuted against any one or more guarantors, whether action is brought against Borrower or other guarantors of the Secured Obligations, and whether Borrower or others are joined in any such action.

Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents, Swap Contracts or Cash Management Agreements, the obligations of each Guarantor under this Agreement and the other Loan Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under the Debtor Relief Laws or any comparable provisions of any applicable state law.

4.02 **Obligations Unconditional**. The obligations of the Guarantors under Section 4.01 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents, Swap Contracts or Cash Management Agreements, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Secured Obligations, and, to the fullest extent permitted by applicable law, irrespective of any law or regulation or other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 4.02

that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against Borrower or any other Guarantor for amounts paid under this Article IV until such time as the Secured Obligations (other than contingent indemnification obligations that survive the termination of this Agreement and obligations arising under Cash Management Agreements that survive the termination of this Agreement) have been paid in full and the Commitments have expired or terminated and the Facility Termination Date has occurred. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Secured Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of any of the Loan Documents, any Swap Contract between any Loan Party and any Hedge Bank, or any Cash Management Agreement between any Loan Party and any Cash Management Bank, or any other agreement or instrument referred to in the Loan Documents, such Swap Contracts or such Cash Management Agreements shall be done or omitted;

(c) the maturity of any of the Secured Obligations shall be accelerated, or any of the Secured Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents, any Swap Contract between any Loan Party and any Hedge Bank or any Cash Management Agreement between any Loan Party and any Cash Management Bank, or any other agreement or instrument referred to in the Loan Documents, such Swap Contracts or such Cash Management Agreements shall be waived or any other guarantee of any of the Secured Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, Administrative Agent or any Lender or Lenders as security for any of the Secured Obligations shall fail to attach or be perfected; or

(e) any of the Secured Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

Each Guarantor authorizes Administrative Agent and the other Secured Parties, without notice and without affecting such Guarantor's liability under this Guaranty, from time to time, to (a) renew, compromise, extend, accelerate, release, subordinate, waive, amend and restate, or otherwise amend or change, the interest rate, time or place for payment or any other terms of all or any part of the Secured Obligations; (b) accept delinquent or partial payments on the Secured Obligations; (c) take or not take security or other credit support for this Guaranty or for all or any part of the Secured Obligations, and exchange, enforce, waive, release, subordinate, fail to enforce or perfect, sell, or otherwise dispose of any such security or credit support; (d) apply

proceeds of any such security or credit support and direct the order or manner of its sale or enforcement as Administrative Agent and the Required Lenders, at their sole discretion, may determine; and (e) release or substitute Borrower or any guarantor or other person or entity liable on the Secured Obligations.

Each Guarantor warrants having established with Borrower adequate means of obtaining, on an ongoing basis, such information as such Guarantor may require concerning all matters bearing on the risk of nonpayment or nonperformance of the Secured Obligations. Each Guarantor assumes sole, continuing responsibility for obtaining such information from sources other than from Secured Parties. No Secured Party has any duty to provide any information to any Guarantor.

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever (including notices of dishonor, notices of acceptance of this Guaranty and of the existence or creation of new or additional Secured Obligations), and any requirement that Administrative Agent or any Lender exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents, any Swap Contract between any Loan Party and any Hedge Bank or any Cash Management Agreement between any Loan Party and any Cash Management Bank, or any other agreement or instrument referred to in the Loan Documents, such Swap Contracts or such Cash Management Agreements, or against any other Person under any other guarantee of, or security for, any of the Secured Obligations.

4.03 Reinstatement. The obligations of the Guarantors under this Article IV shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Secured Obligations is rescinded or must be otherwise restored by any holder of any of the Secured Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify Administrative Agent and each Lender on demand for all reasonable costs and expenses (including, without limitation, the fees, charges and disbursements of counsel) incurred by Administrative Agent or such Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

4.04 Certain Additional Waivers.

(a) Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Secured Obligations, except through the exercise of rights of subrogation pursuant to Section 4.02 and through the exercise of rights of contribution pursuant to Section 4.06.

(b) To the maximum extent permitted by law, each Guarantor waives (i) all rights to require any Secured Party to proceed against Borrower, or any other guarantor, or proceed against, enforce or exhaust any security for the Secured Obligations or to marshal assets or to pursue any other remedy in any Secured Party's power whatsoever; (ii) all defenses arising by reason of any disability or other defense of Borrower, the cessation for any reason of the

liability of Borrower, any defense that any other indemnity, guaranty or security was to be obtained, any claim that any Secured Party has made such Guarantor's obligations more burdensome or more burdensome than Borrower's or any other Guarantor's obligations, and the use of any proceeds of the Secured Obligations other than as intended or understood by any Secured Party or any Guarantor; (iii) all conditions precedent to the effectiveness of this Guaranty; (iv) all rights to file a claim in connection with the Secured Obligations in any bankruptcy or insolvency filed by or against Borrower; (v) all rights to require any Secured Party to enforce any of its remedies; (vi) any setoff, defense or counterclaim against any Secured Party, (vii) the benefit of any act or omission by any Secured Party which directly or indirectly results in or aids the discharge of Borrower or any other Guarantor from any of the Secured Obligations by operation of law or otherwise; (viii) the benefit of California Civil Code Section 2815 permitting the revocation of this Guaranty as to future transactions and the benefit of California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2848, 2849, 2850, 2899 and 1432 with respect to certain suretyship defenses, provided, that with respect to Sections 2847, 2848 and 2849 of the California Civil Code, such waivers shall only be effective until the Facility Termination Date; and (ix) all rights, remedies and defenses such Guarantor may have or acquire against Borrower or any other Guarantor.

(c) Each Guarantor understands that if Bank forecloses by trustee's sale on a deed of trust securing any of the Secured Obligations, Guarantor would then have a defense preventing Administrative Agent from thereafter enforcing Guarantor's liability for the unpaid balance of the Secured Obligations. This defense arises because the trustee's sale would eliminate such Guarantor's right of subrogation, and therefore Guarantor would be unable to obtain reimbursement from Borrower. Each Guarantor specifically waives this defense and all rights and defenses that Guarantor may have because the Secured Obligations are secured by real property. This means, among other things: (i) Administrative Agent and the other Secured Parties may collect from each Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower; and (ii) if Administrative Agent or any of the other Secured Parties forecloses on any real property collateral pledged by Borrower: (A) the amount of the Secured Obligations may be reduced only by the price for which the collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (ii) Administrative Agent and the other Secured Parties may collect from Guarantor even if Administrative Agent and the other Secured Parties, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Secured Obligations are, or may be, secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure or similar laws in other states.

4.05 Remedies. The Guarantors agree that, to the fullest extent permitted by law, as between the Guarantors, on the one hand, and Administrative Agent and the Lenders, on the other hand, the Secured Obligations may be declared to be forthwith due and payable as provided in Section 9.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in said Section 9.02) for purposes of Section 4.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Secured Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Secured Obligations being deemed to have become

automatically due and payable), the Secured Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 4.01. The Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the Lenders may exercise their remedies thereunder in accordance with the terms thereof.

4.06 **Rights of Contribution.** The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable law. Such contribution rights shall be subordinate and subject in right of payment to the obligations of such Guarantors under the Loan Documents and no Guarantor shall exercise such rights of contribution until all Secured Obligations (other than contingent indemnification obligations that survive the termination of this Agreement and obligations arising under Cash Management Agreements that survive the termination of this Agreement) have been paid in full and the Facility Termination Date shall have occurred.

4.07 **Subordination.** All obligations of Borrower to each Guarantor which presently or in the future may exist (“**Guarantor’s Claims**”) are hereby subordinated to the Secured Obligations, provided, that so long as no Event of Default exists, or would result after giving effect thereto, Borrower may make payments of principal and interest with respect to such obligations. At Administrative Agent’s request, Guarantor’s Claims will be enforced and performance thereon received by Guarantor only as a trustee for Administrative Agent and the Secured Parties, and each Guarantor will promptly pay over to Administrative Agent all proceeds recovered for application to the Secured Obligations without reducing or affecting such Guarantor’s liability under other provisions of this Guaranty. Any Lien or charge on the property securing the obligations, and on the revenue and income to be realized therefrom, which any Guarantor may have or obtain shall be, and such lien or charge hereby is, subordinated to Administrative Agent’s Lien on such property. Each Guarantor agrees that it shall file any and all claims against Borrower in any bankruptcy or insolvency proceeding in which the filing of claims is required by law on any Indebtedness of Borrower to such Guarantor, and will assign to Administrative Agent, for the benefit of Lenders, all rights of such Guarantor. If such Guarantor does not file such claim, Administrative Agent, as attorney-in-fact for Guarantor, is authorized to do so in the name of Guarantor or, in Administrative Agent’s sole discretion, to assign the claim and to file a proof of claim in the name of Administrative Agent or Administrative Agent’s nominee. In all such cases, whether in bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Administrative Agent the full amount of any such claim, and, to the full extent necessary for that purpose, Guarantor assigns to Administrative Agent all of Guarantor’s rights to any such payments or distributions to which Guarantor would otherwise be entitled. All monies or other property of any Guarantor at any time in Administrative Agent’s or any Secured Party’s possession may be held by Administrative Agent or such Secured Party as security for any and all obligations of such Guarantor to Administrative Agent or the other Secured Parties no matter how or when arising, whether absolute or contingent, whether due or to become due, and whether under this Guaranty or otherwise. Guarantor also agrees that Administrative Agent books and records showing the account between Administrative Agent and Borrower or any other guarantor shall be admissible in any action or proceeding and shall be binding upon each Guarantor for the purpose of establishing the terms set forth therein and shall constitute prima facie proof thereof.

4.08 **Guarantee of Payment; Continuing Guarantee.** The guarantee in this Article IV is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Secured Obligations whenever arising.

ARTICLE V

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

5.01 **Conditions of Initial Credit Extension.** This Agreement shall become effective upon and the obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement, the Security Agreement, the Pledge Agreement, sufficient in number for distribution to Administrative Agent, each Lender and Borrower;

(ii) a Note executed by Borrower in favor of each Lender requesting a Note;

(iii) each of the Collateral Documents required by Administrative Agent to be executed and delivered on the date hereof, duly executed by each Loan Party, together with:

(A) copies of the Organization Documents of each Loan Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of such Loan Party to be true and correct;

(B) all certificates representing any Equity Interests required to be delivered thereby accompanied by undated transfer powers executed in blank, as applicable,

(C) proper financing statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that Administrative Agent may deem necessary or desirable in order to perfect the Liens created under such Collateral Documents, covering the Collateral described therein, in each case as a first priority Lien (subject only to Permitted Liens),

(D) completed requests for information, dated on or before the date of the initial Credit Extension, listing the financing statements

referred to in clause (C) above and all other effective financing statements filed in the jurisdictions referred to in clause (B) above that name any Loan Party as debtor, together with copies of such other financing statements, and

(E) evidence of the completion of all other actions, recordings and filings of or with respect to the Collateral Documents that Administrative Agent may deem necessary or desirable in order to perfect the Liens created thereby, in each case as a first priority Lien (subject only to Permitted Liens);

(iv) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(v) such documents and certifications as Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(vi) a favorable opinion of counsel to the Loan Parties addressed to Administrative Agent and each Lender, in form and substance reasonably satisfactory to Administrative Agent;

(vii) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(viii) a certificate signed by a Responsible Officer of Borrower certifying (A) that the conditions specified in Sections 5.02(a) and (b) have been satisfied, (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (C) after giving effect to this Agreement and the other Loan Documents (including after giving effect to the initial Loans under this Agreement), Borrower will be Solvent, and (D) the other matters set forth on Exhibit L;

(ix) a complete search of the records of each filing office where a financing statement (including under the Uniform Commercial Code), judgment Lien, tax Lien or other Lien naming a Loan Party or any other party must be filed to perfect Administrative Agent's security interest and Lien, for the benefit of the Secured Parties, in any of the Collateral, which searches shall be reasonably satisfactory to Administrative Agent;

(x) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect;

(xi) a duly completed Compliance Certificate as of the last day of the fiscal quarter of Borrower ended September 30, 2012, signed by a Responsible Officer of Borrower; and

(xii) such other assurances, certificates, documents, consents or opinions as Administrative Agent or the Required Lenders reasonably may require.

(b) Any fees required to be paid in connection with this Agreement on or before the Closing Date shall have been paid.

(c) Unless waived by Administrative Agent, Borrower shall have paid all reasonable fees, charges and disbursements of counsel to Administrative Agent (directly to such counsel if requested by Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between Borrower and Administrative Agent).

(d) The Closing Date shall have occurred on or before February 26, 2013.

Without limiting the generality of the provisions of the last paragraph of Section 10.03(d), for purposes of determining compliance with the conditions specified in this Section 5.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

5.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension is subject to the satisfaction of the following conditions precedent:

(a) The representations and warranties of Borrower and each other Loan Party contained in Article VI or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except that (w) if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation

and warranty shall be required to be true and correct in all respects, (x) to the extent such representations and warranties specifically refer to an earlier date, such representations and warranties shall be true and correct as of such earlier date, and (y) for purposes of this Section 5.02, the representations and warranties contained in subsections (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 7.01.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) Administrative Agent and, if applicable, the L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) Administrative Agent shall have determined in its sole discretion that no event or circumstance has occurred or exists that could reasonably be expected to have a Material Adverse Effect.

Each Request for Credit Extension submitted by Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 5.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants (and each request for a disbursement of the proceeds of each Loan shall be deemed a representation and warranty made on the date of such request) to Administrative Agent and the Lenders that:

6.01 **Existence, Qualification and Power**. Each Loan Party and each Subsidiary thereof (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Each Loan Party and each Subsidiary thereof possesses all permits, consents, approvals, franchises and licenses required and rights to all trademarks, trade names, patents, and fictitious names, if any, necessary to enable it to conduct the business in which it is now engaged in compliance with applicable Law, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect. As of the Closing Date, Borrower's principal place of business and chief executive office is located at 1100 Park Place, 4th Floor, San Mateo, California 94403.

6.02 **Authorization; No Contravention**. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly

authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or except for the Liens created pursuant to the Loan Documents, the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate in any material respect any Law (including, without limitation, Regulation U or Regulation X issued by the FRB).

6.03 **Governmental Authorization; Other Consents.** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document other than (a) those that have already been obtained and are in full force and effect, (b) authorizations, approvals, actions, notices and filings contemplated by the Collateral Documents, (c) notices and filings which customarily are required in connection with the exercise of remedies in respect of the Collateral, and (d) those approvals, consents, exemptions, authorizations, actions, notices or filings the failure of which to obtain, take, give or make could not be reasonably expected to have a Material Adverse Effect.

6.04 **Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as enforcement may be limited by Debtor Relief Law or equitable principles relating to the granting of specific performance and other equitable remedies as a matter of judicial discretion.

6.05 **Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present in all material respects the financial condition of Borrower and its Subsidiaries on a consolidated basis as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby (subject in the case of interim unaudited financial statements, to normal year-end adjustments and the absence of footnotes); and (iii) show all material indebtedness and other liabilities, direct or contingent, of Borrower and its Subsidiaries, on a consolidated basis, as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated and consolidating balance sheets of Borrower and its Subsidiaries dated September 30, 2012, and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of Borrower and its Subsidiaries, on a consolidated

basis, as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year end audit adjustments. Schedule 6.05 to the Disclosure Letter sets forth all material indebtedness and other liabilities, direct or contingent, of Borrower and its consolidated Subsidiaries as of the date of such financial statements, including liabilities for taxes, material commitments and Indebtedness.

(c) Since the date of the Audited Financial Statements, (i) there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect, (ii) Borrower has not mortgaged, pledged, granted a security interest in or otherwise encumbered any of its assets or properties except for Permitted Liens and except for Liens to secure the Existing Credit Agreement; (iii) there has been no Disposition by any Loan Party or any Subsidiary, or any Involuntary Disposition, of any material part of the business or property of any Loan Party or any Subsidiary; and (iv) there has been no purchase or other Acquisition by any of them of any business or property (including any Equity Interests of any other Person) material to any Loan Party or any Subsidiary, in each case, which is not reflected in the foregoing financial statements or in the notes thereto or has not otherwise been disclosed in writing to Administrative Agent. Borrower is not aware of any fact, occurrence or circumstance which Borrower has not disclosed to Administrative Agent and the Lenders in writing which has, or could reasonably be expected to have, a material adverse effect on Borrower's or any other Loan Party's ability to repay the Obligations or perform its obligations under this Agreement or the other Loan Documents.

6.06 **Litigation.** Except for matters specifically disclosed in Schedule 6.06 to the Disclosure Letter or disclosed pursuant to Section 7.02, there are no actions, suits, proceedings, claims or disputes pending, or, to the knowledge of Borrower, after due and diligent investigation, threatened in writing or contemplated in writing, at law, in equity, in arbitration or before any Governmental Authority, arbitrator or administrative agency, by or against Borrower or any of its Subsidiaries or against any of their properties or revenues (a) that purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, (b) where the amount in controversy is \$500,000 or more or (c) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

6.07 **No Default.** Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

6.08 **Ownership of Property; Liens.** Each Loan Party and each Subsidiary of each Loan Party has good record and valid title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such exceptions in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of each Loan Party and each of their Subsidiaries is subject to no Liens, other than Liens permitted by Section 8.01. Borrower is the sole owner of, or has rights to use, Borrower's Intellectual Property, except for non-exclusive licenses granted by Borrower to its customers in the ordinary course of business.

6.09 **Environmental Compliance.** Each Loan Party is in compliance with all applicable Environmental Laws, which govern or affect any of such Loan Party's operations and/or properties, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Resource Conservation and Recovery Act of 1976, and the Federal Toxic Substances Control Act, as any of the same may be amended, modified or supplemented from time to time except to the extent such non-compliance could not reasonably be expected to have a Material Adverse Effect. None of the operations of any Loan Party is the subject of any federal or state investigation evaluating whether any remedial action involving a material expenditure is needed to respond to a release of any toxic or hazardous waste or substance into the environment. No Loan Party has any material contingent liability in connection with any release of any toxic or hazardous waste or substance into the environment.

6.10 **Insurance.** The properties of each Loan Party and each of their Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Party or the applicable Subsidiary operates. The insurance coverage of the Loan Parties and their Subsidiaries as in effect on the Closing Date is outlined as to carrier, policy number, expiration date, type, amount and deductibles on Schedule 6.10 to the Disclosure Letter.

6.11 **Taxes.** Each Loan Party and each of their Subsidiaries have filed or caused to be filed (or have obtained appropriate extensions for filing of) all Federal and state income and other material tax returns and reports required to be filed, and have paid or caused to be paid all Federal and state income and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP and which could not reasonably be expected to result in any Lien upon the Collateral other than a Permitted Lien or (b) which individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. There is no proposed tax assessment against Borrower or any Subsidiary that would, if made, have a Material Adverse Effect. With respect to any contest referenced in clause (a) above, Borrower shall notify Administrative Agent in writing of the commencement of, and any material development in, the proceedings.

6.12 **ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination, advisory or opinion letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. Borrower and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could be reasonably be expected to have a Material Adverse Effect. Neither Borrower nor any ERISA Affiliate has engaged in any non-exempt prohibited transaction under Section 4975 of the Code or Section 406 of ERISA, or any violation of the fiduciary responsibility rules under Section 404 of ERISA with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability in excess of \$250,000; (iii) neither Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069(a) or 4212(c) of ERISA.

6.13 Subsidiaries; Equity Interests. As of the Closing Date, Borrower has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 6.13 to the Disclosure Letter, and (a) all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and nonassessable and (b) are owned by a Loan Party in the amounts specified on Part (a) of Schedule 6.13 to the Disclosure Letter free and clear of all Liens other than Liens permitted by Section 8.01. Borrower has no direct or indirect equity investments in any other Person other than those specifically disclosed in Part (b) of Schedule 6.13 to the Disclosure Letter. Part (a) of such Schedule further specifies or identifies (i) all 5% Subsidiaries as of the Closing Date and (ii) all Material Subsidiaries as of the Closing Date. All of the outstanding Equity Interests in each Loan Party have been validly issued and are fully paid and nonassessable. Borrower does not own any Equity Interests in any Person except for Permitted Investments.

6.14 Margin Regulations; Investment Company Act; OFAC; Patriot Act, Etc.

(a) Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of, and no part of the Credit Extensions will be used directly or indirectly for, purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) No Loan Party, or any Person Controlling Borrower, nor any Subsidiary or any Loan Party is, or is required to be registered as, an “investment company” under the Investment Company Act of 1940.

(c) No Loan Party, nor, to the knowledge of any Loan Party, any Related Party, (i) is currently the subject of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction, or (iii) is or has been (within the previous five (5) years) engaged in any transaction with any Person who is now or was then the subject of Sanctions or who is located,

organized or residing in any Designated Jurisdiction. No Loan, nor the proceeds from any Loan, has been used, directly or indirectly, to lend, contribute, provide or has otherwise made available to fund any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including any Lender, Administrative Agent or the L/C Issuer) of Sanctions.

(d) Borrower and its Subsidiaries are in compliance with (1) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (2) the Patriot Act. No part of the proceeds of any Credit Extension, will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

6.15 **Disclosure.** Each Loan Party has disclosed to Administrative Agent and Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

6.16 **Compliance with Laws.** Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act.

6.17 **Solvency.** Borrower and the other Loan Parties, taken as a whole, are Solvent.

6.18 **Labor Matters.** There are no collective bargaining agreements or Multiemployer Plans covering the employees of Borrower or any of its Domestic Subsidiaries or such other Subsidiaries located in the United States as of the Closing Date.

6.19 **Business Locations.** Set forth on Schedule 6.19(a) to the Disclosure Letter is a list of all real property located in the United States that is owned by the Loan Parties as of the Closing Date. Set forth on Schedule 6.19(b) to the Disclosure Letter is the tax payer identification number and organizational identification number of each Loan Party as of the Closing Date. The exact legal name and state of organization of each Loan Party is as set forth on the signature pages hereto. Except as set forth on Schedule 6.19(c) to the Disclosure Letter, no Loan Party has during the five years preceding the Closing Date (i) changed its legal name, (ii) changed its state of formation, or (iii) been party to a merger, consolidation or other change in structure.

6.20 **Intellectual Property; Licenses, Etc.**

(a) Each Loan Party and its Subsidiaries own, or possess the legal right to use, all of the IP Rights that are reasonably necessary for the operation of their respective businesses. Set forth on Part A of Schedule 6.20 to the Disclosure Letter is a list of all IP Rights registered or in respect of which an application for registration has been filed or recorded with the United States Copyright Office or the United States Patent and Trademark Office and owned by each Loan Party as of the Closing Date. Except for such claims and infringements that could not reasonably be expected to have a Material Adverse Effect, no claim has been asserted and is pending by any Person challenging or questioning the use of any IP Rights or the validity or enforceability of any IP Rights, alleging any violation of such Person's privacy rights, nor does any Loan Party know of any such claim, and, to the knowledge of the Loan Parties, the use of any IP Rights by any Loan Party or any of its Subsidiaries or the granting of a right or a license in respect of any IP Rights from any Loan Party or any of its Subsidiaries does not infringe, violate or misappropriate the rights of any Person. Except as set forth on Part A of Schedule 6.20 to the Disclosure Letter, none of the Material IP Rights owned by any of the Loan Parties or any of its Subsidiaries is subject to any licensing agreement or similar arrangement (other than nonexclusive licenses granted to customers and other relevant parties in the ordinary course of business).

6.21 **Rights in Collateral; Priority of Liens.** Borrower and each other Loan Party own or have rights in the property granted by it as Collateral under the Collateral Documents, free and clear of any and all Liens in favor of third parties except Liens permitted pursuant to Section 8.01. Upon the due and proper filing of UCC financing statements, and the taking of the other actions required by the Required Lenders to perfect the security interests in the Collateral, the Liens granted pursuant to the Collateral Documents will constitute valid and enforceable first, prior and perfected Liens on the Collateral, subject only to Permitted Liens, in favor of Administrative Agent, for the ratable benefit of Administrative Agent and Lenders. There is no agreement, indenture, contract or instrument to which Borrower or any other Loan Party is a party or by which any Loan Party may be bound that requires the subordination in right of payment of any of Borrower's or such Loan Party's obligations subject to this Agreement or any other Loan Document to any other obligation of Borrower or the other Loan Parties. Except as disclosed on Schedule 6.21 of the Disclosure Letter or as timely disclosed in writing to Administrative Agent pursuant hereto, no Loan Party is a party to, or is bound by, any Restricted Agreement.

ARTICLE VII

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan (together with any and all accrued interest fees or expenses hereunder shall remain unpaid or unsatisfied, any Letter of Credit or L/C Obligations shall remain outstanding or any Secured Obligations with respect to Cash Management Agreements remain outstanding as to which cash collateral or other arrangements with respect thereto satisfactory to the applicable Cash Management Bank, in its good faith business judgment, have not been made, Borrower and each Loan Party, as applicable shall, and shall (except in the case of the covenants set forth in Sections 7.01, 7.02, and 7.03) cause each Subsidiary to:

7.01 **Financial Statements**. Deliver to Administrative Agent and each Lender, in form and detail satisfactory to Administrative Agent and the Required Lenders:

(a) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of Borrower (or if earlier, 5 days after the date required to be filed with the SEC), a consolidated balance sheet of Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, retained earnings, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to Administrative Agent and the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and the applicable Securities Laws and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit and such consolidating statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of Borrower to the effect that such statement are fairly stated in all material respects;

(b) as soon as available, but in any event within forty five (45) days after the end of each of the first three fiscal quarters of each fiscal year of Borrower, a consolidated balance sheet of Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations, for such fiscal quarter and for the portion of Borrower's fiscal year then ended, and the related consolidated statements of changes in shareholders' equity, and cash flows for the portion of Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year end audit adjustments and the absence of footnotes and such consolidating statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of Borrower to the effect that such statement are fairly stated in all material respects.

7.02 **Certificates; Other Information.** Deliver to Administrative Agent and each Lender, in form and detail satisfactory to Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Sections 7.01(a) and (b), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of Borrower;

(b) promptly after any reasonable request by Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of Borrower by independent accountants in connection with the accounts or books of Borrower or any Subsidiary, or any audit of any of them;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of Borrower, and copies of all annual, regular, periodic and special reports and registration statements which Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to Administrative Agent pursuant hereto;

(d) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or any Subsidiary thereof pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 7.01 or any other clause of this Section 7.02;

(e) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(f) promptly upon any Responsible Officer of any Loan Party obtaining actual knowledge of (i) any litigation, action, suit, proceeding, claim or dispute pending, threatened (in writing) or contemplated, at law, in equity, in arbitration or before any Governmental Authority, arbitrator or administrative agency, by or against Borrower or any of its Subsidiaries or against any of their properties or revenues (A) that purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, (B) where the amount in controversy is greater than the Threshold Amount or (C) that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect, or (ii) any development in any of the foregoing matters could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to any Loan Party to enable Lenders and their counsel to evaluate such matters;

(g) prompt written notice of any change (i) in any Loan Party's legal name, (ii) in any Loan Party's identity or organizational structure, (iii) in any Loan Party's jurisdiction of organization or incorporation, or (iv) in any Loan Party's Federal Taxpayer Identification Number or state organizational identification number. Borrower agrees not to effect or permit any change referred to in the preceding sentence until it shall have given Administrative Agent not less than 10 Business Days' prior written notice, or such lesser notice period agreed to by Administrative Agent, of its intention so to do, clearly describing such change and providing such other information in connection therewith as Administrative Agent may reasonably request, in order for Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral as contemplated in the Collateral Documents;

(h) concurrently with the delivery of the financial statements referred to in Section 7.01(b) (but only with respect to the second fiscal quarter of any fiscal year), a certificate of a Responsible Officer of Borrower (i) listing (A) all applications by any Loan Party, if any, for Copyrights, Patents or Trademarks made since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date), (B) all issuances of registrations or letters on existing applications by any Loan Party for Copyrights, Patents and Trademarks received since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date), (C) all Trademark Licenses, Copyright Licenses and Patent Licenses entered into by any Loan Party since the date of the prior certificate (or, in the case of the first such certificate, the Closing Date) and (ii) attaching the insurance binder or other evidence of insurance for any insurance coverage of any Loan Party or any Subsidiary that was renewed, replaced or modified during the period covered by such financial statements;

(i) **[Reserved]**.

(j) promptly after entering into any Swap Contract with any Hedge Bank, notify Administrative Agent of the entrance into such Swap Contract and provide Administrative Agent with the identity of the Hedge Bank that is party to such Swap Contract and such other information regarding such Swap Contract as Administrative Agent shall reasonably require.

(k) promptly, such additional information regarding the business, financial or corporate affairs of Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to Section 7.01(a) or (b) or Section 7.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Borrower posts such documents, or provides a link thereto on Borrower's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on Borrower's behalf on an Internet or intranet website, if any, to which each Lender and Administrative Agent have access (whether a commercial, third-party website or whether sponsored by Administrative Agent); provided that (i) Borrower shall deliver paper copies of such documents to Administrative Agent or any Lender that requests Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by Administrative Agent or such Lender; and (ii) Borrower shall notify Administrative Agent and

each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Borrower hereby acknowledges that (a) Administrative Agent will make available to Lenders and the L/C Issuer materials and/or information provided by or on behalf of Borrower hereunder (collectively, "**Borrower Materials**") by posting Borrower Materials on a Platform and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to Borrower or its Affiliates or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," Borrower shall be deemed to have authorized Administrative Agent, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to Borrower or its securities for purposes of United States Federal and state securities laws provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform that is designated "Public Side Information;" and (z) Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information.

7.03 **Notices.**

(a) Promptly (and in any event, within three Business Days after knowledge thereof by a Responsible Officer of a Loan Party) notify Administrative Agent and each Lender of the occurrence of any Default;

(b) Promptly (and in any event more than five (5) Business Days after knowledge thereof by a Responsible Officer of a Loan Party) notify Administrative Agent and each Lender of:

(i) the occurrence of each such event or that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws;

(ii) the occurrence of any ERISA Event;

(iii) any termination or cancellation of any insurance policy which any Loan Party is required to maintain, or any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting any Loan Party's property;

(iv) any material change in accounting policies or financial reporting practices by Borrower or any Subsidiary including any determination by Borrower referred to in Section 2.10(b); or

(v) any material dispute arising between any Loan Party or any of their respective Subsidiaries and any government regulatory body or law enforcement body, other than any good faith dispute arising in the ordinary course of business between a Loan Party and any government regulatory body or law enforcement body that is a client of such Loan Party.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of Borrower setting forth details of the occurrence referred to therein and stating what action Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 7.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

7.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including: (a) all Federal and all other material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the applicable Loan Party or such Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property not permitted pursuant to Section 8.01; and (c) all material Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness. If Administrative Agent reasonably requests, Borrower shall furnish to Administrative Agent a receipt evidencing payment of such taxes or other amounts, or the tax returns or other reports filed with respect to such taxes or other amounts.

7.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except with respect to Subsidiaries of Borrower only (i) in a transaction permitted by Section 8.04 or 8.05 or (ii) to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Preserve, renew and maintain in full force and effect its good standing under the Laws of the jurisdiction of its organization and each other jurisdiction where required by applicable Law, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(c) Take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(d) Preserve or renew all of its registered IP Rights or IP Rights in respect of which an application for registration has been filed or recorded with the United States Copyright Office or the United States Patent and Trademark Office, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

(e) Use commercially reasonable efforts to: (i) protect, defend and maintain the validity and enforceability of all IP Rights except where Borrower, in the exercise of its reasonable business judgment, deems it in its best interest not to do so; (ii) promptly advise Administrative Agent in writing of infringements of its Material IP Rights; and (iii) not allow any Material IP Rights to be abandoned, forfeited or dedicated to the public without Administrative Agent's and the Required Lenders' written consent.

7.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; (c) use the standard of care typical in the industry in the operation and maintenance of its facilities; and (d) maintain such Loan Party's primary operating and other deposit accounts and securities accounts with Cash Management Banks, and use Cash Management Banks for such Loan Party's primary cash management requirements. Borrower shall provide Administrative Agent not less than ten (10) days' prior written notice (or prompt notice following the closing of any Acquisition of any Material Subsidiary that is permitted pursuant to Section 8.02) before Borrower or any other Loan Party establishes any deposit account, securities account, investment account, commodities account or similar account at or with any bank or financial institution other than Administrative Agent or Administrative Agent's Affiliates. For each such account that any Loan Party at any time maintains, Borrower shall cause the applicable bank or financial institution at or with which any such account is maintained to execute and deliver a control agreement with respect to such account to perfect Administrative Agent's Lien in such account and all funds and other property deposited therein or credited thereto and to provide Administrative Agent with "control" (within the meaning of the UCC) over such account, which account control agreement shall be in form and substance satisfactory to Administrative Agent in its sole discretion and may not be terminated without the prior written consent of Administrative Agent. The provisions of this Section 7.06 shall not apply to (i) deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's or any Loan Party's employees and identified to Administrative Agent by Borrower or such Loan Party as such and (ii) Client Trust Accounts. Notwithstanding anything in this Agreement, in connection with the Acquisition of any Material Subsidiary that is permitted pursuant to Section 8.02, Borrower shall have sixty (60) days from the date of closing of such acquisition to provide Administrative Agent, for the benefit of the Lenders, with "control" (within the meaning of the UCC) over any deposit accounts, securities accounts or investment accounts maintained by such Material Subsidiary.

7.07 **Maintenance of Insurance.** Maintain with financially sound and reputable insurance companies that are not Affiliates of Borrower and are acceptable to Administrative Agent, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are acceptable to Administrative Agent and are customarily carried under similar circumstances by such other Persons. Borrower shall deliver to Administrative Agent endorsements to all of the following: (a) "All Risk" and business interruption insurance policies of Borrower naming Administrative Agent, for the benefit of Administrative Agent and Lenders, as a loss payee, as its interests may appear, and (b) general liability and other liability policies of Borrower naming Administrative Agent, for the benefit of Administrative Agent and Lenders, as an additional insured. All policies of insurance on personal property will include an endorsement, in form and substance acceptable to Administrative Agent, showing loss payable to Administrative Agent as its interests may appear, for the benefit of Administrative Agent and Lenders (Form 438 BFU or other form acceptable to Administrative Agent) and such other endorsements as Administrative Agent shall reasonably request. Such endorsement, or an independent instrument furnished to Administrative Agent, will provide that the insurer will give at least 30 days' prior written notice to Administrative Agent before any such policy or policies of insurance shall be altered or canceled (or, if such cancellation relates to a liability insurance policy and is due to non-payment of premium, at least 10 days' (or such greater time as Administrative Agent may agree in writing) notice) and that no act or default of Borrower or any other Person shall affect the right of Administrative Agent, on behalf of Administrative Agent and Lenders, to recover under such policy or policies of insurance in case of loss or damage. So long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty, in an aggregate amount not to exceed the Threshold Amount in the aggregate in any period of twelve (12) consecutive months, toward the replacement or repair of destroyed or damaged property or the purchase of other property useful in the business of Borrower; provided that any such replaced or repaired property or other property useful to Borrower's business, to the extent replacing Collateral, shall be deemed Collateral in which Bank has been granted a first priority security interest subject to Permitted Liens, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of the Administrative Agent, be applied to the Obligations to the extent such proceeds constitute Collateral. Administrative Agent reserves the right at any time, upon review of Borrower's risk profile, to require additional forms and limits of insurance to adequately protect Administrative Agent's interests in accordance with Administrative Agent's normal practices for similarly situated borrowers.

7.08 **Subordination.** All Indebtedness of Borrower and the other Loan Parties to Borrower's stockholders and Affiliates shall be and remain subordinated in right of payment at all times to the Secured Obligations, and any and all Liens in property of Borrower or any other Loan Party held by any such stockholder or Affiliate shall be subordinated to the Liens of Bank, in each case, as evidenced by and subject to the terms of subordination agreements in form and substance satisfactory to Administrative Agent and the Required Lenders.

7.09 **Compliance with Laws.** Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction

or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

7.10 **Books and Records.** (a) Maintain proper books of record and account, in which true and correct and complete entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of Borrower or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over Borrower or such Subsidiary, as the case may be. Borrower shall maintain at all times books and records pertaining to the Collateral in such detail, form and scope as Administrative Agent or any Lender shall reasonably require.

7.11 **Inspection Rights.** Permit representatives and independent contractors of Administrative Agent and each Lender to visit, audit and inspect any of the properties of any Loan Party, to examine the corporate, financial and operating records of any Loan Party, and make copies thereof or abstracts therefrom, and to discuss the affairs, finances and accounts of any Loan Party with such Loan Party's directors, officers, and independent public accountants, all at the expense of Borrower and at such reasonable times during normal business hours and as often as may be reasonably requested, upon reasonable advance notice to Borrower; provided, however, that (i) absent an Event of Default, Borrower shall only be required to permit and pay for one such visit and/or inspection per fiscal year and (ii) when an Event of Default exists Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of Borrower at any time during normal business hours and without advance notice.

7.12 **Use of Proceeds.** Use the proceeds of the Loans shall only be used for Acquisitions permitted hereunder and the Credit Extensions shall otherwise only be used for general corporate purposes not in contravention of any Law or of any Loan Document. In no event shall Borrower use any proceeds of the Credit Extensions for personal, family, household or agricultural purposes.

7.13 **Financial Covenants.**

(a) **Liquidity Ratio.** Maintain at all times a Liquidity Ratio that is not less than 1.00 to 1.00.

(b) **Indebtedness to EBITDA Ratio.** Maintain, on a consolidated basis, a ratio of (i) Indebtedness (including without limitation all obligations in respect of letters of credit, all Earn-Out Obligations and all other deferred Acquisition-related obligations and liabilities that constitute consideration for such Acquisition), to (ii) EBITDA for the four quarter period then ended, that is at all times less than or equal to 3.00 to 1.00. This ratio will be calculated at the end of each reporting period for which this Agreement requires Borrower to deliver financial statements (but no less frequently that quarterly), using the results of the twelve month (or four fiscal quarter) period ending with that reporting period.

(c) **Debt Service Coverage Ratio.** Maintain, on a consolidated basis, a Debt Service Coverage Ratio, that is: (i) at all times through and including September 30, 2014 not less than 1.25 to 1.00, and (ii) at all times thereafter, not less than 1.50 to 1.00. This ratio will be calculated at the end of each reporting period for which this Agreement requires Borrower to deliver financial statements (but no less frequently than quarterly), using the results of the twelve month (or four fiscal quarter) period ending with that reporting period.

(d) **Minimum Consolidated Net Worth.** Maintain at all times a minimum Consolidated Net Worth of not less than the sum of (i) \$105,000,000, **plus** (ii) seventy-five percent (75%) of Consolidated Net Income (Loss) for each fiscal quarter ending on or after the Closing Date (provided that the amount of this clause (ii) shall not in any event be less than \$0.00), **plus** (iii) one hundred percent (100%) of the Net Cash Proceeds from any Equity Issuance (excluding any Net Cash Proceeds from the exercise of any employee stock options or the exercise of any warrants) after the Closing Date.

7.14 **Additional Guarantors.** The payment and performance of all Secured Obligations are and shall be guaranteed, jointly and severally, by each current and future Material Subsidiary of Borrower pursuant to a Guaranty duly executed by each Guarantor in form and amount acceptable to Administrative Agent, which Guaranty shall be secured by unconditional, continuing pledges and Liens in and to all of the assets and properties of each such Material Subsidiary, as evidenced by and subject to the terms of guaranties, deeds, debentures, and security agreements in form and substance reasonably satisfactory to Administrative Agent. On each Material Subsidiary Assessment Date, Borrower shall determine whether there exists any new or additional Material Subsidiaries (whether as a result of a Person becoming a Material Subsidiary or being designated as a Material Subsidiary for purposes of satisfying the 95% Threshold Test), and if any new Material Subsidiary exists, Borrower and such new Subsidiary shall: (a) promptly notify Administrative Agent of the creation, acquisition or designation of such new Material Subsidiary, (b) take all such action as may be reasonably required by Administrative Agent to cause such Subsidiary to Guarantee the Secured Obligations and grant such first-priority pledges and security interests to Administrative Agent for the benefit of the Secured Parties, as Administrative Agent or the Required Lenders may require (including executing and delivering to Administrative Agent a counterpart of the Guaranty or such other document as Administrative Agent shall deem appropriate for such purpose), (c) grant and pledge to Administrative Agent for the benefit of the Secured Parties, a first-priority security interest in the Equity Interests of, and any Indebtedness owing from, such Subsidiary, and (d) deliver to Administrative Agent documents of the types referred to in clauses (iii) and (iv) of Section 5.01(a) and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clauses (b), (c) and (d) above), all in form, content and scope reasonably satisfactory to Administrative Agent. Notwithstanding anything to the contrary herein, Borrower shall at all times cause such of its Subsidiaries necessary to meet the 95% Threshold to be Guarantors and to execute and deliver the documents, instruments and agreements noted above, provided, however, that the 95% Threshold shall only be tested on each Material Subsidiary Assessment Date.

7.15 **Collateral Records.** To execute and deliver promptly, and to cause each other Loan Party to execute and deliver promptly, to Administrative Agent, from time to time, solely

for Administrative Agent's convenience in maintaining a record of the Collateral, such written statements and schedules as Administrative Agent may reasonably request designating, identifying or describing the Collateral. The failure by Borrower or any other Loan Party, however, to promptly give Administrative Agent such statements or schedules shall not affect, diminish, modify or otherwise limit the Liens on the Collateral granted pursuant to the Collateral Documents.

7.16 **Security Interests.** To, and to cause each other Loan Party to, (a) defend the Collateral against all claims and demands of all Persons at any time claiming the same or any interest therein, (b) comply with the requirements of all state and federal laws in order to grant to Administrative Agent and Lenders valid and perfected first priority security interests in the Collateral, and (c) do whatever Administrative Agent may reasonably request, from time to time, to effect the purposes of this Agreement and the other Loan Documents, including filing notices of liens, UCC financing statements, fixture filings and amendments, renewals and continuations thereof; cooperating with Administrative Agent's representatives; keeping stock records; obtaining waivers from landlords and mortgagees and from warehousemen and their landlords and mortgages; and, paying claims which might, if unpaid, become a Lien on the Collateral. Administrative Agent is hereby authorized by Borrower to file any UCC financing statements covering the Collateral whether or not Borrower's signatures appear thereon.

7.17 **Restricted Agreements.** Prior to entering into or becoming bound by any Restricted Agreement: (i) provide written notice to Administrative Agent of the material terms of such license or agreement with a description of its likely impact on Borrower's or its Subsidiaries' business and financial condition; and (ii) will obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for each Loan Party's interest in such Restricted Agreement and the rights and benefits thereunder to be deemed Collateral and for Administrative Agent, for the benefit of the Secured Parties, to have a first-priority security interest in such Restricted Agreement and the rights and benefits thereunder, and to have the power to exercise rights thereunder and to assign such Restricted Agreement and rights in connection with an enforcement of remedies under the Loan Documents, that might otherwise be restricted by the terms of the applicable license or agreement, whether now existing or entered into in the future.

7.18 **Access Agreements.** Use commercially reasonable efforts to deliver to Administrative Agent, in each case in form and substance satisfactory to Administrative Agent, with respect to each real property designated by Administrative Agent to Borrower, access agreements from the landlords on such real property together with such other documents as may be required by Administrative Agent in connection therewith, as more specifically provided in the Security Agreement.

7.19 **Reserved.**

7.20 **Further Assurances.** Promptly upon request, from time to time, by Administrative Agent, or any Lender through Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, financing

statements and continuations thereof, termination statements, certificates, assurances and other instruments as Administrative Agent, or any Lender through Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of this Agreement and any other Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

ARTICLE VIII

NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan (together with any and all accrued interest, fees or expenses) hereunder shall remain unpaid or unsatisfied, any Letter of Credit or L/C Obligations shall remain outstanding or any Secured Obligations with respect to Cash Management Agreements remain outstanding as to which cash collateral or other arrangements with respect thereto satisfactory to the applicable Cash Management Bank, in its good faith business judgment, have not been made, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

8.01 **Liens**. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, or upon the income or profits thereof, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, provided that (i) adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, (ii) the Lien shall not be senior to Administrative Agent's security interests in the Collateral and (iii) a stay of enforcement of any such Lien shall be in effect;

(c) reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases or other similar title exceptions affecting real property which do not in the aggregate materially detract from the value of the real property or materially interfere with their use in the ordinary course of the business of Borrower or its Subsidiaries;

(d) Liens existing on the date hereof and listed on Schedule 8.01 of the Disclosure Letter and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 8.03(b), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 8.03(b);

(e) Liens against security deposits under leases entered into in the ordinary course of business;

(f) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation applicable to Borrower and its Subsidiaries, other than any Lien imposed by ERISA;

(g) Liens relating to statutory obligations of Borrower with respect to surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) other Liens securing indebtedness which does not exceed in the aggregate the Threshold Amount at any one time;

(i) Liens on equipment securing Indebtedness permitted under clause (c) of Section 8.03 granted in connection with the acquisition of such equipment by Borrower after the date hereof (including, without limitation, pursuant to Capital Leases); provided, however, that (i) each such Lien shall attach only to the equipment acquired with the Indebtedness secured thereby, and the proceeds and products thereof, and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(j) Liens which constitute rights of setoff of a customary nature or Liens with respect to deposit or investment accounts provided that such liens only secure customary fees associated with such accounts;

(k) leases or subleases of property granted in the ordinary course of business, and leases, subleases, non-exclusive licenses or sublicenses of property granted in the ordinary course of business;

(l) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default, which is currently being contested in good faith by appropriate proceedings, provided that, adequate reserves have been set aside (to the extent required by GAAP) and no material property is subject to a material impending risk of loss or forfeiture;

(m) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person; and

(n) until such time as PBS becomes a 5% Subsidiary, the security interest granted by PBS to Revere Corporate Center, L.L.C., a Colorado limited liability company ("**Revere**") pursuant to Section 30 of that certain Office Lease, dated as of May 3, 2006 by and between PBS and Revere, in the form provided to Administrative Agent prior to the Closing

Date; provided, however, upon PBS becoming a 5% Subsidiary, such security interest shall be terminated and released to the satisfaction of Administrative Agent, and shall no longer qualify as a Permitted Lien hereunder.

8.02 **Investments**. Make any Investments, except Permitted Investments.

8.03 **Indebtedness**. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 8.03 to the Disclosure Letter and any refinancings, refundings, renewals or extensions thereof; provided that (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and (ii) the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate;

(c) provided that no Event of Default exists at the time such indebtedness is incurred or assumed or would result therefrom, Indebtedness in an aggregate outstanding amount not to exceed, at any time, the Threshold Amount, incurred to finance the acquisition of equipment, including Capital Leases, or Indebtedness assumed in connection with the acquisition of any such equipment or secured by a Lien on any such equipment prior to the acquisition thereof, and any extension, renewal or replacement of any such Indebtedness that does not increase the outstanding principal amount thereof;

(d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business and Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(e) Indebtedness (i) owed by a Loan Party to another Loan Party, (ii) owed by a Subsidiary (other than a Loan Party) to any Loan Party (not in excess of \$200,000 in the aggregate outstanding at any time), (iii) owed by a Loan Party to any Subsidiary (other than another Loan Party) (not in excess of \$200,000 in the aggregate outstanding at any time); and (iv) owed by a Subsidiary (other than a Loan Party) to another Subsidiary that is not a Loan Party;

(f) Indebtedness owed by any Subsidiary to Borrower or a Guarantor in connection with current operating expenses incurred in the ordinary course of the businesses currently engaged in by Borrower or reasonably related thereto and not for extraordinary items or speculative purposes; and

(g) obligations (contingent or otherwise) of Borrower or any Subsidiary existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a “market view”; and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(h) Indebtedness corresponding to Investments permitted by Section 8.02;

(i) Earn-Out Obligations with respect to Permitted Acquisitions; and

(j) other Indebtedness not otherwise permitted above not exceeding \$500,000 in the aggregate outstanding at any time.

8.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) Borrower, provided that Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Wholly Owned Subsidiary is merging with another Subsidiary, the Wholly Owned Subsidiary shall be the continuing or surviving Person, and, provided further that if a Guarantor is merging with another Subsidiary, the Guarantor shall be the surviving Person;

(b) Borrower and Subsidiaries of Borrower may merge or consolidate with any Person as necessary to consummate Acquisitions permitted hereunder; provided that if Borrower is party to transaction, Borrower shall be the surviving Person;

(c) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to Borrower or to another Subsidiary; provided that if the transferor in such a transaction is a Wholly Owned Subsidiary, then the transferee must either be Borrower or a Wholly Owned Subsidiary, and, provided further that if the transferor of such assets is a Guarantor, the transferee must either be Borrower or a Guarantor.

8.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except the following (each a “ **Permitted Disposition** ”):

(a) Dispositions of inventory in the ordinary course of business;

(b) Dispositions consisting of licenses for the use of the IP Rights of Borrower and its Subsidiaries in the ordinary course of business that are either non-exclusive or that may be exclusive in one or more respects as to a particular field of use, geographic area or limited period of time that do not result in a legal transfer of title to or all substantial rights in the licensed property under applicable Law;

(c) Dispositions of obsolete, unneeded or worn out property which such Person determines in good faith are no longer useful in the business of such Person, whether now owned or hereafter acquired, in the ordinary course of business to non-Affiliated third parties with a value not to exceed the Threshold Amount in any calendar year;

(d) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly (and in any event within 180 days) applied to the purchase price of such replacement property;

(e) Dispositions of property by any Subsidiary to Borrower or to a Wholly Owned Subsidiary; provided that if the transferor of such property is a Guarantor, the transferee thereof must either be Borrower or a Guarantor; and

(f) Dispositions otherwise permitted by Article VIII, including, Sections 8.01, 8.02, 8.04, 8.06, and 8.08.

provided, however, that any Disposition pursuant to clauses (a) through (f) shall be for fair market value.

8.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment or incur any obligation (contingent or otherwise) to do so; issue or sell any Disqualified Stock; or permit to exist, whether under its Organizational Documents or otherwise, any right (contingent or otherwise) of any stockholder of Borrower to demand or compel Borrower to repurchase or redeem any Equity Interests of Borrower, or to make any dividend or other distribution on account of, or any payment with respect to, any Equity Interests of Borrower; provided, however, so long as no Default or Event of Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) Borrower may repurchase Equity Interests issued by Borrower from former employees, officers, directors, and consultants pursuant to Borrower's customary, board-approved, equity compensation plans and stock repurchase agreements, in an aggregate amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) in any fiscal year;

(b) each Subsidiary may make Restricted Payments to Borrower, Guarantors and any other Subsidiary of Borrower that owns an Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(c) Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in Qualified Stock of such Person; and

(d) Borrower may convert any of its convertible securities into Qualified Stock pursuant to the terms of such convertible securities or otherwise in exchange thereof and make payments in cash for any fractional shares upon such conversion.

8.07 **Change in Nature of Business**. Engage in any material line of business substantially different from those lines of business conducted by Borrower and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

8.08 **Transactions with Affiliates**. Enter into any transaction of any kind with any Affiliate of Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to Borrower or such Subsidiary as would be obtainable by Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, provided that the foregoing restriction shall not apply to: (a) transactions between or among Borrower and any Guarantor or between and among Guarantors; or (b) Permitted Investments in Subsidiaries.

8.09 **No Further Negative Pledge**. Except with respect to (a) specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to an asset sale, (b) enforceable provisions in leases prohibiting assignment or encumbrance of the applicable leasehold interest, (c) agreements granting Liens permitted by this Agreement, (d) agreements in effect on the Closing Date, (e) provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business and not otherwise prohibited under this Agreement, (f) any agreement in effect at the time the Person becomes a Subsidiary so long as such agreement was not entered into in contemplation of the Person becoming a Subsidiary, (g) customary provisions restricting assignment of any agreement entered into in the ordinary course of business, and (h) any agreement amending, refinancing or replacing any of the foregoing (so long as any such restrictions are not materially more restrictive, taken as a whole, than those contained in the agreement so amended, refinanced or replaced), neither Borrower nor any of its Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, to secure the Obligations.

8.10 **Use of Proceeds**. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

8.11 **Amendment or Modification of Organization Documents**. Amend, modify or change in any manner any term or provision of any Loan Party's Organization Documents in any manner that would reasonably be expected to be adverse to the interests of any Secured Party.

8.12 **Accounting Changes**. Make any change in accounting policies or reporting practices, except as required by GAAP or as may be required by applicable Law or, in the case of any change to fiscal quarter or fiscal year end date methodology after the Closing Date, without prompt notice thereof to Administrative Agent.

8.13 **Compliance**. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940 or undertake as one of its or their important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the FRB), or use the proceeds of any Credit Extension for that purpose; fail to

meet the minimum funding requirements of ERISA, permit a Reportable Event or prohibited transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Effect; withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present Pension Plan which could reasonably be expected to result in any liability of Borrower or any Subsidiary, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

8.14 **Ownership of Subsidiaries.** Notwithstanding any other provisions of this Agreement to the contrary, (i) permit any Person (other than any Loan Party or any Wholly Owned Subsidiary of Borrower) to own any Equity Interests of any Subsidiary of any Loan Party, except to qualify directors where required by applicable law or to satisfy other requirements of applicable law with respect to the ownership of Equity Interests of Foreign Subsidiaries, or (ii) permit any Loan Party or any Subsidiary of any Loan Party to issue or have outstanding any shares of preferred Equity Interests.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

9.01 **Events of Default.** Any of the following shall constitute an Event of Default:

(a) **Non-Payment.** Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of, or any interest on, any Loan or any L/C Obligation, or (ii) within three (3) days after the same becomes due, any fee due hereunder, or (iii) within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants.** Borrower fails to perform or observe any term, covenant or agreement contained in any of Sections 7.01 (Financial Statements), 7.02 (Certificates; Other Information), 7.03 (Notices), 7.04 (Payment of Obligations), 7.07 (Maintenance of Insurance), 7.10 (Books and Records), 7.11 (Inspection Rights), 7.12 (Use of Proceeds), 7.13 (Financial Covenants), 7.14 (Additional Guarantors), 7.16 (Security Interests), 7.20 (Further Assurances) or Article VIII, or any Guarantor fails to perform or observe any term, covenant or agreement contained in the Guaranty; or

(c) **Other Defaults.** Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and, with respect to any such default which by its nature can be cured, such failure continues uncured for ten (10) days from its occurrence, or any default or Event of Default occurs under any other Loan Document; or

(d) **Representations and Warranties.** Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or

deemed made (except, if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation, warranty, certification or statement of fact was incorrect or misleading in any respect when made or deemed made); or

(e) **Cross-Default.** (i) Borrower, any Loan Party or any 5% Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee, having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which Borrower, any Loan Party or any 5% Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which Borrower, any Loan Party or any Significant Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by Borrower, any such Loan Party or any such 5% Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) **Insolvency Proceedings, Etc.** Any Loan Party or any of its 5% Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for forty-five (45) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for forty-five (45) calendar days, or an order for relief is entered in any such proceeding; or

(g) **Inability to Pay Debts; Attachment.** (i) Borrower or any other Loan Party or any 5% Subsidiary ceases to be Solvent or otherwise becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded

within thirty (30) days after its issue or levy; or (iii) any one or more Loan Parties or their respective Subsidiaries are enjoined, restrained or prevented by any Governmental Authority from conducting any material part of the business of the Loan Parties and their Subsidiaries, taken as a whole; or (iv) there is a cessation of any material part of the business of the Loan Parties and their respective Subsidiaries, taken as a whole, for a material period of time; or

(h) **Judgments.** There is entered against Borrower, any other Loan Party or any 5% Subsidiary (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of ten (10) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) **ERISA.** (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$500,000, or (ii) Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$500,000; or

(j) **Invalidity of Loan Documents.** Any Loan Document or any provision thereof, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or the satisfaction in full of all the Obligations (other than contingent indemnification obligations that survive the termination of this Agreement and obligations arising under Cash Management Agreements that survive the termination of this Agreement) and the occurrence of the Facility Termination Date, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document or any provision thereof; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document or any provision thereof; or

(k) **Change of Control.** There occurs any Change of Control with respect to Borrower or Borrower ceases to own and control 100% of the Equity Interests of each Subsidiary (except for transactions resulting in a Subsidiary ceasing to exist as expressly permitted under [Section 8.04](#)); or

(l) **Lien Priority.** Any Lien purported to be created under any Collateral Document shall cease to be, or shall be asserted by any Loan Party or any other Person not to be, a valid and perfected Lien on any Collateral, with the priority required by this Agreement, except as a result of the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents.

9.02 **Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Borrower;

(c) require that Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of Administrative Agent or any Lender.

9.03 **Application of Funds.** After the exercise of remedies provided for in Section 9.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 9.02), any amounts received on account of the Secured Obligations shall, subject to the provisions of Sections 2.15 and 2.16, be applied by Administrative Agent in the following order:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to Administrative Agent (including fees and time charges for attorneys who may be employees of Administrative Agent) and amounts payable under Article III) payable to Administrative Agent in its capacity as such;

Second, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts (other than principal, interest and L/C Fees) payable to Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer arising under the Loan Documents (including fees and time charges for attorneys who may be employees of any Lender or the L/C Issuer) and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid L/C Fees and interest on the Loans, L/C Borrowings and other Secured Obligations arising under the Loan Documents, ratably among Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, L/C Borrowings and Secured Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by Borrower pursuant to Sections 2.03 and 2.15; and

Last, the balance, if any, after all of the Secured Obligations (other than indemnities and other similar contingent obligations surviving the termination of this Agreement for which no claim has been made and which are unknown and not calculable at the time of termination) have been indefeasibly paid in full, to Borrower or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.15, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Secured Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of Administrative Agent pursuant to the terms of Article X for itself and its Affiliates as if a "Lender" party hereto.

ARTICLE X

AGENCY

10.01 **Appointment and Authorization of Administrative Agent**. (a) Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and the L/C Issuer hereby irrevocably appoint Union Bank, N.A. to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof and thereof, together with such actions

and powers as are reasonably incidental thereto. The provisions of this Article X are solely for the benefit of Administrative Agent, the Lenders and the L/C Issuer, and neither Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

(b) Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoint and authorizes Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by Administrative Agent pursuant to Section 10.05 or otherwise for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of Administrative Agent), shall be entitled to the benefits of all provisions of this Article X and Article XI (including Section 11.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents as if set forth in full herein with respect thereto.

(c) The duties of Administrative Agent shall be ministerial and administrative in nature and Administrative Agent shall not have, or be deemed to have, by reason of this Agreement, any other Loan Document, or otherwise a fiduciary relationship in respect of any Lender or the L/C Issuer. In performing its functions and duties under this Agreement and the other Loan Documents, Administrative Agent shall act solely as an agent of Lenders and the L/C Issuer and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for Borrower or any other Person. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(d) For the avoidance of doubt, Union Bank hereby acknowledges and agrees that, with respect to the UCC financing statement filed with the Delaware Department of State on September 21, 2010, numbered 20103282831, naming Borrower as debtor and Union Bank as secured party, as amended, and the UCC financing statement filed with the Delaware Department of State on September 21, 2010, numbered 20103282724, naming MHM Resources, LLC, as debtor and Union Bank as secured party, as amended, each previously filed by Union Bank, such UCC financing statements, and any and all recordings with the United States Patent and Trademark Office and/or United States Copyright Office, are maintained by Union Bank in its capacity as Administrative Agent for the perfection of the Liens granted to Administrative Agent, for the benefit of itself and the Lenders, under this Agreement and the Collateral Documents.

(e) Each Lender agrees that it shall not have any right individually to realize upon the Collateral granted to Administrative Agent or directly to the Lenders pursuant to any

Loan Document, it being understood and agreed that such rights and remedies may be exercised by Administrative Agent for the benefit of the Lenders upon the terms thereof. Notwithstanding anything to the contrary herein or in any other Loan Document, Administrative Agent is hereby irrevocably authorized by each Lender to release any Lien in any Collateral if such release is consented to in accordance with Section 11.01.

(f) Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Administrative Agent, Administrative Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (i) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, the collections of funds from Borrower and its Subsidiaries, and related matters, (ii) 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, (iii) make Loans, for itself or on behalf of Lenders as provided in the Loan Documents, (iv) exclusively receive, apply, and distribute the funds received from Borrower and any of its Subsidiaries as provided in the Loan Documents, (v) open and maintain such bank accounts and cash management accounts as Administrative Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and collection of funds from Borrower and its Subsidiaries, (v) perform, exercise, and enforce any and all other rights and remedies of each Lender with respect to the Loan Parties, the Obligations, the Collateral, the collection of funds from Borrower and its Subsidiaries, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay any expenses as Administrative Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

10.02 **Rights as a Lender.** The Person serving as Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if such Person were not Administrative Agent hereunder and without any duty to account therefor to Lenders.

10.03 **Exculpatory Provisions.** Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that Administrative Agent is required to exercise as directed in

writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Administrative Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity.

(d) Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.02 and 11.01) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice describing such Default is given to Administrative Agent by Borrower, a Lender or the L/C Issuer.

(e) Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document (v) the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (vi) the value, safekeeping or the sufficiency of any Collateral, or (vii) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.

10.04 **Reliance by Administrative Agent.** Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of

such Letter of Credit. Administrative Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.05 **Delegation of Duties.** Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by Administrative Agent. Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

10.06 **Resignation or Removal of Administrative Agent.**

(a) Administrative Agent may at any time give notice of its resignation to Lenders, the L/C Issuer and Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with Borrower if no Event of Default has occurred and is continuing, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “ **Resignation Effective Date**”), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor agent has been appointed, such resignation shall nonetheless become effective on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to Borrower and such Person remove such Person as Administrative Agent and, in consultation with Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “ **Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring or removed Administrative Agent shall

continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) or removed Administrative Agent (other than as provided in Section 3.01(g)) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above). The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(d) Any resignation by Union Bank, N.A. as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer. If Union Bank resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). Upon the appointment by Borrower of a successor L/C Issuer hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (b) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

10.07 Non-Reliance on Administrative Agent and Other Lenders . Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

10.08 **No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the bookrunners, arrangers, syndication agents, documentation agents, co-agents or other Persons holding a title listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as Administrative Agent, a Lender or the L/C Issuer hereunder.

10.09 **Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be entitled and empowered (but not obligated), by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Secured Obligations (other than obligations under Swap Contracts or Treasury Management Agreements to which Administrative Agent is not a party) that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders, the L/C Issuer and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders, the L/C Issuer and Administrative Agent and their respective agents and counsel and all other amounts due Lenders, the L/C Issuer and Administrative Agent under Sections 2.03(i) and (j), 2.09 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders and the L/C Issuer, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.09 and 11.04.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Secured Obligations or the rights of any Lender or L/C Issuer to authorize Administrative Agent to vote in respect of the claim of any Lender or L/C Issuer in any such proceeding.

The Loan Parties and the Secured Parties hereby irrevocably authorize Administrative Agent, based upon the instruction of the Required Lenders, to credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Section 363 of the Bankruptcy Code of the United States or any

similar Laws in any other jurisdictions to which a Loan Party is subject, or credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by (or with the consent or at the direction of) Administrative Agent (whether by judicial action or otherwise) in accordance with applicable Law. In connection with any such credit bid and purchase, the Secured Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Secured Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of Administrative Agent to credit bid and purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of Administrative Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Secured Parties whose Secured Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Secured Obligations credit bid in relation to the aggregate amount of Secured Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase). Except as provided above and otherwise expressly provided for herein or in the other Collateral Documents, Administrative Agent will not execute and deliver a release of any Lien on any Collateral. Upon request by Administrative Agent or Borrower at any time, the Secured Parties will confirm in writing Administrative Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 10.09.

10.10 **Guaranty Matters.** Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and L/C Issuer hereby irrevocably authorize Administrative Agent, at its option and in its discretion, to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder. Upon request by Administrative Agent at any time, each Lender and L/C Issuer will confirm in writing Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this Section 10.10.

10.11 **Collateral Matters.**

(a) Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and L/C Issuer hereby irrevocably authorizes and directs Administrative Agent to enter into the Collateral Documents for the benefit of such Lender and the L/C Issuer. Each Lender and the L/C Issuer hereby agrees, and each holder of any Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth in Section 11.01, any action taken by the Required Lenders, in accordance with the provisions of this Agreement or the Collateral Documents, and the exercise by the Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of Lenders and the L/C Issuer. Administrative Agent is hereby authorized (but not obligated) on behalf of all of Lenders and the L/C Issuer, without the necessity of any notice to or further consent from any Lender or the L/C Issuer from time to time prior to, an Event of Default, to take any action with respect to any Collateral or Collateral Documents which may be necessary to perfect and maintain perfected the Liens upon the Collateral granted pursuant to the Collateral Documents.

(b) Each Lender and the L/C issuer hereby irrevocably authorize Administrative Agent, at its option and in its discretion,

(i) to release any Lien on any property granted to or held by Administrative Agent under any Loan Document (A) upon the occurrence of the Facility Termination Date, (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any transfer permitted hereunder or under any other Loan Document, (C) subject to Section 11.01, if approved, authorized or ratified in writing by the Required Lenders, (D) in connection with any foreclosure sale or other disposition of Collateral after the occurrence of an Event of Default; or (E) as required under the Security Agreement; and

(ii) to subordinate any Lien on any property granted to or held by Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by this Agreement or any other Loan Document.

Upon request by Administrative Agent at any time, each Lender and the L/C Issuer will confirm in writing Administrative Agent's authority to release or subordinate its interest in particular types or items of Collateral pursuant to this Section 10.11.

(c) Subject to (b) above, Administrative Agent shall (and is hereby irrevocably authorized by each Lender and the L/C Issuer), to execute such documents as may be necessary to evidence the release or subordination of the Liens granted to Administrative Agent for the benefit of Administrative Agent and Lenders and the L/C Issuer herein or pursuant hereto upon the applicable Collateral; provided that (i) Administrative Agent shall not be required to execute any such document on terms which, in Administrative Agent's opinion, would expose Administrative Agent to or create any liability or entail any consequence other than the release or subordination of such Liens without recourse or warranty and (ii) such release or subordination shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of Borrower or any other Loan Party in respect of) all interests retained by Borrower or any other Loan Party, including the proceeds of the sale, all of which shall continue to constitute part of the Collateral. In the event of any sale or transfer of Collateral, or any foreclosure with respect to any of the Collateral, Administrative Agent shall be authorized to deduct all expenses reasonably incurred by Administrative Agent from the proceeds of any such sale, transfer or foreclosure.

(d) Administrative Agent shall have no obligation whatsoever to any Lender, the L/C Issuer or any other Person to assure that the Collateral exists or is owned by Borrower or any other Loan Party or is cared for, protected or insured or that the Liens granted to Administrative Agent herein or in any of the Collateral Documents or pursuant hereto or thereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to Administrative Agent in this Section 10.11 or in any of the Collateral Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, Administrative Agent may act in any manner it may deem appropriate, in its sole discretion, given Administrative Agent's own interest in the Collateral as one of Lenders and that Administrative Agent shall have no duty or liability whatsoever to Lenders or the L/C Issuer.

(e) Each Lender and the L/C Issuer hereby appoints each other Lender as agent for the purpose of perfecting Lenders' and the L/C Issuer's security interest in assets which, in accordance with Article 9 of the UCC can be perfected only by possession. Should any Lender or the L/C Issuer (other than Administrative Agent) obtain possession of any such Collateral, such Lender or the L/C Issuer shall notify Administrative Agent thereof, and, promptly upon Administrative Agent's request therefor shall deliver such Collateral to Administrative Agent or in accordance with Administrative Agent's instructions.

(f) Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

10.12 Secured Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein, no Cash Management Bank or Hedge Bank that obtains the benefit of the provisions of Section 9.03, the Guaranty or any Collateral by virtue of the provisions hereof or of the Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Collateral Document) other than in its capacity as a Lender, an L/C Issuer or Administrative Agent and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article X to the contrary, Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless Administrative Agent has received a Secured Party Designation Notice of such Secured Obligations, together with such supporting documentation as Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements, in the case of a Facility Termination Date.

10.13 Legal Representation of Administrative Agent. In connection with the negotiation, drafting, and execution of this Agreement and the other Loan Documents, or in connection with future legal representation relating to loan administration, amendments, modifications, waivers, or enforcement of remedies, DLA Piper LLP (US) has only represented and shall only represent Bank in its capacity as Administrative Agent and as a Lender. Each other Lender hereby acknowledges that DLA Piper LLP (US) does not represent such Lender in connection with any such matters.

ARTICLE XI

MISCELLANEOUS

11.01 **Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and Borrower or the applicable Loan Party, as the case may be, and acknowledged by Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that (x) and Borrower and Administrative Agent may, with the consent of the other, amend, modify or supplement this Agreement and any other Loan Document to cure any ambiguity, typographical error, defect or inconsistency if such amendment, modification or supplement does not adversely affect the rights of any Administrative Agent, any Lender or the L/C Issuer, and (y) no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 5.01(a) without the written consent of each Lender; provided, however, in the sole discretion of Administrative Agent, only a waiver by Administrative Agent shall be required with respect to immaterial matters or items specified in Section 5.01(a)(iii) or (iv) with respect to which Borrower has given assurances satisfactory to Administrative Agent that such items shall be delivered promptly following the Closing Date;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.02) without the written consent of such Lender whose Commitment is being extended or increased (it being understood and agreed that a waiver of any condition precedent set forth in Section 5.02 or of any Default or a mandatory reduction in Commitments is not considered an extension or increase in Commitments of any Lender);

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal (excluding mandatory prepayments), interest, fees or other amounts due to Lenders (or any of them) or any scheduled or mandatory reduction of the Commitments hereunder or under any other Loan Document without the written consent of each Lender entitled to receive such payment or whose Commitments are to be reduced;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender entitled to receive such payment; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of Borrower to pay interest or L/C Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(e) change Section 2.13 or Section 9.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(f) change any provision of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; or

(g) release any Guarantor from the Guaranty, except in accordance with the terms of any Loan Document, or release the Liens on all or substantially all of the Collateral in any transaction or series of related transactions (it being understood that releases of Collateral in connection with a Disposition permitted under Section 8.05 (or as otherwise permitted under the definition of “Disposition”), do not involve substantially all of the Collateral and shall not require the consent of any of the Lenders), except in accordance with the terms of any Loan Document, without the written consent of each Lender;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; and (ii) no amendment, waiver or consent shall, unless in writing and signed by Administrative Agent in addition to the Lenders required above, affect the rights or duties of Administrative Agent under this Agreement or any other Loan Document.

Notwithstanding anything to the contrary herein, (i) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender, and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender; (ii) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (iii) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

11.02 Notices; Effectiveness; Electronic Communications.

(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Borrower, Administrative Agent or an L/C Issuer, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 11.02 ; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) **Electronic Communications.** Notices and other communications to Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable has notified Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, provided that, for both clauses (i) and (ii) above, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) **The Platform.**

(i) Each Loan Party agrees that Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the L/C Issuer and the other Lenders by posting the Communications on Debt Domain, Debt Exchange (DebtX), Intralinks, Syndtrak or a substantially similar electronic transmission system (the "**Platform**").

(ii) THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE ADMINISTRATIVE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY ADMINISTRATIVE AGENT PARTY IN CONNECTION WITH BORROWER MATERIALS OR THE PLATFORM. In no event shall Administrative Agent or any of its Related Parties (collectively, the “**Administrative Agent Parties**”) have any liability to Borrower, any other Loan Party, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of Borrower’s or Administrative Agent’s transmission of Borrower Materials through the Internet or the Platform. “**Communications**” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed to Administrative Agent, any Lender or any L/C Issuer by means of electronic communications pursuant to this Section, including through the Platform.

(d) **Change of Address, Etc.** Each of Borrower, Administrative Agent and the L/C Issuer may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to Borrower, Administrative Agent and the L/C Issuer. In addition, each Lender agrees to notify Administrative Agent from time to time to ensure that Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to Borrower or its securities for purposes of United States Federal or state securities laws.

(e) **Reliance by Administrative Agent, L/C Issuer and Lenders .** Administrative Agent, the L/C Issuer and Lenders shall be entitled to rely and act upon any notices (including telephonic Loan Notices) purportedly given by or on behalf of Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not

preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Borrower shall indemnify Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Borrower. All telephonic notices to and other telephonic communications with Administrative Agent may be recorded by Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 **No Waiver; Cumulative Remedies; Enforcement.** No failure by any Lender, the L/C Issuer or Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Administrative Agent in accordance with Section 9.02 for the benefit of all Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to Administrative Agent pursuant to Section 9.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.04 **Expenses; Indemnity; Damage Waiver.**

(a) **Costs and Expenses.** Borrower shall pay (i) all reasonable out of pocket expenses incurred by Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for Administrative Agent) and shall pay all fees and time charges and disbursements for attorneys who may be employees of Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all

reasonable out of pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable out of pocket expenses incurred by Administrative Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for Administrative Agent, any Lender or the L/C Issuer), and shall pay all fees and time charges for attorneys who may be employees of Administrative Agent, any Lender or the L/C Issuer, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such reasonable out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) **Indemnification by Borrower.** Borrower shall indemnify Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, penalties and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, or the consummation of the transactions contemplated hereby or thereby, or, in the case of Administrative Agent (or any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the indemnitee; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if Borrower or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) **Reimbursement by Lenders.** To the extent that Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to Administrative Agent (or any sub-agent thereof), the L/C Issuer or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the aggregate Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to the L/C Issuer solely in its capacity as such, only the Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against Administrative Agent (or any sub-agent thereof) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for Administrative Agent (or any sub-agent thereof) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by applicable law, Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) **Payments.** All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) **Survival.** The agreements in this Section and the indemnity provisions of Section 11.02(e) shall survive the termination of the Loan Documents, the resignation of Administrative Agent and the L/C Issuer, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Payments Set Aside. To the extent that any payment by or on behalf of Borrower is made to Administrative Agent, the L/C Issuer or any Lender, or to the extent Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement

entered into by Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 **Successors and Assigns.**

(a) **Successors and Assigns Generally.** The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent, the L/C Issuer and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders.** Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts.**

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose

includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than Five Million Dollars (\$5,000,000) unless each of Administrative Agent and, so long as no Event of Default has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) **Proportionate Amounts.** Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) **Required Consents.** No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender or an Affiliate of a Lender or an Approved Fund, provided that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within five (5) Business Days after having received notice thereof and provided further, that Borrower’s consent shall not be required during the primary syndication of the facilities provided hereunder;

(B) the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any Commitment if such assignment is to a Person that is not a Lender, or an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of the L/C Issuer shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding).

(iv) **Assignment and Assumption.** The parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of Three Thousand Five Hundred Dollars (\$3,500); provided, however, that Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to Administrative Agent an Administrative Questionnaire and such information regarding such assignee as Administrative Agent may reasonably request.

(v) **No Assignment to Certain Persons.** No such assignment shall be made to (A) Borrower or any of Borrower's Affiliates or Subsidiaries, (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) a natural Person.

(vi) **Certain Additional Payments.** In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of Borrower and Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent, the L/C Issuer and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment

provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) **Register.** Administrative Agent, acting solely for this purpose as an agent of Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and Borrower, Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, Borrower or Administrative Agent, sell participations to any Person (other than a natural Person, a Defaulting Lender or Borrower or any of Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower, Administrative Agent, the L/C Issuer and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnities hereunder with respect to any payments made by such Lender to its Participant(s). Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. Subject to subsection (e) of this Section, Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender

shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Limitation on Participant Rights.** A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Section 3.01(e) as though it were a Lender.

(f) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) **Lender Securitization.** In addition to any other assignment permitted pursuant to this Section 11.06, the Loan Parties hereby acknowledge that (x) the Lenders, their Affiliates and Approved Funds (the "**Lender Parties**") may sell or securitize the Loans (a "**Lender Securitization**") through the pledge of the Loans as collateral security for loans to a Lender Party or the assignment or issuance of direct or indirect interests in the Loans (such as, for instance, collateralized loan obligations), and (y) such Lender Securitization may be rated by a Rating Agency. The Loan Parties shall reasonably cooperate with the Lender Parties to effect the Lender Securitization including by providing such information as may be reasonably requested by the Lenders or Rating Agencies in connection with the rating of the Loans or the Lender Securitization.

(h) **Deemed Consent of Borrower.** If the consent of Borrower to an assignment to an assignee is required hereunder (including a consent to an assignment which does not meet the minimum assignment threshold specified in Section 11.06(b)(i)(B)), Borrower shall be deemed to have given its consent five (5) Business Days after the date notice thereof has been delivered to Borrower by the assigning Lender (through Administrative Agent) unless such consent is expressly refused by Borrower prior to such fifth Business Day.

(i) **Resignation as L/C Issuer.** Notwithstanding anything to the contrary contained herein, if at any time Union Bank assigns all of its Commitment and Loans pursuant to subsection (b) above, Union Bank may, upon thirty (30) days' notice to Borrower and the Lenders, resign as L/C Issuer. In the event of any such resignation as L/C Issuer, Borrower shall be entitled to appoint from among Lenders a successor L/C Issuer hereunder; provided, however, that no failure by Borrower to appoint any such successor shall affect the resignation of Union Bank as L/C Issuer. If Union Bank resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). Upon the appointment of a successor L/C Issuer, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Union Bank to effectively assume the obligations of Union Bank with respect to such Letters of Credit.

11.07 **Treatment of Certain Information; Confidentiality.** Each of Administrative Agent, the Lenders and the L/C Issuer agrees, severally as to itself only, to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority, purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.15(c), or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to Borrower, its obligations this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than Borrower.

For purposes of this Section, “**Information**” means all information received from Borrower or any Subsidiary relating to Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by Borrower or any Subsidiary, provided that, in the case of information received from Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of Administrative Agent, the Lenders and the L/C Issuer acknowledges that (A) the Information may include material non-public information concerning Borrower or a Subsidiary, as the case may be, (B) it has developed compliance procedures regarding the use of material non-public information and (C) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

Notwithstanding anything to the contrary set forth herein or in any other Loan Document the Secured Parties are hereby authorized to release information concerning Borrower’s and the other Loan Parties’ credit record and financial condition to credit bureaus, credit reporting agencies, credit reporters, and guarantors hereunder, or pursuant to an order from a governmental agency or court, or among departments of such Secured Party and its respective Affiliates. Secured Parties are authorized to obtain credit reports, copies of tax returns and other information regarding Borrower or the other Loan Parties and to take such other steps as such Secured Party deems appropriate to verify the information provided in connection herewith.

11.08 **Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of Borrower or any other Loan Party against any and all of the obligations of Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer or any such Affiliate, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of Borrower or such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of Sections 2.13 and 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent, the L/C Issuer, and the Lenders, and (y) the Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under

this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify Borrower and Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 **Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “ **Maximum Rate**”). If Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 **Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to Administrative Agent or the L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by Administrative Agent and when Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

11.11 **Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by Administrative Agent and each Lender, regardless of any investigation made by Administrative Agent or any Lender or on their behalf and notwithstanding that Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

11.12 **Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the

illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 **Governing Law; Jurisdiction; Etc.**

(a) **GOVERNING LAW.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, UNLESS EXPRESSLY STATED OTHERWISE THEREIN, SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

(b) **SUBMISSION TO JURISDICTION.** BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF CALIFORNIA SITTING IN SANTA CLARA COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF CALIFORNIA, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH CALIFORNIA STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE.** BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES,

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS.** EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINTS AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.14 **Disputes; Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, IN CONNECTION WITH ANY CLAIM, CAUSE OF ACTION, PROCEEDING OR OTHER DISPUTE CONCERNING THE LOAN DOCUMENTS (EACH A "CLAIM"), THE PARTIES TO THIS AGREEMENT EXPRESSLY, INTENTIONALLY, AND DELIBERATELY WAIVE ANY RIGHT EACH MAY OTHERWISE HAVE TO TRIAL BY JURY. IN THE EVENT THAT THE WAIVER OF JURY TRIAL SET FORTH IN THE PREVIOUS SENTENCE IS NOT ENFORCEABLE UNDER THE LAW APPLICABLE TO THIS AGREEMENT, THE PARTIES TO THIS AGREEMENT AGREE THAT ANY CLAIM, INCLUDING ANY QUESTION OF LAW OR FACT RELATING THERETO, SHALL, AT THE WRITTEN REQUEST OF ANY PARTY, BE DETERMINED BY JUDICIAL REFERENCE PURSUANT TO THE STATE LAW APPLICABLE TO THIS AGREEMENT. THE PARTIES SHALL SELECT A SINGLE NEUTRAL REFEREE, WHO SHALL BE A RETIRED STATE OR FEDERAL JUDGE. IN THE EVENT THAT THE PARTIES CANNOT AGREE UPON A REFEREE, THE COURT SHALL APPOINT THE REFEREE. THE REFEREE SHALL REPORT A STATEMENT OF DECISION TO THE COURT. NOTHING IN THIS PARAGRAPH SHALL LIMIT THE RIGHT OF ANY PARTY AT ANY TIME TO EXERCISE SELF-HELP REMEDIES, FORECLOSE AGAINST COLLATERAL OR OBTAIN PROVISIONAL REMEDIES. THE PARTIES SHALL BEAR THE FEES AND EXPENSES OF THE REFEREE EQUALLY, UNLESS THE REFEREE ORDERS OTHERWISE. THE REFEREE SHALL ALSO DETERMINE ALL ISSUES RELATING TO THE APPLICABILITY, INTERPRETATION, AND ENFORCEABILITY OF THIS PARAGRAPH. THE PARTIES ACKNOWLEDGE THAT IF A REFEREE IS SELECTED TO DETERMINE THE CLAIMS, THEN THE CLAIMS WILL NOT BE DECIDED BY A JURY.

11.15 **No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), Borrower and each other Loan Party acknowledges and agrees and acknowledges its Affiliates' understanding that that: (i) (A) the services regarding this Agreement provided by Administrative Agent are arm's-length commercial transactions between Borrower, each other Loan Party and their respective Affiliates, on the one hand, and Administrative Agent, on the other hand, (B) each of Borrower and the other Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate, and (C) Borrower and each other Loan Party is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents;

(ii) (A) Administrative Agent is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for Borrower, any other Loan Party, or any of their respective Affiliates, or any other Person and (B) Administrative Agent does not have any obligation to Borrower, any other Loan Party or any of their Affiliates with respect to the transaction contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) Administrative Agent and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Borrower, the other Loan Parties and their respective Affiliates, and Administrative Agent has no obligation to disclose any of such interests to Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of Borrower and the other Loan Parties hereby waive and release, any claims that it may have against Administrative Agent with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.16 **Electronic Execution of Assignments and Certain Other Documents.** The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.17 **USA PATRIOT Act Notice.** Each Lender and L/C Issuer that is subject to the Act (as hereinafter defined) and Administrative Agent (for itself and not on behalf of any Lender or L/C Issuer) hereby notifies Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies Borrower and/or other Loan Parties, which information includes the name and address of Borrower and/or other Loan Parties and other information that will allow such Lender, L/C Issuer or Administrative Agent, as applicable, to identify Borrower in accordance with the Patriot Act. Borrower shall, promptly following a request by Administrative Agent or any Lender or L/C Issuer, provide all documentation and other information that Administrative Agent or such Lender or L/C Issuer requests in order to comply with its ongoing obligations under applicable “**know your customer**” and anti-money laundering rules and regulations, including the Patriot Act.

11.18 **Time of the Essence.** Time is of the essence of the Loan Documents.

11.19 **Effect of Restatement.** This Agreement together with the other Loan Documents are intended to and do completely amend, restate, supercede and replace, without novation, the Existing Credit Agreement. The execution and delivery of this Agreement or the other Loan Documents shall not, in any manner or circumstance, be deemed to be a novation of or to have terminated, released, extinguished, or discharged any of Borrower’s or any other Loan Party’s obligations, indebtedness, duties or liabilities under the Existing Credit Agreement or any Liens

granted to Union Bank in connection with the Existing Credit Agreement or any security agreement, financing statement or other document, instrument or agreement executed in connection therewith, all of which are hereby ratified and confirmed.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER:

WAGEWORKS, INC.

By: /s/ Richard T. Green

Name: Richard T. Green

Its: Chief Financial Officer

GUARANTORS:

MHM RESOURCES, LLC

By: /s/ Richard T. Green

Name: Richard T. Green

Its: Manager and Treasurer

UNION BANK, N.A., as Administrative Agent

By: /s/ James B. Goudy

Name: James B. Goudy

Its: Vice President

UNION BANK, N.A., as a Lender and L/C Issuer

By: /s/ James B. Goudy

Name: James B. Goudy

Its: Vice President

Lending Office:

99 Almaden Boulevard, Suite 200

San Jose, CA 95113

Attn: James B. Goudy

Fax: (408) 280-7163

SCHEDULE 1.01

EXISTING LETTERS OF CREDIT

**L/C Issuer: Union Bank, N.A.
As of 12/31/2012**

<u>L/C Number</u>	<u>Beneficiary</u>	<u>Issue Date</u>	<u>Amount</u>	<u>Expiry Date</u>
S30596	BK Pinnacle	06/27/2008	\$ 94,338.00	05/31/2013
S312683	NYGOER	02/24/2010	\$2,200,000.00	10/02/2016
S314517	Fidelity and Deposit Company of Maryland	07/19/2010	\$ 500,000.00	07/18/2013
S237262	Oracle USA	12/07/2006	\$ 231,546.00	10/31/2013
S322441	NYGOER	12/07/2006	\$ 250,000.00	10/31/2013

SCHEDULE 2.01

**COMMITMENTS AND
APPLICABLE PERCENTAGES**

<u>Lender</u>	<u>Commitment</u>	<u>Applicable Percentage</u>
UNION BANK, N.A.	\$75,000,000	100.000000000%
Total	\$ 75,000,000	100.000000000%

SCHEDULE 11.02

**ADMINISTRATIVE AGENT'S OFFICE,
CERTAIN ADDRESSES FOR NOTICES**

WAGEWORKS, INC.

1100 Park Place, 4th Floor
San Mateo, California 94403
Attention: Chief Financial Officer
Tel:
Fax:
Electronic Mail: rich.green@wageworks.com
Website Address: www.wageworks.com
U.S. Taxpayer Identification Number:

ADMINISTRATIVE AGENT:

Administrative Agent's Office

*(for payments and Requests for Credit Extensions,
Rollovers, Letters of Credit):*

UNION BANK, N.A., as Administrative Agent
Commercial Loan Operations
1980 Saturn Street
Monterey Park, CA 91755
Attn: Commercial Loan Operations
Supervisor
Fax: (800) 446-9951
(323) 724-6198
Tel: (323) 720-7347
Electronic Mail: #clo_synd@unionbank.com

With a copy to:

UNION BANK, N.A., as Administrative Agent
Attention: James B. Goudy
99 Almaden Boulevard, Suite 200
San Jose, California 95113
Facsimile: (408) 280-7163

Payments:

UNION BANK, N.A.
ABA No.: 122-000-496
Account No.: 77070196431
Account Name: Wire Transfer Clearing CLO
Attention: Commercial Loan Operations
Reference: WAGEWORKS, INC.

Other Notices as Administrative Agent:

UNION BANK, N.A., as Administrative Agent
James B. Goody
Vice President
UNION BANK, N.A.
99 Almaden Blvd., 1-645
San Jose, CA 95113
Ph.: 408-279-7714
E-Mail: james.goudy@unionbnk.com

Rosa Lo
Asst. Vice President
UNION BANK, N.A.
99 Almaden Blvd., 1-645
San Jose, CA 95113
Ph.: 408-279-7722
E-Mail: rosa.lo@unionbnk.com

With a copy to:

UNION BANK, N.A., as Administrative Agent
Commercial Loan Operations
1980 Saturn St., 1st Floor, V01-161
Monterey Park, CA 91755
Ph. (323) 720-2578

EXHIBIT A

FORM OF LOAN NOTICE

Date: _____, ____

To: UNION BANK, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of December 31, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “**Agreement**”; the terms defined therein being used herein as therein defined), among WAGeworks, INC., a Delaware corporation (the “**Borrower**”), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and UNION BANK, N.A., as Administrative Agent and L/C Issuer.

The undersigned hereby requests (select one):

- A Borrowing of Loans A conversion of Loans
 A continuation of Eurodollar Rate Loans

1. On _____ (a Business Day).
2. In the principal amount of \$_____.
3. Comprised of _____.
[Type of Loan requested]
4. For Eurodollar Rate Loans: with an Interest Period of _____ months.

The Borrowing, if any, requested herein complies with the proviso to the first sentence of Section 2.01 of the Agreement.

WAGeworks, INC.

By: _____
Name: _____
Title: _____

EXHIBIT B

FORM OF REVOLVING LOAN NOTE

§

FOR VALUE RECEIVED, the undersigned, WAGeworks, INC., a Delaware corporation (“Borrower”), hereby promises to pay to the order of [], or registered assigns (“Lender”), in accordance with the provisions of the Agreement (as hereinafter defined), the principal amount of each Loan from time to time made by the Lender to Borrower under that certain Credit Agreement, dated as of December 31, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement”; the terms defined therein being used herein as therein defined), among Borrower, the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Union Bank, N.A., as Administrative Agent and L/C Issuer in the amounts and at the times specified in the Agreement with a final payment on the Maturity Date of all Loans made by the Lender which are outstanding on such date.

Borrower promises to pay interest on the unpaid principal amount of each Loan from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent’s Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Revolving Loan Note (this “**Note**”) is one of the Notes referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Note is also entitled to the benefits of the Guaranty and is secured by the Collateral. Upon the occurrence and continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Agreement. Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES THEREOF REGARDING CONFLICTS OF LAWS, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

IN WITNESS WHEREOF, the undersigned has caused this Note to be signed as an instrument under seal by its duly authorized officer as of the day and year first above written.

WAGeworks, INC.

By: _____
Name: _____
Title: _____

LOANS AND PAYMENTS WITH RESPECT THERETO

Date	Type of Loan Made	Amount of Loan Made	End of Interest Period	Amount of Principal or Interest Paid This Date	Outstanding Principal Balance This Date	Notation Made By
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

EXHIBIT C

FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: _____,

To: UNION BANK, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of December 31, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "**Agreement**"; the terms defined therein being used herein as therein defined), among WAGeworks, INC., a Delaware corporation ("**Borrower**"), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Union Bank, N.A., as Administrative Agent and L/C Issuer.

The undersigned Responsible Officer hereby certifies as of the date hereof that he/she is the _____ of Borrower, and that, as such, he/she is authorized to execute and deliver this Certificate to Administrative Agent on the behalf of Borrower, and that:

*[Use following paragraph 1 for fiscal **year-end** financial statements]*

1. Borrower has delivered the year end audited financial statements required by Section 7.01(a) of the Agreement for the fiscal year of Borrower ended as of the above date, together with the report and opinion of an independent certified public accountant required by such section.

*[Use following paragraph 1 for fiscal **quarter-end** financial statements]*

1. Borrower has delivered the unaudited financial statements required by Section 7.01(b) of the Agreement for the fiscal quarter of Borrower ended as of the above date. Such financial statements fairly present in all material respects the financial condition, results of operations, stockholders' equity and cash flows of Borrower and its Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year end audit adjustments and the absence of footnotes.

2. The undersigned has reviewed and is familiar with the terms of the Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of Borrower during the accounting period covered by such financial statements.

3. A review of the activities of Borrower during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period Borrower performed and observed all its Obligations under the Loan Documents, and

[select one:]

[to the best knowledge of the undersigned during such fiscal period, Borrower performed and observed in all material respects each covenant and condition of the Loan Documents applicable to it, and no Default has occurred and is continuing.]

—or—

[to the best knowledge of the undersigned, during such fiscal period, the following covenants or conditions have not been performed or observed in all material respects and the following is a list of each such Default and its nature and status:]

4. The representations and warranties of Borrower contained in Article VI of the Agreement, and/or any representations and warranties of Borrower or any other Loan Party that are contained in any document furnished at any time under or in connection with the Loan Documents, are true and correct in all material respects on and as of the date hereof, except that (i) if a qualifier relating to materiality, Material Adverse Effect or a similar concept applies, such representation and warranty is true and correct in all respects, (ii) to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date, and (iii) for purposes of this Compliance Certificate, the representations and warranties contained in subsections (a) and (b) of Section 6.05 of the Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 7.01 of the Agreement, including the statements in connection with which this Compliance Certificate is delivered.

5. Set forth on **Annex I** attached here to is a description of all Permitted Acquisitions undertaken during the period covered by this Certificate.

6. The financial covenant analyses and information set forth on **Schedule 1** attached hereto are true and accurate in all material respects on and as of the date of this Certificate.

*[Use the following paragraph 6 in connection with the delivery of fiscal **quarter-end** financial statements for the second fiscal quarter of any fiscal year.]*

[6. Attached hereto as **Schedule 2** is (i) a list of (A) all applications by any Loan Party, if any, for Copyrights, Patents or Trademarks made since [the Closing Date]* [the date of the prior Compliance Certificate]**, (B) all issuances of registrations or letters on existing applications by any Loan Party for Copyrights, Patents and Trademarks received since [the Closing Date]* [the date of the prior Compliance Certificate]**, (C) all Trademark Licenses, Copyright Licenses and Patent Licenses entered into by any Loan Party since [the Closing Date]* [the date of the prior Compliance Certificate]**, and (ii) the insurance binder or other evidence of insurance for any insurance coverage of any Loan Party or any Subsidiary that was renewed, replaced or modified during the period covered by the financial statements referenced in Paragraph 1 above.]

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of _____, _____.

WAGeworks, INC.

By: _____
Name: _____
Title: _____

SCHEDULE 1
to the Compliance Certificate
(\$ in 000's)

I. Section 7.13(a) – Liquidity Ratio		
A. Liquidity		
1.	unrestricted cash and Cash Equivalents	\$
2.	<u>plus</u> marketable securities	\$
3.	Total Liquidity (Line I.A.1. plus I.A.2):	\$
B. Certain Liabilities		
1.	customer deposits (consolidated basis):	\$
2.	<u>plus</u> current portion of contingent, Acquisition-related obligations and liabilities (including Earn Out Obligations)	\$
3.	Total Certain Liabilities (Line I.B.1. plus I.B.2):	\$
C.	Ratio (Line I.A.3 ÷ Line I.B.3):	to 1.00
	Minimum permitted:	1.00 to 1.00
II. Section 7.13(b) – Indebtedness to EBITDA Ratio		
A. Indebtedness		
1.	Total Indebtedness	\$
B. EBITDA (past 12 months)		
1.	Consolidated Net Income (Loss):	\$
2.	<u>plus</u> Consolidated Interest Expense:	\$
3.	<u>plus</u> income taxes:	\$
4.	<u>plus</u> depreciation and amortization:	\$

5.	<u>plus</u> non-cash expenses:	\$
6.	Total EBITDA (sum of II.A.1 through II.A.5):	\$
C.	Ratio (Line II.A.1 ÷ Line II.B.6):	to 1.00
	Maximum permitted:	3.00 to 1.00
III. Section 7.13(c) – Debt Service Coverage Ratio		
A.	EBITDA (past 12 months)	
1.	Consolidated Net Income (Loss):	\$
2.	<u>plus</u> Consolidated Interest Expense:	\$
3.	<u>plus</u> income taxes:	\$
4.	<u>plus</u> depreciation and amortization:	\$
5.	<u>plus</u> non-cash expenses:	\$
6.	<u>plus/minus</u> EBITDA from Permitted Acquisitions (if any):	\$
7.	Total EBITDA (sum of III.A.1 through III.A.5 minus III.A.6 plus/minus III.A.7.):	\$
8.	<u>plus</u> , operating lease payments	\$
9.	<u>minus</u> , Distributions	\$
10.	<u>minus</u> , payments made re Acquisition-related liabilities and Earn Out Obligations	\$
11.	Adjusted EBITDA (III.A.7 plus III.A.8 minus III.A.9 minus III.A.10)	\$
B.	Debt Service	
1.	25% of outstanding Loans (please explain on attachment):	\$
2.	<u>plus</u> , Consolidated Interest Expense (past 12 months):	\$

3.	<u>plus</u> , projected operating lease payments for next 12 months:	\$
4.	<u>plus</u> , Consolidated Scheduled Funded Debt Payments for next 12 months:	\$
5.	Total Debt Service (sum of III.B.1 through III.B.4)	\$
C.	Ratio (Line III.A.12 ÷ Line III.B.5):	to 1.00
	Minimum permitted:	1.25 to 1.00 1.50 to 1.00 (after 9/30/14)

IV. Section 7.13(d) – Consolidated Net Worth

A.	Consolidated Net Worth	\$
B.	Minimum Required:	
1.	\$105,000:	\$ 105,000
2.	<u>plus</u> , 75% of Consolidated Net Income (Loss) (but not less than \$0):	\$
3.	<u>plus</u> , 100% of Net Cash Proceeds from Equity Issuances after Closing Date:	\$
	Minimum Required (sum of IV.B.1 + IV.B.2 + IV.B.3)	\$

ANNEX I
To Compliance Certificate

Permitted Acquisitions

[Please describe, if any]

EXHIBIT D

**FORM OF
ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (this “**Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between [INSERT NAME OF ASSIGNOR (the “**Assignor**”) and [INSERT NAME OF ASSIGNEE] (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (the “**Credit Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including, without limitation, the Letters of Credit included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as, the “**Assigned Interest**”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor[s]:
2. Assignee[s]: **for each Assignee, indicate Affiliate of [identify Lender]]**
3. Borrower(s): WAGEWORKS, INC., a Delaware corporation (“**Borrower**”).
4. Administrative Agent: Union Bank, N.A., as the agent under the Credit Agreement.

5. Credit Agreement: Credit Agreement, dated as of December 31, 2012, among Borrower, the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Union Bank, N.A., as Administrative Agent and L/C Issuer.

6. Assigned Interest[s]:

Assignor[s]	Assignee[s]	Facility Assigned	Aggregate Amount of Commitment/ Loans for all Lenders	Amount of Commitment/ Loans Assigned	Percentage Assigned of Commitment/ Loans
			\$	\$	%
			\$	\$	%
			\$	\$	%
			\$	\$	%

7. **Trade Date:** _____]

Effective Date: _____, 20 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: _____
Title: _____

ASSIGNEE
[NAME OF ASSIGNEE]

By: _____
Title: _____

[Consented to and] Accepted:

UNION BANK, N.A., as Administrative
Administrative Agent

By: _____
Title: _____

[Consented to:]

By: _____
Title: _____

ANNEX 1 TO ASSIGNMENT AND ASSUMPTION

**STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1 Assignor. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 11.06(b)(iii), (v) and (vi) of the Credit Agreement (subject to such consents, if any, as may be required under Section 11.06(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 7.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest and (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not

taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the laws of the State of California, without reference to its choice of law rules.

EXHIBIT E

**FORM OF
NEW LENDER ADDENDUM**

THIS NEW LENDER ADDENDUM (this “**New Lender Addendum**”), dated _____, 20____, to that certain Credit Agreement, dated as of December 31, 2012, by and among WAGEWORKS, INC., as borrower (the “**Borrower**”), each Guarantor from time to time party thereto, each Lender from time to time party thereto, and **UNION BANK, N.A.**, as administrative agent and L/C Issuer (as further amended, modified or supplemented from time to time, the “**Credit Agreement**”). Capitalized terms used herein and not defined shall have the meanings given to them in the Credit Agreement.

RECITALS

A. The Credit Agreement provides that a lender not originally party to the Credit Agreement may become a Lender thereunder in connection with an increase of the Commitment by executing a New Lender Addendum and delivering it to Administrative Agent and Borrower.

B. The undersigned (the “**New Lender**”) desires to become a New Lender and, accordingly, agrees with the parties hereto as follows:

1. The New Lender represents and warrants as follows:

a. The New Lender has full power and authority, and has taken all action necessary, to execute and deliver this New Lender Addendum and any and all other documents required to be executed by it in connection with this New Lender Addendum and to fulfill its obligations under, and to consummate the transactions contemplated by this New Lender Addendum, and no governmental authorizations or other authorizations are required in connection herewith;

b. The New Lender has independently and without reliance upon Administrative Agent or any Lender and based on such documents and information as the New Lender has deemed appropriate, made its own credit analysis and decision to enter into this New Lender Addendum. The New Lender will, independently and without reliance upon Administrative Agent or any Lender, and based upon such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement;

c. The New Lender has received copies of the Credit Agreement together with copies of the financial statements referred to therein and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this New Lender Addendum;

d. The New Lender is an Eligible Assignee;

e. The New Lender will perform in accordance with their respective terms all of the obligations which, by the terms of the Credit Agreement, are required to be performed by it as a Lender; and

f. This New Lender Addendum constitutes the legal, valid and binding obligation of the New Lender.

2. The New Lender hereby appoints and authorizes Administrative Agent to exercise such powers as are delegated to it under the Credit Agreement and by the other Loan Documents.

3. As of the Effective Date (as defined below), (i) the New Lender shall have a Commitment amount equal to _____ Dollars (\$ _____), (ii) a Commitment Percentage of _____ % and (iii) its pro rata participation amount in the outstanding Letters of Credit shall be _____ Dollars (\$ _____), in each case after giving effect to the Lenders and other New Lenders, if any, participating in such increase of Commitment as of the Effective Date.

4. The effective date for this New Lender Addendum shall be _____ (the “**Effective Date**”). As of the Effective Date, (i) the New Lender shall be a party to the Credit Agreement and shall have the rights and obligations of a Lender thereunder and under the other Loan Documents as if the New Lender had been an original party to the Credit Agreement, including an obligation to maintain confidentiality of information pursuant to Section 11.07 of the Credit Agreement.

5. This New Lender Addendum and the rights and obligations of the parties under this New Lender Addendum shall be governed by, and construed and interpreted in accordance with, the law of the State of California (without reference to its choice of law rules).

IN WITNESS WHEREOF, the undersigned has caused this New Lender Addendum to be executed and delivered by a duly authorized officer on the date first above written.

Accepted and Agreed this day of .

[NEW LENDER]

By: _____

Name: _____

Title: _____

Address for Notices:

Telephone No.: _____

Telecopier No.: _____

Attention: _____

Eurodollar Lending Office

Address:

Consented to this day of .

WAGeworks, INC.,
as Borrower

By: _____

Name: _____

Title: _____

UNION BANK, N.A.,
as Administrative Agent

By: _____
Name: _____
Title: _____

UNION BANK, N.A.,
as Issuing Lender

By: _____
Name: _____
Title: _____

EXHIBIT F

**FORM OF
GUARANTOR JOINDER AGREEMENT**

THIS JOINDER AGREEMENT (this “**Agreement**”) dated as of _____, 20____ is by and between _____, a _____ (the “**New Subsidiary**”), and Union Bank, N.A., in its capacity as Administrative Agent under that certain Credit Agreement dated as of December 31, 2012 (as amended, modified, supplemented or extended from time to time, the “**Credit Agreement**”) among WageWorks, Inc., a Delaware corporation (the “**Borrower**”), the Guarantors, the Lenders from time to time party thereto and Union Bank, N.A., as Administrative Agent and L/C Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The Loan Parties are required by Section 7.14 of the Credit Agreement to cause the New Subsidiary to become a “Guarantor” thereunder. Accordingly, the New Subsidiary hereby agrees as follows with Administrative Agent, for the benefit of the holders of the Obligations:

1. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a party to the Credit Agreement and a “Guarantor” for all purposes of the Credit Agreement, and shall have all of the obligations of a Guarantor thereunder as if it had executed the Credit Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions applicable to the Guarantors contained in the Credit Agreement. Without limiting the generality of the foregoing terms of this paragraph 1, the New Subsidiary hereby jointly and severally together with the other Guarantors, guarantees to each Lender, Administrative Agent and each other holder of the Secured Obligations, as provided in Article IV of the Credit Agreement, the prompt payment and performance of the Secured Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof.

2. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a party to the Security Agreement and a “Grantor” for all purposes of the Security Agreement, and shall have all the obligations of a Grantor thereunder as if it had executed the Security Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Security Agreement. Without limiting the generality of the foregoing terms of this paragraph 2, the New Subsidiary hereby grants to Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in, and a right of set off against, any and all right, title and interest of the New Subsidiary in and to the Collateral (as defined in the Security Agreement) of the New Subsidiary to secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Secured Obligations (as defined in the Security Agreement).

3. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a party to the Pledge Agreement and a “Pledgor” for all purposes of the Pledge Agreement, and shall have all the

obligations of a Pledgor thereunder as if it had executed the Pledge Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Pledge Agreement. Without limiting the generality of the foregoing terms of this paragraph 3, the New Subsidiary hereby grants, pledges and assigns to Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in, and a right of set off against, any and all right, title and interest of the New Subsidiary in and to the Equity Interests identified on Schedule 6 hereto and all other Pledged Collateral (as defined in the Pledge Agreement) of the New Subsidiary to secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Secured Obligations (as defined in the Pledge Agreement).

4. The New Subsidiary hereby represents and warrants to Administrative Agent and the Lenders that:

(a) The New Subsidiary's exact legal name and state of formation are as set forth on the signature pages hereto.

(b) The New Subsidiary's taxpayer identification number and organization number are set forth on Schedule 1 hereto.

(c) Other than as set forth on Schedule 2 hereto, the New Subsidiary has not changed its legal name, changed its state of formation, been party to a merger, consolidation or other change in structure or used any tradename in the five years preceding the date hereof.

(d) Schedule 3 hereto includes all of the IP Rights registered or pending registration with the United States Copyright Office or the United States Patent and Trademark Office and owned by the New Subsidiary as of the date hereof. None of the IP Rights of the New Subsidiary set forth in Schedule 3 hereto is subject to any licensing agreement or similar arrangement, except as set forth on Schedule 3 hereto.

(e) Schedule 4 hereto includes all Commercial Tort Claims (as defined in the Security Agreement) before any Governmental Authority by or in favor of the New Subsidiary.

(f) Schedule 5 hereto lists all real property located in the United States that is owned or leased by the New Subsidiary as of the date hereof.

(g) Schedule 6 hereto includes each Subsidiary of the New Subsidiary, including (i) jurisdiction of formation, (ii) number of shares of each class of Equity Interests outstanding, (iii) the certificate number(s) of the certificates evidencing such Equity Interests and number and percentage of outstanding shares of each class owned by the New Subsidiary (directly or indirectly) of such Equity Interests and (iv) number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto.

5. The address of the New Subsidiary for purposes of all notices and other communications is the address designated for all Loan Parties on Schedule 11.02 to the Credit Agreement or such other address as the New Subsidiary may from time to time notify Administrative Agent in writing.

6. The New Subsidiary hereby waives acceptance by Administrative Agent and the Lenders of the guaranty by the New Subsidiary under Article IV of the Credit Agreement upon the execution of this Agreement by the New Subsidiary.

7. This Agreement may be executed in multiple counterparts, each of which shall constitute an original but all of which when taken together shall constitute one contract.

8. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

[Signature Page Follows]

IN WITNESS WHEREOF, the New Subsidiary has caused this Joinder Agreement to be duly executed by its authorized officer, and Administrative Agent, for the benefit of the Lenders, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

[NEW SUBSIDIARY]

By: _____
Name:
Title:

Acknowledged and accepted:

UNION BANK, N.A.,
as Administrative Agent

By: _____
Name:
Title:

Schedule 1

Taxpayer Identification Number; Organizational Number

F-5

Schedule 2

Changes in Legal Name or State of Formation;
Mergers, Consolidations and other Changes in Structure; Tradenames

F-6

Schedule 3

IP Rights

F-7

Schedule 4

Commercial Tort Claims

F-8

Schedule 5
Real Property
F-9

Schedule 6

Equity Interests

F-10

EXHIBIT G

**FORM OF
ADMINISTRATIVE QUESTIONNAIRE
(see attached)**

G-1

Administrative Questionnaire

Please complete the following form and return via facsimile or email to Union Bank, N.A., as soon as possible. Fees payable at closing will NOT BE PAID until this form is completed in its entirety and an appropriate IRS Income Tax Withholding Form is received by the Department. Please type or print your information. Return by fax to the Department as noted below.

General Information

PLEASE PRINT OR TYPE FORM

Institution Name _____
Street Address _____

Tax ID Number _____ Foreign Bank? (Include a copy of current IRS tax form)

Organizational Structure

Foreign Br., organized under which laws, etc. _____ Lender's Tax ID # _____

Tax Withholding Form attached Form W-9 Form 4224 effective _____
 Form W-8 (BEN, ECI, IMY, EXP) Form 1001
 W/Hold ___% Effective _____

All Lenders are expected to consult with their tax counsel regarding their respective tax status and necessary documentation, and to provide to UBOC the appropriate U.S. or Foreign Withholding Tax Form or Certificate on their own behalf. Withholding taxes will be deducted from any payments which are subject to U.S. Withholding tax until appropriate documentation evidencing an exemption is delivered to UBOC, the Agent.

Certification Validity. A properly executed Form @-9 is valid indefinitely. Forms W-8BEN and W-8ECI are valid for three years subsequent to the year of certification. Each Bank will be asked to provide a new certification prior to the form expiring if the terms of the loan extend beyond the life of the certification. All forms must be re-certified if there is a change in the information contained therein.

Operational Contacts (for borrowings, paydowns, interest, fees, etc.)

	Primary Contact	Alternate Contact
Names	_____	_____
Mailing Address	_____	_____
City, State	_____	_____
Phone Number	_____	_____
Fax Number	_____	_____
Email Address	_____	_____

Credit Contacts

	Primary Contact	Alternate Contact
Name	_____	_____
Title	_____	_____
Mailing Address	_____	_____
Street Address	_____	_____
City, State	_____	_____

Phone Number _____
 Fax Number _____
 Email Address _____

Data Site Contacts

	Primary Contact	Alternate Contact
Name	_____	_____
Title	_____	_____
Street Address	_____	_____
Phone Number	_____	_____
Fax Number	_____	_____
Email Address	_____	_____

Pg. 1 of 2

Pg 2 of 2

PLEASE PRINT OR TYPE FORM

Wiring Instructions:

Institution Name _____
 Address _____
 ABA Number _____
 Acct. Name/Dept. _____
 Account Number _____
 Reference (Borrower) _____
 Attention _____

Thank you for your prompt reply. If you have any questions, please call (_____) _____

Submitted to UNION BANK, N.A., by:

Name _____
 Phone _____

Return by fax to:

Fax Number: () Attn:
 Fax Number: () Attn: Phone: () -

EXHIBIT H

**FORM OF
SECURITY AGREEMENT
*(see attached)***

H-1

SECURITY AGREEMENT

THIS SECURITY AGREEMENT dated as of December 31, 2012 (as amended, modified, restated or supplemented from time to time, this “**Security Agreement**”) is by and among the parties identified as “Grantors” on the signature pages hereto and such other parties as may become Grantors hereunder after the date hereof (individually a “**Grantor**”, and collectively the “**Grantors**”) and Union Bank, N.A., as administrative agent (in such capacity, the “**Administrative Agent**” or the “**Agent**”) for the Secured Parties (defined below).

WITNESSETH

WHEREAS, a credit facility has been established in favor of WageWorks, Inc., a Delaware corporation (the “**Borrower**”), pursuant to the terms of that certain Credit Agreement dated as of the date hereof (as amended, modified, supplemented, restated or extended from time to time, the “**Credit Agreement**”) among the Borrower, the Guarantors from time to time party thereto, the Lenders from time to time party thereto and UNION BANK, N.A., as Administrative Agent and L/C Issuer;

WHEREAS, this Security Agreement is required under the terms of the Credit Agreement; and

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions.

(a) Capitalized terms used and not otherwise defined herein shall have the meanings provided in the Credit Agreement.

(b) The following terms shall have the meanings assigned thereto in the UCC: Accession, Account, As-Extracted Collateral, Chattel Paper, Commercial Tort Claim, Consumer Goods, Deposit Account, Document, Electronic Chattel Paper, Equipment, Farm Products, Fixtures, General Intangible, Goods, Instrument, Inventory, Investment Property, Letter-of-Credit Right, Manufactured Home, Payment Intangible, Proceeds, Software, Standing Timber, Supporting Obligation and Tangible Chattel Paper.

(c) As used herein, the following terms shall have the meanings set forth below:

“**Administrative Agent**” has the meaning provided in the introductory paragraph hereof.

“**Collateral**” has the meaning provided in Section 2 hereof.

“**Collateral Access Agreement**” means an agreement in form and substance satisfactory to Administrative Agent in its good faith discretion, pursuant to which a mortgagee or lessor of real property on which Collateral is stored or otherwise located, or a warehouseman, processor, contract manufacturer, equipment holder, co-location facility or other bailee of Inventory, Equipment or other property of a Grantor, that acknowledges the Liens of Administrative Agent and waives any Liens held by such Person on such Inventory, Equipment or other property and, includes such other agreements with respect to the Collateral, including agreements relating to access to the Collateral, as Administrative Agent may require in its good faith discretion, as the same may be amended, restated or otherwise modified from time to time.

“**Excluded Equipment**” means Equipment that is owned by a Grantor on the Closing Date or hereafter acquired that is subject to a Permitted Lien allowed under Section 8.01(i) of the Credit Agreement that secures purchase money Indebtedness allowed under Section 8.03(c) of the Credit Agreement, in an aggregate amount not to exceed the Threshold Amount, if and to the extent that the Capital Lease or security agreement in which such Lien is created prohibits the creation of a Lien in favor of Administrative Agent on such Equipment and such creation would, in and of itself, cause or result in a default under such Capital Lease or security agreement enabling the holder of such Permitted Lien to accelerate the related Permitted Indebtedness or enforce material remedies with respect to the subject Equipment; provided, however, that no Equipment shall be deemed to be Excluded Equipment if and to the extent that (x) any such prohibition relating to such Equipment has been waived or the holder of the Permitted Lien has otherwise consented to the creation hereunder of a security interest in favor of Administrative Agent, or (y) such prohibition would be rendered ineffective under applicable Law (including the Debtor Relief Laws) or principles of equity; and provided, further, that immediately upon the ineffectiveness, lapse or termination of any such prohibition, such Grantor shall be deemed to have granted a security interest in all its right, title and interest in and to such Equipment as if such provision had never been in effect and the Equipment had never been Excluded Equipment.

“**Excluded Foreign Subsidiary**” means any Foreign Subsidiary that is a controlled foreign corporation (as defined in the Code) in respect of which the pledge of all of the Voting Equity Interests of such Foreign Subsidiary as Collateral would result in material adverse tax consequences to Borrower; provided, however, in no event shall a Material Subsidiary qualify as an Excluded Foreign Subsidiary.

“**Secured Obligations**” has the meaning given to that term in the Credit Agreement.

“**Secured Parties**” has the meaning given to that term in the Credit Agreement.

“**UCC**” has the meaning given to that term in the Credit Agreement.

2. Grant of Security Interest in the Collateral. To secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Secured Obligations, each Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in, and a right to set off against, any and all right, title and interest of such Grantor in and to all of the following, whether now owned or existing or owned, acquired, or arising hereafter (collectively, the “**Collateral**”):

- (a) all Accounts;
- (b) all cash and currency;
- (c) all Chattel Paper;
- (d) all Commercial Tort Claims, including those identified on Schedule 2(d) attached hereto;
- (e) all Copyrights;
- (f) all Copyright Licenses;
- (g) all Deposit Accounts;
- (h) all Documents;

-
- (i) all Equipment;
 - (j) all Fixtures;
 - (k) all General Intangibles;
 - (l) all Goods;
 - (m) all Instruments;
 - (n) all Inventory;
 - (o) all Investment Property;
 - (p) all Letter-of-Credit Rights;
 - (q) all Other Intellectual Property;
 - (r) all Patents;
 - (s) all Patent Licenses;
 - (t) all Payment Intangibles;
 - (u) all Proprietary Software;
 - (v) all Software;
 - (w) all Supporting Obligations;
 - (x) all Trademarks;
 - (y) all Trademark Licenses;
 - (z) all Trade Secrets; and
 - (aa) to the extent not otherwise included, all Accessions and all Proceeds of any and all of the foregoing.

The Grantors and the Administrative Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest created hereby in the Collateral (i) constitutes continuing collateral security for all of the Secured Obligations, whether now existing or hereafter arising and (ii) is not and shall not be construed as an assignment of any Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks or Trademark Licenses.

Notwithstanding the foregoing, the Collateral shall not include any:

(i) any General Intangible, permit, lease, license, contract or other Instrument of a Grantor if the grant of a security interest in such General Intangible, permit, lease, license, contract or other Instrument in the manner contemplated by this Security Agreement, under the terms thereof or under applicable Law, is prohibited and would result in the termination thereof or give the other parties thereto the right to terminate, accelerate or otherwise alter such Grantor's

rights, titles and interests thereunder (including upon the giving of notice or the lapse of time or both); provided that (a) any prohibition or limitation described in clause (i) of this paragraph on the security interests granted hereunder shall (x) only apply to the extent that any such prohibition or limitation is not rendered ineffective pursuant to the UCC or any other applicable Law (including Debtor Relief Laws) or principles of equity and (y) not apply to Proceeds or Accounts arising from the General Intangibles, permits, leases, licenses, contracts or Instruments referenced in clause (i) of this paragraph and (b) in the event of the termination or elimination of any such prohibition or the requirement for any consent contained in any documents relating to the property described in clause (i) of this paragraph, to the extent sufficient to permit any such item to become Collateral hereunder, or upon the granting of any such consent, or waiving or terminating any requirement for such consent, a security interest in such property shall be automatically and simultaneously granted hereunder and shall be included as Collateral hereunder;

(ii) any Client Trust Accounts;

(iii) more than 65% of the Voting Equity Interests in any Excluded Foreign Subsidiary; or

(iv) any Excluded Equipment.

Notwithstanding the foregoing, the Collateral shall include, and the foregoing shall in no way be construed so as to limit, impair or otherwise affect Administrative Agent's unconditional continuing security interest in and to, all right, title and interest of each Grantor in or to any payment obligations or other rights to receive monies due or to become due under or with respect to of the property described in clauses (i)-(iv) above or any and all proceeds, products, substitutions or replacements of the property described in clauses (i)-(iv) above (unless such proceeds, products, substitutions or replacements would otherwise constitute property of the types described in clauses (i)-(iv) above).

Notwithstanding anything in this Agreement or any rights arising between Borrower and Agent in any other agreement or by operation of law or statute, Agent hereby waives any lien or right of setoff with respect to any Client Trust Accounts, except for any lien or right of setoff securing Agent's or any Cash Management Bank's standard fees with respect to the maintenance of such Client Trust Accounts.

3. Provisions Relating to Accounts.

(a) Anything herein to the contrary notwithstanding, each of the Grantors shall remain liable under each of the Accounts, contracts and agreements included in the Collateral and to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of each such Account, contract and agreement. Neither the Administrative Agent nor any Secured Party shall have any obligation or liability under any Account (or any agreement giving rise thereto), agreement or contract by reason of or arising out of this Security Agreement or the receipt by the Administrative Agent or any Secured Party of any payment relating to such Account pursuant hereto, nor shall the Administrative Agent or any Secured Party be obligated in any manner to perform any of the obligations of a Grantor under or pursuant to any Account (or any agreement giving rise thereto) agreement or contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account (or any agreement giving rise thereto), to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

(b) At any time after the occurrence and during the continuation of an Event of Default, (i) the Administrative Agent shall have the right, but not the obligation, to make test verifications of the Accounts in any manner and through any medium that it reasonably considers advisable, and the Grantors shall furnish all such assistance and information as the Administrative Agent may reasonably require in connection with such test verifications, (ii) upon the Administrative Agent's request and at the expense of the Grantors, the Grantors shall cause independent public accountants or others satisfactory to the Administrative Agent to furnish to the Administrative Agent reports showing reconciliations, aging and test verifications of, and trial balances for, the Accounts and (iii) the Administrative Agent in its own name or in the name of others may communicate with account debtors on the Accounts to verify with them to the Administrative Agent's satisfaction the existence, amount and terms of any Accounts.

4. Representations and Warranties. Each Grantor hereby represents and warrants to the Administrative Agent, for the benefit of the Secured Parties, that:

(a) Legal Name.

(i) Each Grantor's exact legal name (and for the shorter of the five years prior to the Closing Date or since the date of its formation has been), and each Grantor's taxpayer identification number and organization identification number are as set forth on Schedule 6.19(b) to the Credit Agreement.

(ii) Each Grantor's state of formation is (and for the prior five years or since the date of its formation has been) as set forth on the signature pages hereto.

(iii) Other than as set forth on Schedule 6.19(c) to the Credit Agreement, no Grantor has been party to a merger, consolidation or other change in structure or used any tradename in the prior five years.

(b) Ownership. Each Grantor is the legal and beneficial owner of, or has valid and enforceable rights to use, its Collateral and has the right to pledge, sell, assign or transfer the same.

(c) Security Interest/Priority. This Security Agreement creates a valid security interest in favor of the Administrative Agent, for the benefit of the Secured Parties, in the Collateral of such Grantor and, when properly perfected by filing, shall constitute a valid, perfected security interest in such Collateral, to the extent such security interest can be perfected by filing under the UCC, free and clear of all Liens except for Permitted Liens.

(d) Types of Collateral. None of the Collateral consists of, or is the Accessions or the Proceeds of, As-Extracted Collateral, Consumer Goods, Farm Products, Manufactured Homes, or Standing Timber.

(e) Accounts. With respect to the Accounts of the Grantors reflected as accounts receivable on the consolidated balance sheet of the Borrower and its Subsidiaries most recently delivered to the Administrative Agent pursuant to the Credit Agreement, (i) each Account of the Grantors and the papers and documents relating thereto are genuine and in all material respects what they purport to be, (ii) each Account arises out of (A) a bona fide sale of goods sold and delivered by such Grantor (or is in the process of being delivered) or (B) services theretofore actually rendered by such Grantor to, the account debtor named therein, (iii) any Account of a Grantor evidenced by any Instrument or Chattel Paper has, to the extent requested by the Administrative Agent, been endorsed over and delivered to, or submitted to the control of, the Administrative Agent and (iv) no surety bond was required or given in connection with any Account of a Grantor or the contracts or purchase orders out of which they arose.

(f) Inventory. No Inventory of a Grantor is held by any Person other than a Grantor pursuant to consignment, sale or return, sale on approval or similar arrangement.

(g) IP Rights.

(i) Each Material IP Right of such Grantor is valid, subsisting, unexpired, enforceable and has not been abandoned as of the date hereof.

(ii) No holding, decision or judgment has been rendered by any Governmental Authority that limits in any material respect or cancels any Material IP Right.

(iii) To the knowledge of each Grantor, no action or proceeding is pending seeking to limit, in any material respect, cancel or question the validity of any Material IP Right of such Grantor, or in which a reasonably likely adverse determination could reasonably be expected to have a Material Adverse Effect.

(iv) No Grantor has made any assignment or agreement in conflict with the security interest in the IP Rights of any Grantor hereunder other than Permitted Liens or as otherwise permitted hereunder or under the Credit Agreement.

(h) Commercial Tort Claims. Such Grantor has no commercial tort claims seeking damages in excess of \$250,000 other than (i) those listed on Schedule 2(d), or (ii) as to which the actions required by Section 5(k) have been taken.

5. Covenants. Each Grantor covenants that, so long as any of the Secured Obligations remain outstanding (other than contingent indemnification obligations that pursuant to the express terms of the Loan Documents survive termination of the Loan Documents, obligations arising under Cash Management Agreements that survive the termination of the Credit Agreement as to which cash collateral or other arrangements satisfactory to the applicable Cash Management Bank shall have been made and Letters of Credit as to which Cash Collateral or other arrangements satisfactory to Administrative Agent and L/C Issuer shall have been made) and until all of the commitments relating thereto have been terminated and the Facility Termination Date has occurred, such Grantor shall:

(a) Other Liens. Defend the Collateral against Liens therein other than Permitted Liens.

(b) Instruments/Tangible Chattel Paper/Documents. If any amount in excess of \$100,000 payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument or Tangible Chattel Paper, or if any property constituting Collateral shall be stored or shipped subject to a Document, (i) ensure that such Instrument, Tangible Chattel Paper or Document is either in the possession of such Grantor at all times or, if requested by the Administrative Agent to perfect or otherwise protect its security interest in such Collateral, is promptly delivered to the Administrative Agent, duly endorsed in a manner satisfactory to the Administrative Agent and (ii) ensure that any Collateral consisting of Tangible Chattel Paper is marked with a legend acceptable to the Administrative Agent indicating the Administrative Agent's security interest in such Tangible Chattel Paper.

(c) Change in Structure, Location or Type. (i) Not, without providing ten (10) Business Days' prior written notice to the Administrative Agent change its name or state of formation and (ii) not be party to a merger, consolidation or other change in structure except as permitted by the Credit Agreement.

(d) Perfection of Security Interest. Execute and deliver to the Administrative Agent such agreements, assignments or instruments and do all such other things as the Administrative Agent may reasonably deem necessary, appropriate or convenient (i) to assure to the Administrative Agent the effectiveness, perfection and priority of its security interests in the Collateral hereunder, including (A) such instruments as the Administrative Agent may from time to time reasonably request in order to perfect and maintain the security interests granted hereunder in accordance with the UCC, (B) with regard to Copyrights, Patents and Trademarks, an intellectual property security agreement in substantially the form of Exhibit 5(d) attached hereto for filing with the United States Copyright Office and the United States Patent and Trademark Office, (ii) to consummate the transactions contemplated hereby and (iii) to otherwise protect and assure the Administrative Agent of its rights and interests hereunder. To that end, each Grantor authorizes the Administrative Agent to file one or more financing statements (with collateral descriptions broader, including without limitation “all assets” and/or “all assets of the debtor, whether now owned or existing or owned, acquired or arising hereafter” and/or “all personal property” collateral descriptions, and/or less specific than the description of the Collateral contained herein) disclosing the Administrative Agent’s security interest in any or all of the Collateral of such Grantor without such Grantor’s signature thereon. Each Grantor hereby ratifies and confirms each financing statement filed by Union Bank prior to the Closing Date and agrees that such financing statement shall be deemed to be maintained by Union Bank in its capacity as Administrative Agent under the Credit Agreement, this Security Agreement and the other Loan Documents. Each Grantor also hereby irrevocably makes, constitutes and appoints the Administrative Agent, its nominee or any other Person whom the Administrative Agent may designate, as such Grantor’s attorney-in-fact with full power and for the limited purpose to sign in the name of such Grantor any such financing statements (including renewal statements), amendments and supplements, notices or any similar documents that in the Administrative Agent’s reasonable discretion would be necessary, appropriate or convenient in order to perfect and maintain perfection of the security interests granted hereunder, such power, being coupled with an interest, being and remaining irrevocable so long as the Secured Obligations remain unpaid (other than contingent indemnification obligations that pursuant to the express terms of the Loan Documents survive termination of the Loan Documents, obligations arising under Cash Management Agreements that survive the termination of the Credit Agreement as to which cash collateral or other arrangements satisfactory to the applicable Cash Management Bank shall have been made and Letters of Credit as to which Cash Collateral or other arrangements satisfactory to Administrative Agent and L/C Issuer shall have been made) and until the commitments relating thereto shall have been terminated and the Facility Termination Date has occurred. Each Grantor hereby agrees that a carbon, photographic or other reproduction of any such financing statement is sufficient for filing as a financing statement by the Administrative Agent without notice thereof to such Grantor wherever the Administrative Agent may in its sole discretion desire to file the same. In the event for any reason the law of any jurisdiction other than California becomes or is applicable to the Collateral of any Grantor or any part thereof, or to any of the Secured Obligations, such Grantor agrees to execute and deliver all such instruments and to do all such other things as the Administrative Agent reasonably deems necessary, appropriate or convenient to preserve, protect and enforce the security interests of the Administrative Agent under the law of such other jurisdiction (and, if a Grantor shall fail to do so promptly upon the request of the Administrative Agent, then the Administrative Agent may execute any and all such requested documents on behalf of such Grantor pursuant to the power of attorney granted hereinabove). If any Collateral with a value in excess of \$100,000, individually with one agent, or in excess of the Threshold Amount, in the aggregate for all agents, is in the possession or control of a Grantor’s agents and the Administrative Agent so requests, such Grantor agrees to notify such agents in writing of the Administrative Agent’s security interest therein and, upon the Administrative Agent’s request, instruct them to hold all such Collateral for the account of the Secured Parties, subject to the Administrative Agent’s instructions. Each Grantor agrees to mark its books and records to reflect the security interest of the Administrative Agent in the Collateral.

(e) Control. Execute and deliver (and cause to be executed and delivered) all agreements, assignments, instruments or other documents as the Administrative Agent shall reasonably request for the purpose of obtaining and maintaining control within the meaning of the UCC with respect to any Collateral consisting of Deposit Accounts, Investment Property, Letter-of-Credit Rights and Electronic Chattel Paper.

(f) Collateral held by Warehouseman, Bailee, etc. If any Collateral, with a value at any one location of more than \$250,000, or with a value at all locations (as to which Grantors have not taken the actions described in this subsection (f)) of more than the Threshold Amount, is at any time in the possession or control of a warehouseman, bailee, agent or processor of such Grantor and is expected to remain in possession and control of such third party, (i) notify the Administrative Agent of such possession or control, (ii) upon Administrative Agent's written request, notify such Person of the Administrative Agent's security interest in such Collateral, (iii) instruct such Person to hold all such Collateral for the Administrative Agent's account and subject to the Administrative Agent's instructions and (iv) upon request of Administrative Agent, use commercially reasonable efforts to obtain a Collateral Access Agreement for such location, including an acknowledgment from such Person that it is holding such Collateral for the benefit of the Administrative Agent. If any Collateral, with a value at any one location of more than \$250,000, or with a value at all locations (as to which Grantors have not taken the actions described in this subsection (f)) of more than the Threshold Amount, is at any time located on premises leased by a Grantor or subject to a mortgage in favor of a third party, Grantors, notify Administrative Agent of such location and shall, upon request of Administrative Agent, use commercially reasonable efforts to obtain a Collateral Access Agreement for such location.

(g) Treatment of Accounts. Not grant or extend the time for payment of any Account, or compromise or settle any Account for less than the full amount thereof, or release any Person or property, in whole or in part, from payment thereof, or allow any credit or discount thereon, in each case other than as normal and customary in the ordinary course of a Grantor's business or as required by law.

(h) Covenants Relating to Copyrights.

(i) With respect to any Copyright owned by a Grantor that is included in the Collateral that is a Material IP Right (A) not do any act or knowingly omit to do any act whereby such Copyright may become invalidated; (B) not do any act, or knowingly omit to do any act, whereby such Copyright is injected into the public domain; (C) notify the Administrative Agent immediately if it knows that such Copyright may become injected into the public domain or of any materially adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any court or tribunal in the United States or any other country) regarding a Grantor's ownership of any such Copyright or its validity of which such Grantor becomes aware; (D) take all necessary steps as it shall deem appropriate under the circumstances, to maintain and pursue each application (and to obtain the relevant registration) of each such Copyright owned by a Grantor and to maintain each registration of each such Copyright owned by a Grantor and included in the Collateral for which such Grantor considers, in its reasonable business judgment, registration is appropriate including, without limitation, filing of applications for renewal where necessary; and (E) promptly notify the Administrative Agent of any material infringement of any such Copyright of a Grantor of which it becomes aware and take such actions as it shall reasonably deem appropriate under the circumstances to protect such Copyright, including, where appropriate, the bringing of suit for infringement, seeking injunctive relief and seeking to recover any and all damages for such infringement.

(ii) Not make any assignment or agreement in material conflict with the security interest in the Copyrights of each Grantor hereunder (other than in connection with a Permitted Lien or as otherwise provided in the Credit Agreement).

(i) Covenants Relating to Patents and Trademarks.

(i) With respect to any Trademark owned by a Grantor that is included in the Collateral that is a Material IP Right, (A) continue to use such Trademark in order to maintain such Trademark in full force free from any claim of abandonment for non-use, (B) maintain as in the past the quality of products and services offered under such Trademark, (C) employ such Trademark with the appropriate notice of registration, if applicable, (D) not adopt or use any mark that is confusingly similar or a colorable imitation of such Trademark unless the Administrative Agent, for the ratable benefit of the Secured Parties, shall obtain a perfected security interest in such Trademark pursuant to this Security Agreement, and (E) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any such Trademark owned by a Grantor is invalidated.

(ii) With respect to any Patent owned by a Grantor that is included in the Collateral that is a Material IP Right, not do any act, or omit to do any act, whereby any such Patent owned by a Grantor is abandoned or dedicated.

(iii) Notify the Administrative Agent promptly if it knows that any application or registration relating to any Patent or Trademark owned by a Grantor that is included in the Collateral and is a Material IP Right of such Grantor may become abandoned or dedicated, or of any materially adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office or any court or tribunal in any country) of which such Grantor becomes aware regarding a Grantor's ownership of any Patent or Trademark that is a Material IP Right of such Grantor or its right to register the same or to keep and maintain the same.

(iv) Whenever a Grantor, either by itself or through an agent, employee, licensee or designee, shall file an application for the registration of any Patent or Trademark with the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to the Administrative Agent as required by the Credit Agreement. Upon request of the Administrative Agent, a Grantor shall execute and deliver any and all agreements, instruments, documents and papers as the Administrative Agent may reasonably request to evidence the security interest of the Administrative Agent and the Secured Parties in any Patent or Trademark in the Collateral and the goodwill and general intangibles of a Grantor relating thereto or represented thereby.

(v) With respect to each Patent and Trademark owned by a Grantor that is a Material IP Right, take all reasonable and necessary steps as it shall deem appropriate in the circumstances, including, without limitation, if applicable, in any proceeding before the United States Patent and Trademark Office, or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of each such Patent and Trademark owned by a Grantor, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability.

(vi) Promptly notify the Administrative Agent after it learns that any Patent or Trademark included in the Collateral that is a Material IP Right is infringed, misappropriated or diluted by a third party in any material respect and take such actions as it shall reasonably deem appropriate under the circumstances to protect such Patent or Trademark.

(vii) Not make any assignment or agreement in material conflict with the security interest in the Patents or Trademarks of each Grantor hereunder (other than in connection with a Permitted Lien or as otherwise provided in the Credit Agreement).

(j) Insurance. Insure, repair and replace the Collateral of such Grantor as set forth in the Credit Agreement. All insurance proceeds with respect to the Collateral shall be subject to the security interest of the Administrative Agent hereunder.

(k) Commercial Tort Claims.

(i) Promptly notify the Administrative Agent in writing of the initiation of any Commercial Tort Claim in which damages are sought in excess of \$250,000 before any Governmental Authority by or in favor of such Grantor.

(ii) Execute and deliver such statements, documents and notices and do and cause to be done all such things as the Administrative Agent may reasonably deem necessary, appropriate or convenient, or as are required by law, to create, perfect and maintain the Administrative Agent's security interest in any such Commercial Tort Claim.

6. Advances by Administrative Agent. On failure of any Grantor to perform any of the covenants and agreements contained herein which constitutes an Event of Default and while such Event of Default continues, the Administrative Agent may, at its sole option and in its sole discretion, upon notice to the Grantors, perform the same and in so doing may expend such sums as the Administrative Agent may reasonably deem advisable in the performance thereof, including, without limitation, the payment of any insurance premiums, the payment of any taxes, a payment to obtain a release of a Lien (other than a Permitted Lien), expenditures made in defending against any adverse claim and all other expenditures that the Administrative Agent may make for the protection of the security hereof or that may be compelled to make by operation of Law. All such sums and amounts so expended shall be repayable by the Grantors on a joint and several basis (subject to Section 24 hereof) promptly upon timely notice thereof and demand therefor, with accompanying detail for such sums and amounts, shall constitute additional Secured Obligations and, subject to the terms of the Credit Agreement, shall bear interest from the date said amounts are expended at the Default Rate. No such performance of any covenant or agreement by the Administrative Agent on behalf of any Grantor, and no such advance or expenditure therefor, shall relieve the Grantors of any default under the terms of this Security Agreement, the other Loan Documents or any other documents relating to the Secured Obligations. The Administrative Agent may make any payment hereby authorized in accordance with any bill, statement or estimate procured from the appropriate public office or holder of the claim to be discharged, without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien, title or claim except to the extent such payment is being contested in good faith by a Grantor in appropriate proceedings and against which adequate reserves are being maintained in accordance with GAAP.

7. Remedies.

(a) General Remedies. Upon the occurrence of an Event of Default and during the continuation thereof, the Administrative Agent shall have, in addition to the rights and remedies provided herein, in the Loan Documents, in any other documents relating to the Secured Obligations, or by law (including, without limitation, levy of attachment and garnishment), the rights and remedies of a secured

party under the Uniform Commercial Code of the jurisdiction applicable to the affected Collateral and, further, the Administrative Agent may, with or without judicial process or the aid and assistance of others to the extent permitted by applicable law and subject to the rights of any lessor of a Grantor, if applicable (i) enter on any premises on which any of the Collateral may be located and, without resistance or interference by the Grantors, take possession of the Collateral, (ii) dispose of any Collateral on any such premises, (iii) require the Grantors to assemble and make available to the Administrative Agent at the expense of the Grantors any Collateral at any place and time designated by the Administrative Agent that is reasonably convenient to both parties, (iv) remove any Collateral from any such premises for the purpose of effecting sale or other disposition thereof, and/or (v) without demand and without advertisement, notice, hearing or process of law, all of which each of the Grantors hereby waives to the fullest extent permitted by law, at any place and time or times, sell and deliver any or all Collateral held by or for it at public or private sale, by one or more contracts, in one or more parcels, for cash, upon credit or otherwise, at such prices and upon such terms as the Administrative Agent deems advisable, in its sole discretion (subject to any and all mandatory legal requirements). Each of the Grantors acknowledges that any private sale referenced above may be at prices and on terms less favorable to the seller than the prices and terms that might have been obtained at a public sale and agrees that such private sale shall be deemed to have been made in a commercially reasonable manner. The Administrative Agent's disclaimer of warranties relating to the Collateral shall not be considered to adversely affect the commercial reasonableness of any sale. In addition to all other sums due the Administrative Agent and the Secured Parties with respect to the Secured Obligations, the Grantors shall pay the Administrative Agent and each of the Secured Parties all reasonable costs and expenses incurred by the Administrative Agent or any such Secured Party, in enforcing its remedies hereunder including, but not limited to, reasonable attorneys' fees and court costs, in obtaining or liquidating the Collateral, in enforcing payment of the Secured Obligations, or in the prosecution or defense of any action or proceeding by or against the Administrative Agent or the Secured Parties or the Grantors concerning any matter arising out of or connected with this Security Agreement, any Collateral or the Secured Obligations, including, without limitation, any of the foregoing arising in, arising under or related to a case under the Debtor Relief Laws. To the extent the rights of notice cannot be legally waived hereunder, each Grantor agrees that any requirement of reasonable notice shall be met if such notice is personally served on or mailed, postage prepaid, to the Borrower in accordance with the notice provisions of Section 11.02 of the Credit Agreement at least ten Business Days before the time of sale or other event giving rise to the requirement of such notice. The Administrative Agent shall not be obligated to make any sale or other disposition of the Collateral regardless of notice having been given. To the extent permitted by law, any Secured Party may be a purchaser at any such sale. To the extent permitted by applicable law, each of the Grantors hereby waives all of its rights of redemption with respect to any such sale. Subject to the provisions of applicable law, the Administrative Agent and the Secured Parties may postpone or cause the postponement of the sale of all or any portion of the Collateral by announcement at the time and place of such sale, and such sale may, without further notice, to the extent permitted by law, be made at the time and place to which the sale was postponed, or the Administrative Agent may further postpone such sale by announcement made at such time and place.

(b) Remedies relating to Accounts. Upon the occurrence of an Event of Default and during the continuation thereof, whether or not the Administrative Agent has exercised any or all of its rights and remedies hereunder, (i) each Grantor will promptly upon request of the Administrative Agent instruct all account debtors to remit all payments in respect of Accounts to a mailing location selected by the Administrative Agent and (ii) the Administrative Agent shall have the right to enforce any Grantor's rights against its customers and account debtors, and the Administrative Agent or its designee may notify (or require any Grantor to notify) any Grantor's customers and account debtors that the Accounts of such Grantor have been assigned to the Administrative Agent or of the Administrative Agent's security interest therein, and may (either in its own name or in the name of a Grantor or both) demand, collect (including without limitation by way of a lockbox arrangement), receive, take receipt for, sell, sue for, compound,

settle, compromise and give acquittance for any and all amounts due or to become due on any Account, and, in the Administrative Agent's discretion, file any claim or take any other action or proceeding to protect and realize upon the security interest of the Secured Parties in the Accounts. The Administrative Agent and the Secured Parties shall have no liability or responsibility to any Grantor for acceptance of a check, draft or other order for payment of money bearing the legend "payment in full" or words of similar import or any other restrictive legend or endorsement or be responsible for determining the correctness of any remittance. Each Grantor hereby agrees to indemnify the Administrative Agent and the Secured Parties from and against all liabilities, damages, losses, actions, claims, judgments, costs, expenses, charges and reasonable attorneys' fees suffered or incurred by the Administrative Agent or the Secured Parties (each, an "**Indemnified Party**") because of the maintenance of the foregoing arrangements except as relating to or arising out of the gross negligence or willful misconduct of an Indemnified Party or its officers, employees or agents. In the case of any investigation, litigation or other proceeding, the foregoing indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by a Grantor, its directors, shareholders or creditors or an Indemnified Party or any other Person or any other Indemnified Party is otherwise a party thereto.

(c) Access. In addition to the rights and remedies hereunder, upon the occurrence of an Event of Default and during the continuation thereof, the Administrative Agent shall have the right, subject to the rights of any lessor of a Grantor, if applicable, to enter and remain upon the various premises of the Grantors without cost or charge to the Administrative Agent, and use the same, together with materials, supplies, books and records of the Grantors for the purpose of collecting and liquidating the Collateral, or for preparing for sale and conducting the sale of the Collateral, whether by foreclosure, auction or otherwise. In addition, the Administrative Agent may remove Collateral, or any part thereof, from such premises and/or any records with respect thereto, in order to effectively collect or liquidate such Collateral.

(d) Nonexclusive Nature of Remedies. Failure by the Administrative Agent or the Secured Parties to exercise any right, remedy or option under this Security Agreement, any other Loan Document, any other documents relating to the Secured Obligations, or as provided by law, or any delay by the Administrative Agent or the Secured Parties in exercising the same, shall not operate as a waiver of any such right, remedy or option. No waiver hereunder shall be effective unless it is in writing, signed by the party against whom such waiver is sought to be enforced and then only to the extent specifically stated, which in the case of the Administrative Agent or the Secured Parties shall only be granted as provided herein. To the extent permitted by law, neither the Administrative Agent, the Secured Parties, nor any party acting as attorney for the Administrative Agent or the Secured Parties, shall be liable hereunder for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct hereunder. The rights and remedies of the Administrative Agent and the Secured Parties under this Security Agreement shall be cumulative and not exclusive of any other right or remedy that the Administrative Agent or the Secured Parties may have.

(e) Retention of Collateral. To the extent permitted under applicable law, in addition to the rights and remedies hereunder, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, after providing the notices required by Sections 9-620 and 9-621 of the UCC or otherwise complying with the requirements of applicable law of the relevant jurisdiction, accept or retain all or any portion of the Collateral in satisfaction of the Secured Obligations. Unless and until the Administrative Agent shall have provided such notices, however, the Administrative Agent shall not be deemed to have accepted or retained any Collateral in satisfaction of any Secured Obligations for any reason.

(f) Deficiency. In the event that the proceeds of any sale, collection or realization are insufficient to pay all amounts to which the Administrative Agent or the Secured Parties are legally

entitled, the Grantors shall be jointly and severally liable for the deficiency (subject to Section 24 hereof), together with interest thereon at the Default Rate, together with the costs of collection and reasonable attorneys' fees. Any surplus remaining after the full payment and satisfaction of the Secured Obligations shall be returned to the Grantors or to whomsoever a court of competent jurisdiction shall determine to be entitled thereto.

8. Rights of the Administrative Agent.

(a) Power of Attorney. In addition to other powers of attorney contained herein, each Grantor hereby designates and appoints the Administrative Agent, on behalf of the Secured Parties, and each of its designees or agents, as attorney-in-fact of such Grantor, irrevocably and with power of substitution, with authority to take any or all of the following actions upon the occurrence and during the continuation of an Event of Default:

(i) to demand, collect, settle, compromise and adjust, and give discharges and releases concerning the Collateral, all as the Administrative Agent may reasonably deem appropriate;

(ii) to commence and prosecute any actions at any court for the purposes of collecting any of the Collateral and enforcing any other right in respect thereof;

(iii) to defend, settle or compromise any action, suit or proceeding brought in connection with the Collateral and, in connection therewith, give such discharge or release as the Administrative Agent may reasonably deem appropriate;

(iv) to receive, open and dispose of mail addressed to a Grantor and endorse checks, notes, drafts, acceptances, money orders, bills of lading, warehouse receipts or other instruments or documents evidencing payment, shipment or storage of the goods giving rise to the Collateral on behalf of and in the name of such Grantor, or securing, or relating to such Collateral;

(v) to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral;

(vi) to direct any parties liable for any payment in connection with any of the Collateral to make payment of any and all monies due and to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct;

(vii) to receive payment of and receipt for any and all monies, claims, and other amounts due and to become due at any time in respect of or arising out of any Collateral;

(viii) to sell, assign, transfer, make any agreement in respect of, or otherwise deal with or exercise rights in respect of, any Collateral or the goods or services that have given rise thereto, as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes;

(ix) to adjust and settle claims under any insurance policy relating thereto;

(x) to execute and deliver all assignments, conveyances, statements, financing statements, renewal financing statements, security and pledge agreements, affidavits, notices and other agreements, instruments and documents that the Administrative Agent may reasonably deem appropriate in order to perfect and maintain the security interests and liens granted in this Security Agreement and in order to fully consummate all of the transactions contemplated therein;

(xi) to institute any foreclosure proceedings that the Administrative Agent may reasonably deem appropriate; and

(xii) to do and perform all such other acts and things as the Administrative Agent may reasonably deem appropriate or convenient in connection with the Collateral.

This power of attorney is a power coupled with an interest and shall be irrevocable for so long as any of the Secured Obligations shall remain outstanding (other than contingent indemnification obligations that pursuant to the express terms of the Loan Documents survive termination of the Loan Documents, obligations arising under Cash Management Agreements that survive the termination of the Credit Agreement as to which cash collateral or other arrangements satisfactory to the applicable Cash Management Bank shall have been made and Letters of Credit as to which Cash Collateral or other arrangements satisfactory to Administrative Agent and L/C Issuer shall have been made) and until all of the commitments relating thereto shall have been terminated and the Facility Termination Date shall have occurred. The Administrative Agent shall be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges and options expressly or implicitly granted to the Administrative Agent in this Security Agreement, and shall not be liable for any failure to do so or any delay in doing so. The Administrative Agent shall not be liable for any act or omission or for any error of judgment or any mistake of fact or law in its individual capacity or its capacity as attorney-in-fact except acts or omissions resulting from its gross negligence or willful misconduct. This power of attorney is conferred on the Administrative Agent solely to protect, preserve and realize upon its security interest in the Collateral.

(b) The Administrative Agent's Duty of Care. Other than the exercise of reasonable care to assure the safe custody of the Collateral while being held by the Administrative Agent hereunder and to account for all proceeds thereof, the Administrative Agent shall have no duty or liability to preserve rights pertaining thereto, it being understood and agreed that the Grantors shall be responsible for preservation of all rights in the Collateral, and the Administrative Agent shall be relieved of all responsibility for the Collateral upon surrendering it or tendering the surrender of it to the Grantors. The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Administrative Agent accords its own property, which shall be no less than the treatment employed by a reasonable and prudent agent in the industry, it being understood that the Administrative Agent shall not have responsibility for taking any necessary steps to preserve rights against any parties with respect to any of the Collateral. In the event of a public or private sale of Collateral pursuant to Section 7 hereof, the Administrative Agent shall have no obligation to clean, repair or otherwise prepare the Collateral for sale.

(c) Certain Waivers. Each Grantor waives: (a) all right to require Agent to proceed against any other person including Borrower and any other Grantor or to apply any Collateral that Agent or any Secured Party may hold at any time or to pursue any other remedy. Collateral, endorsers or Guarantors may be released, substituted or added without affecting the liability of any Grantor hereunder or under any other Loan Document; (b) the defense of the statute of limitations in any action upon any obligations of any Grantor secured hereby; (c) any right of subrogation and any right to participate in Collateral until all obligations secured hereby have been paid in full; and (d) to the fullest extent permitted by law, any right to oppose the appointment of a receiver or similar official to operate any Grantor's business.

(d) Rights Not Affected. The right of Agent and the other Secured Parties to have recourse against Collateral shall not be affected in any way by the fact that the credit is secured by a mortgage, deed of trust or other lien upon real property. The security interests granted herein, and the rights and

remedies of Agent with respect to the security interests granted hereby, are in addition to those set forth in the Credit Agreement and the other Loan Documents, and those which are now or hereafter available to Administrative Agent or any other Secured Party as a matter of law or equity.

9. Rights of Required Lenders. All rights of the Administrative Agent hereunder, if not exercised by the Administrative Agent, may be exercised by the Required Lenders.

10. Application of Proceeds. Upon the occurrence and during the continuation of an Event of Default, any payments in respect of the Secured Obligations and any proceeds of the Collateral, when received by the Administrative Agent or any of the Secured Parties in cash or its equivalent, will be applied in reduction of the Secured Obligations in the order set forth in Section 9.03 of the Credit Agreement, and each Grantor irrevocably waives the right to direct the application of such payments and proceeds and acknowledges and agrees that the Administrative Agent shall have the continuing and exclusive right to apply and reapply any and all such payments and proceeds in the Administrative Agent's sole discretion, notwithstanding any entry to the contrary upon any of its books and records.

11. Continuing Agreement.

(a) This Security Agreement shall be a continuing agreement in every respect and shall remain in full force and effect so long as any of the Secured Obligations remains outstanding (other than contingent indemnification obligations that pursuant to the express terms of the Loan Documents survive termination of the Loan Documents) and until all of the commitments relating thereto have been terminated. Upon payment or other satisfaction of all Secured Obligations (other than contingent indemnification obligations that pursuant to the express terms of the Loan Documents survive termination of the Loan Documents) and termination of the commitments related thereto, this Security Agreement and the liens and security interests of the Administrative Agent hereunder shall be terminated and the Administrative Agent shall, upon the request and at the expense of the Grantors, execute and deliver all UCC termination statements and/or other documents reasonably requested by the Grantors evidencing such termination and return to Grantors all Collateral in its possession. Grantors shall be obligated to request the release, reassignment or return of Collateral after the Facility Termination Date. Administrative Agent shall be under no duty or obligation to release, reassign or return any Collateral except upon the express written request of a Grantor and then only after the Facility Termination Date. Notwithstanding the foregoing, all releases and indemnities provided hereunder shall survive termination of this Security Agreement.

(b) This Security Agreement shall continue to be effective or be automatically reinstated, as the case may be, if at any time payment, in whole or in part, of any of the Secured Obligations is rescinded or must otherwise be restored or returned by the Administrative Agent or any Secured Party as a preference, fraudulent conveyance or otherwise under any bankruptcy, insolvency or similar law, all as though such payment had not been made; provided that in the event payment of all or any part of the Secured Obligations is rescinded or must be restored or returned, all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the Administrative Agent or any Secured Party in defending and enforcing such reinstatement shall be deemed to be included as a part of the Secured Obligations.

12. Amendments and Waivers. This Security Agreement and the provisions hereof may not be amended, waived, modified, changed, discharged or terminated except as set forth in Section 11.01 of the Credit Agreement.

13. Successors in Interest. This Security Agreement shall create a continuing security interest in the Collateral and shall be binding upon each Grantor, its successors and assigns, and shall

inure, together with the rights and remedies of the Administrative Agent and the Secured Parties hereunder, to the benefit of the Administrative Agent and the Secured Parties and their successors and permitted assigns; provided, however, none of the Grantors may assign its rights or delegate its duties hereunder without the prior written consent of the requisite Lenders under the Credit Agreement. To the fullest extent permitted by law, each Grantor hereby releases the Administrative Agent and each Secured Party, their respective successors and assigns and their respective officers, attorneys, employees and agents, from any liability for any act or omission or any error of judgment or mistake of fact or of law relating to this Security Agreement or the Collateral, except for any liability arising from the gross negligence or willful misconduct of the Administrative Agent or such holder, or their respective officers, attorneys, employees or agents.

14. Notices. All notices required or permitted to be given under this Security Agreement shall be given as provided in Section 11.02 of the Credit Agreement.

15. Counterparts. This Security Agreement may be executed in any number of counterparts, each of which, where so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Security Agreement to produce or account for more than one such counterpart.

16. Headings. The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Security Agreement.

17. Governing Law; Submission to Jurisdiction; Venue.

(a) THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE; PROVIDED THAT THE ADMINISTRATIVE AGENT AND EACH SECURED PARTY SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF CALIFORNIA SITTING IN SANTA CLARA, CALIFORNIA OR OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, AND BY EXECUTION AND DELIVERY OF THIS SECURITY AGREEMENT, EACH GRANTOR AND THE ADMINISTRATIVE AGENT, ON BEHALF OF ITSELF AND EACH SECURED PARTY, CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH GRANTOR AND THE ADMINISTRATIVE AGENT, ON BEHALF OF ITSELF AND EACH SECURED PARTY, IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. EACH GRANTOR AND THE ADMINISTRATIVE AGENT, ON BEHALF OF ITSELF AND EACH SECURED PARTY, WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF SUCH STATE. NOTHING IN THIS SECURITY AGREEMENT SHALL AFFECT ANY RIGHT THAT ADMINISTRATIVE AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY GRANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

18. Waiver of Right to Trial by Jury.

TO THE EXTENT PERMITTED BY LAW, IN CONNECTION WITH ANY CLAIM, CAUSE OF ACTION, PROCEEDING OR OTHER DISPUTE CONCERNING THIS SECURITY AGREEMENT (EACH A “CLAIM”), THE PARTIES TO THIS SECURITY AGREEMENT EXPRESSLY, INTENTIONALLY, AND DELIBERATELY WAIVE ANY RIGHT EACH MAY OTHERWISE HAVE TO TRIAL BY JURY. IN THE EVENT THAT THE WAIVER OF JURY TRIAL SET FORTH IN THE PREVIOUS SENTENCE IS NOT ENFORCEABLE UNDER THE LAW APPLICABLE TO THIS AGREEMENT, THE PARTIES TO THIS SECURITY AGREEMENT AGREE THAT ANY CLAIM, INCLUDING ANY QUESTION OF LAW OR FACT RELATING THERETO, SHALL, AT THE WRITTEN REQUEST OF ANY PARTY, BE DETERMINED BY JUDICIAL REFERENCE PURSUANT TO THE STATE LAW APPLICABLE TO THIS SECURITY AGREEMENT. THE PARTIES SHALL SELECT A SINGLE NEUTRAL REFEREE, WHO SHALL BE A RETIRED STATE OR FEDERAL JUDGE. IN THE EVENT THAT THE PARTIES CANNOT AGREE UPON A REFEREE, THE COURT SHALL APPOINT THE REFEREE. THE REFEREE SHALL REPORT A STATEMENT OF DECISION TO THE COURT. NOTHING IN THIS PARAGRAPH SHALL LIMIT THE RIGHT OF ANY PARTY AT ANY TIME TO EXERCISE SELF HELP REMEDIES, FORECLOSE AGAINST COLLATERAL OR OBTAIN PROVISIONAL REMEDIES. THE PARTIES SHALL BEAR THE FEES AND EXPENSES OF THE REFEREE EQUALLY, UNLESS THE REFEREE ORDERS OTHERWISE. THE REFEREE SHALL ALSO DETERMINE ALL ISSUES RELATING TO THE APPLICABILITY, INTERPRETATION, AND ENFORCEABILITY OF THIS PARAGRAPH. THE PARTIES ACKNOWLEDGE THAT IF A REFEREE IS SELECTED TO DETERMINE THE CLAIMS, THEN THE CLAIMS WILL NOT BE DECIDED BY A JURY.

19. Severability. If any provision of this Security Agreement is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

20. Entirety. This Security Agreement, the other Loan Documents and the other documents relating to the Secured Obligations represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Loan Documents, any other documents relating to the Secured Obligations, or the transactions contemplated herein and therein.

21. Survival. All representations and warranties of the Grantors hereunder shall survive the execution and delivery of this Security Agreement, the other Loan Documents and the other documents relating to the Secured Obligations, the delivery of the Notes and the extension of credit thereunder or in connection therewith.

22. Other Security. To the extent that any of the Secured Obligations are now or hereafter secured by property other than the Collateral (including, without limitation, real property and securities owned by a Grantor), or by a guarantee, endorsement or property of any other Person, then to the extent permitted by applicable law the Administrative Agent shall have the right to proceed against such other property, guarantee or endorsement upon the occurrence and during the continuation of any Event of Default, and the Administrative Agent shall have the right, in its sole discretion, to determine which rights, security, liens, security interests or remedies the Administrative Agent shall at any time pursue,

relinquish, subordinate, modify or take with respect thereto, without in any way modifying or affecting any of them or the Secured Obligations or any of the rights of the Administrative Agent or the Secured Parties under this Security Agreement, under any of the other Loan Documents or under any other document relating to the Secured Obligations.

23. Joinder. At any time after the date of this Security Agreement, one or more additional Persons may become party hereto by executing and delivering to the Administrative Agent a Joinder Agreement. Immediately upon such execution and delivery of such Joinder Agreement (and without any further action), each such additional Person will become a party to this Security Agreement as a “Grantor” and have all of the rights and obligations of a Grantor hereunder and this Security Agreement and the schedule hereto shall be deemed amended by such Joinder Agreement.

24. Joint and Several Obligations of Grantors.

(a) Subject to subsection (c) of this Section 24, each of the Grantors is accepting joint and several liability hereunder in consideration of the financial accommodation to be provided by the Secured Parties, for the mutual benefit, directly and indirectly, of each of the Grantors and in consideration of the undertakings of each of the Grantors to accept joint and several liability for the obligations of each of them.

(b) Subject to subsection (c) of this Section 24, each of the Grantors 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 Grantors with respect to the payment and performance of all of the Secured Obligations arising under this Security Agreement, the other Loan Documents and any other documents relating to the Secured Obligations, it being the intention of the parties hereto that all the Secured Obligations shall be the joint and several obligations of each of the Grantors without preferences or distinction among them.

(c) Notwithstanding any provision to the contrary contained herein, in any other of the Loan Documents or in any other documents relating to the Secured Obligations, the obligations of each Grantor under the Credit Agreement, the other Loan Documents and the other documents relating to the Secured Obligations shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under Section 548 of the United States Bankruptcy Code or any comparable provisions of any applicable state law.

25. Restatement. This Security Agreement together with the other Loan Documents is intended to and does completely amend, restate, supercede and replace, without novation, that certain Security Agreement, dated as of August 31, 2010, by and among Borrower, MHM Resources, LLC, and Union Bank, as amended from time to time (the “Existing Security Agreement”). The execution and delivery of this Security Agreement or the other Loan Documents shall not, in any manner or circumstance, be deemed to be a novation of or to have terminated, released, extinguished, or discharged any Grantor’s obligations, indebtedness, duties or liabilities under the Existing Security Agreement or any Liens granted to Union Bank in connection with the Existing Security Agreement or any security agreement, financing statement or other document, instrument or agreement executed in connection therewith, all of which are hereby ratified and confirmed.

[Signature Pages Follow]

Each of the parties hereto has caused a counterpart of this Security Agreement to be duly executed and delivered as of the date first above written.

GRANTORS:

WAGeworks, INC.,
a Delaware corporation

By: _____
Name:
Title:

MHM RESOURCES, LLC.,
a Delaware limited liability company

By: _____
Name:
Title:

Accepted and agreed to as of the date first above written.

UNION BANK, N.A.,
as Administrative Agent

By: _____
Name:
Title:

SCHEDULE 2(d)

COMMERCIAL TORT CLAIMS

None.

EXHIBIT 5(d)

**FORM OF
INTELLECTUAL PROPERTY SECURITY AGREEMENT**

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT dated as of [], 20] (as amended, modified, restated or supplemented from time to time, this “**Intellectual Property Security Agreement**”) is by and between [] (“**Grantor**”) and Union Bank, N.A., as administrative agent (in such capacity, the “**Administrative Agent**” or the “**Agent**”) for the Secured Parties (defined below).

RECITALS

WHEREAS, a credit facility has been established in favor of WageWorks, Inc., a Delaware corporation (the “**Borrower**”), pursuant to the terms of that certain Credit Agreement dated as of December 31, 2012 (as amended, modified, supplemented, restated or extended from time to time, the “**Credit Agreement**”) among the Borrower, the Guarantors from time to time party thereto, the Lenders from time to time party thereto and Union Bank, N.A., as Administrative Agent and L/C Issuer;

WHEREAS, pursuant to the terms of that certain Security Agreement dated as of December 31, 2012 (as amended, modified, supplemented, restated or extended from time to time, the “**Security Agreement**”), Grantor has granted to Administrative Agent, for the benefit of the Secured Parties, a security interest in all of Grantor’s right, title and interest, whether presently existing or hereafter acquired, in, to and under all of the Collateral;

WHEREAS, this Intellectual Property Security Agreement is required under the terms of the Credit Agreement; and

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings provided in the Security Agreement and, to the extent not defined therein, the meanings provided in the Credit Agreement.

2. Grant of Security Interest. To secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Secured Obligations, Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in, and a right to set off against, any and all right, title and interest of Grantor in, to and under all IP Rights, whether now owned or existing or owned, acquired, or arising hereafter (including without limitation those Copyrights, Patents and Trademarks listed on Schedules 1, 2 and 3 hereto), and including without limitation all proceeds thereof (such as, by way of example but not by way of limitation, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all re-issues, divisions continuations, renewals, extensions and continuations-in-part thereof.

3. Rights and Remedies. This security interest is granted in conjunction with the security interest granted to Administrative Agent, for the benefit of the Secured Parties, under the Security Agreement and the other Collateral Documents. The rights and remedies of Administrative Agent with respect to the security interest granted hereby are in addition to those set forth in the Credit Agreement

and the other Loan Documents, and those which are now or hereafter available to Administrative Agent as a matter of law or equity. Each right, power and remedy of Administrative Agent and the other Secured Parties provided for herein or in the Credit Agreement or any of the Loan Documents, or now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power or remedy provided for herein and the exercise by Administrative Agent or the other Secured Parties of any one or more of the rights, powers or remedies provided for in this Intellectual Property Security Agreement, the Credit Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise by any Person, including Administrative Agent, of any or all other rights, powers or remedies.

4. Registered IP Rights. Grantor represents and warrants that Schedules 1, 2 and 3 attached hereto set forth any and all IP rights in connection to which Grantor has registered or filed an application with either the United States Patent and Trademark Office or the United States Copyright Office, as applicable.

5. Counterparts. This Intellectual Property Security Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the parties have caused this Intellectual Property Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

GRANTOR:

Address of Grantor:

[]

1100 Park Place, 4th Floor
San Mateo, CA 94403
Attn: Chief Financial Officer
Facsimile No.

By: _____

Name: _____

Title: _____

ADMINISTRATIVE AGENT:

Address of Administrative Agent:

UNION BANK, N.A.

Union Bank, N.A., as Administrative Agent
Attn: Commercial Loan Operations
1980 Saturn St., 1st Floor, V01-161
Monterey Park, CA 91755
Facsimile No.: (323) 720-2578

By: _____

Name: _____

Title: _____

with a copy to:

Union Bank, N.A., as Administrative Agent
Northern California Commercial Banking Group
99 Almaden Boulevard, Suite 200
San Jose, California 95113
Attention: James B. Goudy
Facsimile: (408) 280-7163

SCHEDULE 1

Copyrights

<u>Description</u>	<u>Registration Number</u>	<u>Registration Date</u>

SCHEDULE 2

Patents

<u>Description</u>	<u>Patent/App. No.</u>	<u>File Date</u>

SCHEDULE 3

Trademarks

<u>Description</u>	<u>Serial/ Registration No.</u>	<u>File Date</u>

EXHIBIT 1
FORM OF
PLEDGE AGREEMENT

I-1

PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT dated as of December 31, 2012 (as amended, modified, restated or supplemented from time to time, the “**Pledge Agreement**”) is by and among the parties identified as “Pledgors” on the signature pages hereto and such other parties as may become Pledgors hereunder after the date hereof (individually a “**Pledgor**”, and collectively the “**Pledgors**”) and Union Bank, N.A., as administrative agent (in such capacity, the “**Administrative Agent**” or the “**Agent**”) for the Secured Parties (defined below).

WITNESSETH

WHEREAS, a credit facility has been established in favor of WageWorks, Inc., a Delaware corporation (the “**Borrower**”), pursuant to the terms of that certain Credit Agreement dated as of the date hereof (as amended, modified, supplemented or extended from time to time, the “**Credit Agreement**”) among the Borrower, the Guarantors from time to time party thereto, the Lenders from time to time party thereto and Union Bank, N.A., as Administrative Agent and L/C Issuer;

WHEREAS, this Pledge Agreement is required under the terms of the Credit Agreement; and

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions.

(a) Capitalized terms used and not otherwise defined herein shall have the meanings provided in the Credit Agreement.

(b) As used herein, the following terms shall have the meanings assigned thereto in the UCC: Accession, Financial Asset, Proceeds and Security.

(c) As used herein, the following terms shall have the meanings set forth below:

“**Administrative Agent**” has the meaning provided in the introductory paragraph hereof.

“**Excluded Foreign Subsidiary**” means any Foreign Subsidiary that is a controlled foreign corporation (as defined in the Code) in respect of which the pledge of all of the Voting Equity Interests of such Foreign Subsidiary as Collateral would result in material adverse tax consequences to Borrower; provided, however, in no event shall a Material Subsidiary qualify as an Excluded Foreign Subsidiary.

“**Non-Voting Equity**” has the meaning provided in Section 2 hereof.

“**Pledged Collateral**” has the meaning provided in Section 2 hereof.

“**Pledged Shares**” has the meaning provided in Section 2 hereof.

“**Secured Obligations**” has the meaning given to that term in the Credit Agreement.

“**Secured Parties**” has the meaning given to that term in the Credit Agreement.

“**UCC**” has the meaning given to that term in the Credit Agreement.

“**Voting Equity Interests**” has the meaning given to that term in the Credit Agreement.

2. Pledge and Grant of Security Interest. To secure the prompt payment and performance in full when due, whether by lapse of time, acceleration, mandatory prepayment or otherwise, of the Secured Obligations, each Pledgor hereby grants, pledges and collaterally assigns to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in, and a right to set-off against, any and all right, title and interest of such Pledgor in and to the following, whether now owned or existing or owned, acquired, or arising hereafter (collectively, the “**Pledged Collateral**”):

(a) Pledged Shares. (i) With respect to each Domestic Subsidiary, each other Material Subsidiary and each Foreign Subsidiary that is not an Excluded Foreign Subsidiary, in each case set forth on Schedule 2(a) attached hereto, one hundred percent (100%) (or, if less, the full amount owned by such Pledgor) of the issued and outstanding Equity Interests owned by such Pledgor of each such Subsidiary; and (ii) with respect to each Excluded Foreign Subsidiary, sixty-five percent (65%) (or, if less, the full amount owned by such Pledgor), or such greater percentage that, due to a change in an applicable Law after the date hereof, (1) could not reasonably be expected to cause the undistributed earnings of such Excluded Foreign Subsidiary as determined for United States federal income tax purposes to be treated as a deemed dividend to Borrower and (2) could not reasonably be expected to cause any material adverse tax consequences to Borrower), of the issued and outstanding Voting Equity Interests, and one hundred percent (100%) (or, if less, the full amount owned by such Pledgor) of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) (“**Non-Voting Equity**”) owned by such Pledgor of each Excluded Foreign Subsidiary directly owned by such Pledgor set forth on Schedule 2(a) attached hereto, in each case together with the certificates (or other agreements or instruments), if any, representing such Equity Interests, and all options and other rights, contractual or otherwise, with respect thereto (collectively, together with the Equity Interests described in Section 2(b) and 2(c) below, the “**Pledged Shares**”), including, but not limited to, the following:

(A) all shares, securities, membership interests and other Equity Interests or other property representing a dividend or other distribution on or in respect of any of the Pledged Shares, or representing a distribution or return of capital upon or in respect of the Pledged Shares, or resulting from a stock split, revision, reclassification or other exchange therefor, and any other dividends, distributions, subscriptions, warrants, cash, securities, instruments, rights, options or other property issued to or received or receivable by the holder of, or otherwise in respect of, the Pledged Shares; and

(B) without affecting the obligations of the Pledgors under any provision prohibiting such action hereunder or under the Credit Agreement, in the event of any consolidation or merger involving the issuer of any Pledged Shares and in which such issuer is not the surviving entity, all Equity Interests of the successor entity formed by or resulting from such consolidation or merger.

(b) Additional Shares. (i) One hundred percent (100%) (or, if less, the full amount owned by such Pledgor) of the issued and outstanding Equity Interests owned by such Pledgor of any Person that hereafter becomes a Domestic Subsidiary, a Material Subsidiary or a Foreign Subsidiary that is not an Excluded Foreign Subsidiary, and (ii) sixty-five percent (65%) (or, if less, the full amount owned by such Pledgor, or such greater percentage that, due to a change in an applicable Law after the date hereof, (1) could not reasonably be expected to cause the undistributed earnings of such Excluded Foreign Subsidiary as determined for United States federal income tax purposes to be treated as a deemed dividend to such Excluded Foreign

Subsidiary's United States parent and (2) could not reasonably be expected to cause any material adverse tax consequences to Borrower) of the Voting Equity Interests and one hundred percent (100%) (or, if less, the full amount owned by such Pledgor) of the Non-Voting Equity owned by such Pledgor of any Person that hereafter becomes an Excluded Foreign Subsidiary directly owned by such Pledgor, including, without limitation, the certificates (or other agreements or instruments) representing such Equity Interests.

(c) Accessions and Proceeds. All Accessions and all Proceeds of any and all of the foregoing.

Without limiting the generality of the foregoing, it is hereby specifically understood and agreed that a Pledgor may from time to time hereafter deliver additional Equity Interests to the Administrative Agent as collateral security for the Secured Obligations. Upon delivery to the Administrative Agent, such additional Equity Interests shall be deemed to be part of the Pledged Collateral of such Pledgor and shall be subject to the terms of this Pledge Agreement whether or not Schedule 2(a) is amended to refer to such additional Equity Interests.

3. Security for Secured Obligations. The security interest created hereby in the Pledged Collateral of each Pledgor constitutes continuing collateral security for all of the Secured Obligations (subject to Section 25 hereof).

4. Delivery of the Pledged Collateral. Each Pledgor hereby agrees that:

(a) Delivery of Certificates. Each Pledgor shall deliver to the Administrative Agent (i) simultaneously with or promptly following the execution and delivery of this Pledge Agreement, all certificates representing the Pledged Shares of such Pledgor and (ii) promptly upon the receipt thereof by or on behalf of a Pledgor, all other certificates and instruments constituting Pledged Collateral of a Pledgor. Prior to delivery to the Administrative Agent, all such certificates and instruments constituting Pledged Collateral of a Pledgor shall be held in trust by such Pledgor for the benefit of the Administrative Agent pursuant hereto. All such certificates and instruments shall be delivered in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, substantially in the form provided in Exhibit 4(a) attached hereto.

(b) Additional Securities. If such Pledgor shall receive (or become entitled to receive) by virtue of its being or having been the owner of any Pledged Collateral, any (i) certificate or instrument, including without limitation, any certificate representing a dividend or distribution in connection with any increase or reduction of capital, reclassification, merger, consolidation, sale of assets, combination of shares or membership or other Equity Interests, stock splits, spin-off or split-off, promissory notes or other instruments; (ii) option or right, whether as an addition to, substitution for, conversion of, or an exchange for, any Pledged Collateral or otherwise in respect thereof; (iii) dividends payable in securities; or (iv) distributions of securities or other Equity Interests, cash or other property in connection with a partial or total liquidation, dissolution or reduction of capital, capital surplus or paid-in surplus, then such Pledgor shall accept and receive each such certificate, instrument, option, right, dividend or distribution in trust for the benefit of the Administrative Agent, shall segregate it from such Pledgor's other property and shall deliver it forthwith to the Administrative Agent in the exact form received together with any necessary endorsement and/or appropriate stock power duly executed in blank, substantially in the form provided in Exhibit 4(a), to be held by the Administrative Agent as Pledged Collateral and as further collateral security for the Secured Obligations.

(c) Financing Statements. Each Pledgor authorizes the Administrative Agent to file one or more financing statements (with the description of the Pledged Collateral contained herein, including without limitation "all assets" and/or "all personal property" collateral descriptions) disclosing the Administrative Agent's security interest in the Pledged Collateral. Each Pledgor agrees to execute and deliver to the Administrative Agent such financing statements and other filings as may be reasonably requested by the Administrative Agent in order to perfect and protect the security interest created hereby in the Pledged Collateral of such Pledgor.

5. Representations and Warranties. Each Pledgor hereby represents and warrants to the Administrative Agent, for the benefit of the Secured Parties, that so long as any of the Secured Obligations remains outstanding (other than contingent indemnification obligations that pursuant to the express terms of the Loan Documents survive termination of the Loan Documents, obligations arising under Cash Management Agreements that survive the termination of the Credit Agreement as to which cash collateral or other arrangements satisfactory to the applicable Cash Management Bank shall have been made and Letters of Credit as to which Cash Collateral or other arrangements satisfactory to Administrative Agent and L/C Issuer shall have been made) and until all of the commitments relating thereto have been terminated and the Facility Termination Date has occurred:

(a) Authorization of Pledged Shares. The Pledged Shares are duly authorized and validly issued, are fully paid and nonassessable and are not subject to the preemptive rights, warrants, options or other rights to purchase of any Person, or equityholder, voting trust or similar agreements outstanding with respect to, or property that is convertible, into, or that requires the issuance and sale of, any of the Pledged Shares.

(b) Title. Each Pledgor has good and indefeasible title to the Pledged Collateral of such Pledgor and is the legal and beneficial owner of such Pledged Collateral free and clear of any Lien, other than Permitted Liens. There exists no "adverse claim" within the meaning of Section 8-102 of the UCC with respect to the Pledged Shares of such Pledgor other than Permitted Liens.

(c) Exercising of Rights. The exercise by the Administrative Agent of its rights and remedies hereunder will not violate any material law or governmental regulation or any material contractual restriction binding on or affecting a Pledgor or any of its property.

(d) Pledgor's Authority. No authorization, approval or action by, and no notice or filing with any Governmental Authority or with the issuer of any Pledged Collateral or any other Person is required either (i) for the pledge made by a Pledgor or for the granting of the security interest by a Pledgor pursuant to this Pledge Agreement (except as have been already obtained) or (ii) for the exercise by the Administrative Agent or the Secured Parties of their rights and remedies hereunder (except as may be required by the UCC or applicable foreign laws or laws affecting the offering and sale of securities).

(e) Security Interest/Priority. This Pledge Agreement creates a valid security interest in favor of the Administrative Agent for the benefit of the Secured Parties, in the Pledged Collateral. The taking of possession by the Administrative Agent of the certificates representing the Pledged Shares and all other certificates and instruments constituting Pledged Collateral will perfect and establish the first priority of the Administrative Agent's security interest in the Pledged Shares consisting of certificated securities of Subsidiaries, subject only to Permitted Liens, and, when properly perfected by filing or registration, in all other Pledged Collateral represented by such Pledged Shares and instruments securing the Secured Obligations. Except as set forth in this Section 5(e), no action is necessary to perfect or otherwise protect such security interest.

(f) Partnership and Membership Interests. Except as previously disclosed to the Administrative Agent, none of the Pledged Shares consisting of partnership or limited liability company interests (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is a security governed by Article 8 of the UCC, (iii) is an investment company security, (iv) is held in a securities account or (v) constitutes a Security or a Financial Asset.

(g) Delivery of Certificated Equity Interests. All certificated Equity Interests, if any, included in the Pledged Collateral, have been delivered to the Administrative Agent.

6. Covenants. Each Pledgor hereby covenants, that so long as any of the Secured Obligations remain outstanding (other than contingent indemnification obligations that pursuant to the express terms of the Loan Documents survive termination of the Loan Documents, obligations arising under Cash Management Agreements that survive the termination of the Credit Agreement as to which cash collateral or other arrangements satisfactory to the applicable Cash Management Bank shall have been made and Letters of Credit as to which Cash Collateral or other arrangements satisfactory to Administrative Agent and L/C Issuer shall have been made) and until all of the commitments relating thereto have been terminated and the Facility Termination Date has occurred, such Pledgor shall:

(a) Books and Records. Mark its books and records (and shall cause the issuer of the Pledged Shares of such Pledgor to mark its books and records) to reflect the security interest granted to the Administrative Agent, for the benefit of the Secured Parties, pursuant to this Pledge Agreement.

(b) Defense of Title. Warrant and defend title to and ownership of the Pledged Collateral of such Pledgor at its own expense against the claims and demands of all other parties claiming an interest therein, keep the Pledged Collateral free from all Liens, except for Permitted Liens, and not sell, exchange, transfer, assign, lease or otherwise dispose of Pledged Collateral of such Pledgor or any interest therein, except as permitted under the Credit Agreement and the other Loan Documents.

(c) Further Assurances. Promptly execute and deliver at its expense all further instruments and documents and take all further action that may be necessary and desirable or that the Administrative Agent may request in order to (i) perfect and protect the security interest created hereby in the Pledged Collateral of such Pledgor (including, without limitation, any and all action necessary to satisfy the Administrative Agent that the Administrative Agent has obtained a first priority perfected security interest in all Pledged Collateral subject only to Permitted Liens); (ii) enable the Administrative Agent to exercise and enforce its rights and remedies hereunder in respect of the Pledged Collateral of such Pledgor; and (iii) otherwise effect the purposes of this Pledge Agreement, including, without limitation and if requested by the Administrative Agent, delivering to the Administrative Agent upon its request after the occurrence of an Event of Default, irrevocable proxies in respect of the Pledged Collateral of such Pledgor.

(d) Amendments. Not make or consent to any amendment or other modification or waiver with respect to any of the Pledged Collateral of such Pledgor or enter into any agreement or allow to exist any restriction with respect to any of the Pledged Collateral of such Pledgor other than pursuant hereto or as may be permitted under the Credit Agreement and the other Loan Documents.

(c) Compliance with Securities Laws. File all reports and other information now or hereafter required to be filed by such Pledgor with the United States Securities and Exchange Commission and any other state, federal or foreign agency in connection with the ownership of the Pledged Collateral of such Pledgor.

(f) Issuance or Acquisition of Equity Interests. Not, without executing and delivering, or causing to be executed and delivered, to the Administrative Agent such agreements, documents and instruments as the Administrative Agent may request for the purpose of perfecting its security interest therein, issue or acquire any Equity Interests constituting Pledged Collateral consisting of an interest in a partnership or a limited liability company that (i) is dealt in or traded on a securities exchange or in a securities market, (ii) by its terms expressly provides that it is a security governed by Article 8 of the UCC, (iii) is an investment company security, (iv) is held in a securities account or (v) constitutes a Security or a Financial Asset.

7. Advances by Secured Parties. On failure of any Pledgor to perform any of the covenants and agreements contained herein which constitutes an Event of Default and while such Event of Default is continuing, the Administrative Agent may, at its sole option and in its sole discretion, upon notice to the Pledgors, perform the same and in so doing may expend such sums as the Administrative Agent reasonably may deem advisable in the performance thereof, including, without limitation, the payment of any insurance premiums, the payment of any taxes, a payment to obtain a release of a Lien or potential Lien, expenditures made in defending against any adverse claim and all other expenditures that the Administrative Agent or the Secured Parties may make for the protection of the security hereof or may be compelled to make by operation of law. All such sums and amounts so expended shall be repayable by the Pledgors on a joint and several basis (subject to Section 25 hereof) promptly upon timely notice thereof and demand therefor, shall constitute additional Secured Obligations and shall bear interest from the date said amounts are expended at the Default Rate. No such performance of any covenant or agreement by the Administrative Agent or the Secured Parties on behalf of any Pledgor, and no such advance or expenditure therefor, shall relieve the Pledgors of any default under the terms of this Pledge Agreement, the other Loan Documents or any other documents relating to the Secured Obligations. The Secured Parties may make any payment hereby authorized in accordance with any bill, statement or estimate procured from the appropriate public office or holder of the claim to be discharged without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien, title or claim except to the extent such payment is being contested in good faith by a Pledgor in appropriate proceedings and against which adequate reserves are being maintained in accordance with GAAP.

8. Remedies.

(a) General Remedies. Upon the occurrence of an Event of Default and during the continuation thereof, the Administrative Agent and the Secured Parties shall have, in addition to the rights and remedies provided herein, in the Loan Documents, in any other documents relating to the Secured Obligations, or by law (including, without limitation, levy of attachment and garnishment), the rights and remedies of a secured party under the Uniform Commercial Code of the jurisdiction applicable to the affected Pledged Collateral.

(b) Sale of Pledged Collateral. Upon the occurrence of an Event of Default and during the continuation thereof, without limiting the generality of this Section 8 and without notice, the Administrative Agent may, in its sole discretion, sell or otherwise dispose of or realize upon the Pledged

Collateral, or any part thereof, in one or more parcels, at public or private sale, at any exchange or broker's board or elsewhere, at such price or prices and on such other terms as the Administrative Agent may deem commercially reasonable, for cash, credit or for future delivery or otherwise in accordance with applicable law. To the extent permitted by law, any Secured Party may in such event, bid for the purchase of such securities. Each Pledgor agrees that, to the extent notice of sale shall be required by law and has not been waived by such Pledgor, any requirement of reasonable notice shall be met if notice, specifying the place of any public sale or the time after which any private sale is to be made, is personally served on or mailed, postage prepaid, to such Pledgor, in accordance with the notice provisions of Section 11.02 of the Credit Agreement at least ten Business Days before the time of such sale. The Administrative Agent shall not be obligated to make any sale of Pledged Collateral of such Pledgor regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(c) Private Sale. Upon the occurrence of an Event of Default and during the continuation thereof, the Pledgors recognize that the Administrative Agent may be unable or deem it impracticable to effect a public sale of all or any part of the Pledged Shares or any of the securities constituting Pledged Collateral and that the Administrative Agent may, therefore, determine to make one or more private sales of any such Pledged Collateral to a restricted group of purchasers who will be obligated to agree, among other things, to acquire such Pledged Collateral for their own account, for investment and not with a view to the distribution or resale thereof. Each Pledgor acknowledges and agrees that any such private sale may be at prices and on other terms less favorable than the prices and other terms that might have been obtained at a public sale and, notwithstanding the foregoing, agrees that such private sale shall be deemed to have been made in a commercially reasonable manner and that the Administrative Agent shall have no obligation to delay sale of any such Pledged Collateral for the period of time necessary to permit the issuer of such Pledged Collateral to register such Pledged Collateral for public sale under the Securities Act or under applicable state securities laws.

(d) Retention of Pledged Collateral. To the extent permitted under applicable law, in addition to the rights and remedies hereunder, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, after providing the notices required by Sections 9-620 and 9-621 of the UCC or otherwise complying with the requirements of applicable law of the relevant jurisdiction, accept or retain all or any portion of the Pledged Collateral in satisfaction of the Secured Obligations. Unless and until the Administrative Agent shall have provided such notices, however, the Administrative Agent shall not be deemed to have accepted or retained any Pledged Collateral in satisfaction of any Secured Obligations for any reason.

(e) Deficiency. In the event that the proceeds of any sale, collection or realization are insufficient to pay all amounts to which the Administrative Agent or the Secured Parties are legally entitled, the Pledgors shall be jointly and severally liable (subject to Section 25 hereof) for the deficiency, together with interest thereon at the Default Rate, together with the costs of collection and reasonable attorneys' fees and expenses. Any surplus remaining after the full payment and satisfaction of the Secured Obligations shall be returned to the Pledgors or to whomsoever a court of competent jurisdiction shall determine to be entitled thereto.

9. Rights of the Administrative Agent.

(a) Power of Attorney. Each Pledgor hereby designates and appoints the Administrative Agent, on behalf of the Secured Parties, and each of its designees or agents, as attorney-in-fact of such Pledgor, irrevocably and with power of substitution, with authority to take any or all of the following actions upon the occurrence and during the continuation of an Event of Default:

(i) to demand, collect, settle, compromise and adjust, and give discharges and releases concerning the Pledged Collateral, all as the Administrative Agent may deem appropriate;

(ii) to commence and prosecute any actions at any court for the purposes of collecting any of the Pledged Collateral and enforcing any other right in respect thereof;

(iii) to defend, settle or compromise any action brought and, in connection therewith, give such discharge or release as the Administrative Agent may deem appropriate;

(iv) to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Pledged Collateral (other than Permitted Liens);

(v) to direct any parties liable for any payment in connection with any of the Pledged Collateral to make payment of any and all monies due and to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct;

(vi) to receive payment of and receipt for any and all monies, claims, and other amounts due and to become due at any time in respect of or arising out of any Pledged Collateral;

(vii) to sign and endorse any drafts, assignments, proxies, stock powers, verifications, notices and other documents relating to the Pledged Collateral;

(viii) to execute and deliver all assignments, conveyances, statements, financing statements, renewal financing statements, security and pledge agreements, affidavits, notices and other agreements, instruments and documents that the Administrative Agent may deem appropriate in order to perfect and maintain the security interests and liens granted in this Pledge Agreement and in order to fully consummate all of the transactions contemplated therein;

(ix) to exchange any of the Pledged Collateral or other property upon any merger, consolidation, reorganization, recapitalization or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Pledged Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms as the Administrative Agent may deem appropriate;

(x) to vote for a shareholder or member resolution, or to sign an instrument in writing, sanctioning the transfer of any or all of the Pledged Collateral into the name of the Administrative Agent or one or more of the Secured Parties or into the name of any transferee to whom the Pledged Collateral or any part thereof may be sold pursuant to Section 8 hereof; and

(xi) to do and perform all such other acts and things as the Administrative Agent may deem appropriate or convenient in connection with the Pledged Collateral.

This power of attorney is a power coupled with an interest and shall be irrevocable for so long as any of the Secured Obligations shall remain outstanding (other than contingent indemnification obligations that pursuant to the express terms of the Loan Documents survive termination of the Loan Documents, obligations arising under Cash Management Agreements that survive the termination of the Credit Agreement as to which cash collateral or other arrangements satisfactory to the applicable Cash Management Bank shall have been made and Letters of Credit as to which Cash Collateral or other arrangements satisfactory to Administrative Agent and L/C Issuer shall have been made) and until all of the commitments relating thereto have been terminated and the Facility Termination Date has occurred.

The Administrative Agent shall be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges and options expressly or implicitly granted to the Administrative Agent in this Pledge Agreement, and shall not be liable for any failure to do so or any delay in doing so. The Administrative Agent shall not be liable for any act or omission or for any error of judgment or any mistake of fact or law in its individual capacity or its capacity as attorney-in-fact except acts or omissions resulting from its gross negligence or willful misconduct. This power of attorney is conferred on the Administrative Agent solely to protect, preserve and realize upon its security interest in the Pledged Collateral.

(b) Assignment by the Administrative Agent. The Administrative Agent may from time to time assign the Pledged Collateral and any portion thereof to a successor agent in accordance with the Credit Agreement, and the assignee shall be entitled to all of the rights and remedies of the Administrative Agent under this Pledge Agreement in relation thereto.

(c) The Administrative Agent's Duty of Care. Other than the exercise of reasonable care to assure the safe custody of the Pledged Collateral while being held by the Administrative Agent hereunder and to account for all proceeds thereof, the Administrative Agent shall have no duty or liability to preserve rights pertaining thereto, it being understood and agreed that the Pledgors shall be responsible for preservation of all rights in the Pledged Collateral, and the Administrative Agent shall be relieved of all responsibility for the Pledged Collateral upon surrendering it or tendering the surrender of it to the Pledgors. The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession if such Pledged Collateral is accorded treatment substantially equal to that which the Administrative Agent accords its own property, which shall be no less than the treatment employed by a reasonable and prudent agent in the industry, it being understood that the Administrative Agent shall not have responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Pledged Collateral, whether or not the Administrative Agent has or is deemed to have knowledge of such matters, or (ii) taking any necessary steps to preserve rights against any parties with respect to any of the Pledged Collateral.

(d) Voting Rights in Respect of the Pledged Collateral.

(i) So long as no Event of Default shall have occurred and be continuing, each Pledgor may exercise any and all voting and other consensual rights pertaining to the Pledged Collateral of such Pledgor or any part thereof for any purpose not inconsistent with the terms of this Pledge Agreement or the Credit Agreement; and

(ii) Upon the occurrence and during the continuance of an Event of Default, following not less than two (2) Business Days' advance written notice, all rights of a Pledgor to exercise the voting and other consensual rights that it would otherwise be entitled to exercise pursuant to paragraph (i) of this subsection shall cease and all such rights shall thereupon become vested in the Administrative Agent, which shall then have the sole right to exercise such voting and other consensual rights.

(e) Dividend Rights in Respect of the Pledged Collateral.

(i) So long as no Event of Default shall have occurred and be continuing and subject to Section 4(b) hereof, each Pledgor may receive and retain any and all dividends and distributions (other than stock dividends and other dividends and distributions constituting Pledged Collateral addressed hereinabove) or interest paid in respect of the Pledged Collateral to the extent they are allowed under the Credit Agreement.

(ii) Upon the occurrence and during the continuance of an Event of Default:

(A) all rights of a Pledgor to receive the dividends, distributions and interest payments that it would otherwise be authorized to receive and retain pursuant to paragraph (i) of this subsection shall cease and all such rights shall thereupon be vested in the Administrative Agent, which shall then have the sole right to receive and hold as Pledged Collateral such dividends, distributions and interest payments; and

(B) all dividends and interest payments that are received by a Pledgor contrary to the provisions of paragraph (A) of this subsection shall be received in trust for the benefit of the Administrative Agent, shall be segregated from other property or funds of such Pledgor, and shall be forthwith paid over to the Administrative Agent as Pledged Collateral in the exact form received, to be held by the Administrative Agent as Pledged Collateral and as further collateral security for the Secured Obligations.

(f) Release of Pledged Collateral. The Administrative Agent may release any of the Pledged Collateral from this Pledge Agreement or may substitute any of the Pledged Collateral for other Pledged Collateral without altering, varying or diminishing in any way the force, effect, lien, pledge or security interest of this Pledge Agreement as to any Pledged Collateral not expressly released or substituted, and this Pledge Agreement shall continue as a first priority Lien on all Pledged Collateral (subject only to Permitted Liens) not expressly released or substituted.

10. Rights of Required Lenders. All rights of the Administrative Agent hereunder, if not exercised by the Administrative Agent, may be exercised by the Required Lenders.

11. Application of Proceeds. Upon the occurrence and during the continuation of an Event of Default and in accordance with Section 9.03 of the Credit Agreement, any payments in respect of the Secured Obligations and any proceeds of the Pledged Collateral, when received by the Administrative Agent or any of the Secured Parties in cash or its equivalent, will be applied in reduction of the Secured Obligations in the order set forth in Section 9.03 of the Credit Agreement, and each Pledgor irrevocably waives the right to direct the application of such payments and proceeds and acknowledges and agrees that the Administrative Agent shall have the continuing and exclusive right to apply and reapply any and all such payments and proceeds in the Administrative Agent's sole discretion, notwithstanding any entry to the contrary upon its books and records.

12. Continuing Agreement.

(a) This Pledge Agreement shall be a continuing agreement in every respect and shall remain in full force and effect so long as any of the Secured Obligations remains outstanding (other than contingent indemnification obligations that pursuant to the express terms of the Loan Documents survive termination of the Loan Documents, obligations arising under Cash Management Agreements that survive the termination of the Credit Agreement as to which cash collateral or other arrangements satisfactory to the applicable Cash Management Bank shall have been made and Letters of Credit as to which Cash Collateral or other arrangements satisfactory to Administrative Agent and L/C Issuer shall have been made) and until all of the commitments relating thereto have been terminated and the Facility Termination Date has occurred. Upon the Facility Termination Date, this Pledge Agreement shall be automatically terminated and the Administrative Agent and the Secured Parties shall, upon the request and at the expense of the Pledgors, forthwith release all of its liens and security interests hereunder, shall return all certificates or instruments pledged hereunder and shall execute and deliver all UCC termination statements and/or other documents reasonably requested by the Pledgors evidencing such termination. Notwithstanding the foregoing, all releases and indemnities provided hereunder shall survive termination of this Pledge Agreement.

(b) This Pledge Agreement shall continue to be effective or be automatically reinstated, as the case may be, if at any time payment, in whole or in part, of any of the Secured Obligations is rescinded or must otherwise be restored or returned by the Administrative Agent or any Secured Party as a preference, fraudulent conveyance or otherwise under any bankruptcy, insolvency or similar law, all as though such payment had not been made; provided that in the event payment of all or any part of the Secured Obligations is rescinded or must be restored or returned, all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the Administrative Agent or any Secured Party in defending and enforcing such reinstatement shall be deemed to be included as a part of the Secured Obligations.

13. Amendments and Waivers. This Pledge Agreement and the provisions hereof may not be amended, waived, modified, changed, discharged or terminated except as set forth in Section 11.01 of the Credit Agreement.

14. Successors in Interest. This Pledge Agreement shall create a continuing security interest in the Pledged Collateral and shall be binding upon each Pledgor, its successors and assigns, and shall inure, together with the rights and remedies of the Administrative Agent and the Secured Parties hereunder, to the benefit of the Administrative Agent and the Secured Parties and their successors and permitted assigns; provided, however, that, except as provided in the Credit Agreement, none of the Pledgors may assign its rights or delegate its duties hereunder without the prior written consent of the requisite Lenders under the Credit Agreement. To the fullest extent permitted by law, each Pledgor hereby releases the Administrative Agent and each Secured Party, and their respective successors and assigns, from any liability for any act or omission relating to this Pledge Agreement or the Pledged Collateral, except for any liability arising from the gross negligence or willful misconduct of the Administrative Agent or such holder, or their respective officers, employees or agents.

15. Notices. All notices required or permitted to be given under this Pledge Agreement shall be given as provided in Section 11.02 of the Credit Agreement.

16. Counterparts. This Pledge Agreement may be executed in any number of counterparts, each of which where so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Pledge Agreement to produce or account for more than one such counterpart.

17. Headings. The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Pledge Agreement.

18. Governing Law; Submission to Jurisdiction; Venue.

(a) THIS PLEDGE AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE; PROVIDED THAT THE ADMINISTRATIVE AGENT AND EACH SECURED PARTY SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS PLEDGE AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF

THE STATE OF CALIFORNIA SITTING IN SANTA CLARA, CALIFORNIA OR OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, AND BY EXECUTION AND DELIVERY OF THIS PLEDGE AGREEMENT, EACH GRANTOR AND THE ADMINISTRATIVE AGENT, ON BEHALF OF ITSELF AND EACH SECURED PARTY, CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. EACH GRANTOR AND THE ADMINISTRATIVE AGENT, ON BEHALF OF ITSELF AND EACH SECURED PARTY, IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS PLEDGE AGREEMENT OR ANY OTHER LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. EACH GRANTOR AND THE ADMINISTRATIVE AGENT, ON BEHALF OF ITSELF AND EACH SECURED PARTY, WAIVES PERSONAL SERVICE OF ANY SUMMONS COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF SUCH STATE. NOTHING IN THIS PLEDGE AGREEMENT SHALL AFFECT ANY RIGHT THAT ADMINISTRATIVE AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS PLEDGE AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY GRANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

19. Waiver of Right to Trial by Jury.

TO THE EXTENT PERMITTED BY LAW, IN CONNECTION WITH ANY CLAIM, CAUSE OF ACTION, PROCEEDING OR OTHER DISPUTE CONCERNING THIS PLEDGE AGREEMENT (EACH A "CLAIM"), THE PARTIES TO THIS PLEDGE AGREEMENT EXPRESSLY, INTENTIONALLY, AND DELIBERATELY WAIVE ANY RIGHT EACH MAY OTHERWISE HAVE TO TRIAL BY JURY. IN THE EVENT THAT THE WAIVER OF JURY TRIAL SET FORTH IN THE PREVIOUS SENTENCE IS NOT ENFORCEABLE UNDER THE LAW APPLICABLE TO THIS AGREEMENT, THE PARTIES TO THIS PLEDGE AGREEMENT AGREE THAT ANY CLAIM, INCLUDING ANY QUESTION OF LAW OR FACT RELATING THERETO, SHALL, AT THE WRITTEN REQUEST OF ANY PARTY, BE DETERMINED BY JUDICIAL REFERENCE PURSUANT TO THE STATE LAW APPLICABLE TO THIS PLEDGE AGREEMENT. THE PARTIES SHALL SELECT A SINGLE NEUTRAL REFEREE, WHO SHALL BE A RETIRED STATE OR FEDERAL JUDGE. IN THE EVENT THAT THE PARTIES CANNOT AGREE UPON A REFEREE, THE COURT SHALL APPOINT THE REFEREE. THE REFEREE SHALL REPORT A STATEMENT OF DECISION TO THE COURT. NOTHING IN THIS PARAGRAPH SHALL LIMIT THE RIGHT OF ANY PARTY AT ANY TIME TO EXERCISE SELF HELP REMEDIES, FORECLOSE AGAINST COLLATERAL OR OBTAIN PROVISIONAL REMEDIES. THE PARTIES SHALL BEAR THE FEES AND EXPENSES OF THE REFEREE EQUALLY, UNLESS THE REFEREE ORDERS OTHERWISE. THE REFEREE SHALL ALSO DETERMINE ALL ISSUES RELATING TO THE APPLICABILITY, INTERPRETATION, AND ENFORCEABILITY OF THIS PARAGRAPH. THE PARTIES ACKNOWLEDGE THAT IF A REFEREE IS SELECTED TO DETERMINE THE CLAIMS, THEN THE CLAIMS WILL NOT BE DECIDED BY A JURY.

20. Severability. If any provision of this Pledge Agreement is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

21. Entirety. This Pledge Agreement, the other Loan Documents and the other documents relating to the Secured Obligations represent the entire agreement of the parties hereto and thereto, and

supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Loan Documents, any other documents relating to the Secured Obligations, or the transactions contemplated herein and therein.

22. Survival. All representations and warranties of the Pledgors hereunder shall survive the execution and delivery of this Pledge Agreement, the other Loan Documents and the other documents relating to the Secured Obligations, the delivery of the Notes and the extension of credit thereunder or in connection therewith.

23. Other Security. To the extent that any of the Secured Obligations are now or hereafter secured by property other than the Pledged Collateral (including, without limitation, real and other personal property owned by a Pledgor), or by a guarantee, endorsement or property of any other Person, then to the maximum extent permitted by applicable law, the Administrative Agent shall have the right to proceed against such other property, guarantee or endorsement upon the occurrence and during the continuance of any Event of Default, and the Administrative Agent shall have the right, in its sole discretion, to determine which rights, security, liens, security interests or remedies the Administrative Agent shall at any time pursue, relinquish, subordinate, modify or take with respect thereto, without in any way modifying or affecting any of them or the Secured Obligations or any of the rights of the Administrative Agent or the Secured Parties under this Pledge Agreement, under any of the other Loan Documents or under any other document relating to the Secured Obligations.

24. Joinder. At any time after the date of this Pledge Agreement, one or more additional Persons may become party hereto by executing and delivering to the Administrative Agent a Joinder Agreement. Immediately upon such execution and delivery of such Joinder Agreement (and without any further action), each such additional Person will become a party to this Pledge Agreement as a "Pledgor" and have all of the rights and obligations of a Pledgor hereunder and this Pledge Agreement and the schedules hereto shall be deemed amended by such Joinder Agreement.

25. Joint and Several Obligations of Pledgors.

(a) Each of the Pledgors is accepting joint and several liability hereunder in consideration of the financial accommodation to be provided by the Secured Parties, for the mutual benefit, directly and indirectly, of each of the Pledgors and in consideration of the undertakings of each of the Pledgors to accept joint and several liability for the obligations of each of them.

(b) Each of the Pledgors 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 Pledgors with respect to the payment and performance of all of the Secured Obligations arising under this Pledge Agreement, the other Loan Documents and any other documents relating to the Secured Obligations, it being the intention of the parties hereto that all the Secured Obligations shall be the joint and several obligations of each of the Pledgors without preferences or distinction among them.

(c) Notwithstanding any provision to the contrary contained herein, in any other of the Loan Documents or in any other documents relating to the Secured Obligations, the obligations of each Guarantor under the Credit Agreement, the other Loan Documents and the documents relating to the Secured Obligations shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under Section 548 of the Bankruptcy Code or any comparable provisions of any applicable state law.

[Signature Pages Follow]

Each of the parties hereto has caused a counterpart of this Pledge Agreement to be duly executed and delivered as of the date first above written.

PLEDGORS:

WAGeworks, INC.,
a Delaware corporation

By: _____
Name:
Title:

MHM RESOURCES, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

PLEDGE AGREEMENT

Accepted and agreed to as of the date first above written.

UNION BANK, N.A.,
as Administrative Agent

By: _____
Name:
Title:

PLEDGE AGREEMENT

SCHEDULE 2(a)

EQUITY INTERESTS

<u>Pledgor</u>	<u>Issuer</u>	<u>Number of Shares/Units</u>	<u>Certificate Number</u>	<u>Percentage Ownership Pledged</u>
WageWorks, Inc.	MHM Resources, LLC, a Delaware limited liability company	Membership Interest	Not certificated	100%
WageWorks, Inc.	Planned Benefit Systems Incorporated, a Colorado corporation	1,000 Common Shares	Not certificated	100%

EXHIBIT 4(a)

FORM OF IRREVOCABLE STOCK POWER

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers to
capital stock of _____, a _____ corporation:

the following shares of

Number of Shares

Certificate Number

and irrevocably appoints _____ its agent and attorney-in-fact to transfer all or any part of such capital stock and to take all necessary and appropriate action to effect any such transfer. The agent and attorney-in-fact may substitute and appoint one or more persons to act for him.

[HOLDER]

By: _____
Name:
Title:

EXHIBIT J-1

**FORM OF
U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of December 31, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**"; the terms defined therein being used herein as therein defined), among WageWorks, Inc., a Delaware corporation ("**Borrower**"), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Union Bank, N.A., as Administrative Agent and L/C Issuer.

Pursuant to the provisions of Section 3.01 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished Administrative Agent and Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform Borrower and Administrative Agent, and (2) the undersigned shall have at all times furnished Borrower and Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____

Name:

Title:

Date: _____, 20[]

EXHIBIT J-2

**FORM OF
U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of December 31, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**"; the terms defined therein being used herein as therein defined), among WageWorks, Inc., a Delaware corporation ("**Borrower**"), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Union Bank, N.A., as Administrative Agent and L/C Issuer.

Pursuant to the provisions of Section 3.01 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____

Name:

Title:

Date: _____, 20[]

EXHIBIT J-3

**FORM OF
U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of December 31, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), among WageWorks, Inc., a Delaware corporation (“**Borrower**”), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Union Bank, N.A., as Administrative Agent and L/C Issuer.

Pursuant to the provisions of Section 3.01 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____

Name:

Title:

Date: _____, 20[]

EXHIBIT J-4

**FORM OF
U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of December 31, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “**Credit Agreement**”; the terms defined therein being used herein as therein defined), among WageWorks, Inc., a Delaware corporation (“**Borrower**”), the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Union Bank, N.A., as Administrative Agent and L/C Issuer.

Pursuant to the provisions of Section 3.01 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished Administrative Agent and Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform Borrower and Administrative Agent, and (2) the undersigned shall have at all times furnished Borrower and Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____

Name:

Title:

Date: _____, 20[]

EXHIBIT K

**FORM OF
SECURED PARTY DESIGNATION NOTICE**

TO: Union Bank, N.A., as Administrative Agent

RE: Credit Agreement, dated as of December 31, 2012 by and among WageWorks, Inc., a Delaware corporation (the “**Borrower**”), the Guarantors, the Lenders and Union Bank, N.A., as Administrative Agent and L/C Issuer (as amended, modified, extended, restated, replaced, or supplemented from time to time, the “**Credit Agreement**”; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement).

DATE: []

[*Name of Cash Management Bank/Hedge Bank*] (the “**Secured Party**”) hereby notifies you, pursuant to the terms of the Credit Agreement, that the Secured Party meets the requirements of a [*Cash Management Bank*] [*Hedge Bank*] under the terms of the Credit Agreement and is a [*Cash Management Bank*] [*Hedge Bank*] under the Credit Agreement and the other Loan Documents.

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this notice.

A duly authorized officer of the undersigned has executed this notice as of the day and year set forth above.

_____,
as a [*Cash Management Bank*] [*Hedge Bank*]

By: _____
Name: _____
Title: _____

EXHIBIT L

**FORM OF
CLOSING DATE OFFICER'S CERTIFICATE**

(See attached)

L-1

**CERTIFICATE OF
THE CHIEF FINANCIAL OFFICER OF
WAGeworks, INC.**

I, Richard T. Green, the duly appointed, acting and incumbent Chief Financial Officer of WAGeworks, INC., a Delaware corporation (“**Company**”), on behalf of the Company, hereby represent, warrant, and certify as set forth herein in connection with the loans and other financial accommodations being made to Company by UNION BANK, N.A. (“**Bank**”), under or in connection with that certain Commercial Credit Agreement dated as of August 31, 2010 (as amended, restated, supplemented or otherwise modified from time to time, including by that certain Third Loan Modification Agreement dated as of the date hereof by and between the Company and Bank, collectively, the “**Loan Agreement**”) by and between the Company and Bank and the other Loan Documents (as defined in the Loan Agreement). All capitalized terms used in this Certificate and not otherwise defined herein shall have the respective meanings given to them in the Loan Agreement.

I have reviewed the terms and conditions of the Loan Agreement and the definitions and provisions contained in the Loan Agreement, and, in my capacity as the Chief Financial Officer of the Company, have made, or have caused to be made under my supervision, such examination or investigation as is necessary to enable me, in my capacity as the Chief Financial Officer of the Company, to certify as to the matters referred to herein.

As of September 20, 2012:

1. Except for the conversions, common stock dividends and repurchases expressly permitted under Sections 9.21 and 9.22(a) of the Loan Agreement, no stockholder of Borrower has any right (contingent or otherwise), whether under Borrower’s certificate of incorporation or otherwise, to demand or compel Borrower to repurchase or redeem any capital stock or other equity interests of Borrower, to make any dividend or other distribution on account of, or any payment with respect to, any capital stock or other equity interests of Borrower, other than (a) such rights that give rise to obligations of Borrower that remain performable solely at the option of Borrower (by way of example, payments made pursuant to the liquidation provisions of Borrower’s charter) and (b) redemption or dividend rights that are first exercisable by the holder thereof after December 31, 2013; and

2. no event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default, has occurred and is continuing;

[Remainder of Page Left Blank]

CERTIFICATE OF THE CHIEF FINANCIAL OFFICER
(WageWorks, Inc.)

IN WITNESS WHEREOF, this Certificate has been executed as of September 20, 2012.

WageWorks, Inc.

By: Richard T. Green, Chief Financial Officer

CERTIFICATE OF THE CHIEF FINANCIAL OFFICER
(WageWorks, Inc.)

WAGeworks INC.
2011 BONUS PLAN
EXECUTIVE OFFICERS

PURPOSE OF THE PLAN

This 2011 Bonus Plan (the "Plan") is intended to promote the financial interests of WageWorks, Inc., a Delaware corporation (the "Company"), by providing Executive Officers with the opportunity to receive additional compensation ("Bonus") above their base salaries in an amount determined on the basis of the Company's financial performance and attainment of Company and individual goals during the 2011 fiscal year.

ADMINISTRATION OF THE PLAN

The Company's Chief Executive Officer and Senior Vice President of Human Resources, along with the Plan Administrator (as such term is defined below) shall have the sole and exclusive power and authority to select the Executive Officers who are eligible to participate in the Plan (each a "Participating Officer," as defined in further detail below).

For purposes of this Plan, the term "Plan Administrator" shall refer to The Compensation Committee of the Company's Board of Directors.

The Plan Administrator, acting within the scope of its administrative functions under the Plan, is hereby authorized to establish such rules and regulations, as it may deem appropriate, for proper administration of the Plan, and to make such determinations under and issue such interpretations of the Plan, as it may deem necessary or advisable. Decisions of the Plan Administrator shall be final and binding on all Participating Officers.

ELIGIBILITY

The Plan Administrator, in consult with the Company's Senior Vice President of Human Resources and Company's Chief Executive Officer, shall have full authority to determine which individuals are eligible to participate in the Plan, and the time when such individuals commence and cease to be Participating Officers.

PARTICIPATION

A "Participating Officer" is defined as an officer of the Company who is selected by the Plan Administrator to participate in this Plan and who has executed the Plan document. No Bonus under this Plan shall be payable unless the individual selected for participation has agreed to the terms of this Plan and executed the Plan document. Participating Officers will be eligible to receive a Bonus that is calculated as a percentage of the Bonus Target identified for that individual on the attached Exhibit A, subject to the requirements further outlined below.

EMPLOYMENT CONDITIONS

Employment.

Notwithstanding any other provision of this Plan, or any other policies, procedures or any other agreement between the Company and the Participating Officer, an individual shall cease to be a Participating Officer, and shall not be eligible or otherwise entitled to any Bonus payment under the Plan, if that Participating Officer's employment with the Company terminates for any reason at any time prior to the completion of the Bonus Period (as defined below) or the date of payment of the Bonus; provided, however, that should the Participating Officer's employment terminate by reason of death or Disability (as defined below) after completion of the Bonus Period but prior to the date of payment of the Bonus payment, then such individual's Bonus (if any) shall be determined in accordance with the language below.

Termination Due to Death or Disability

Death.

Should a Participating Officer die after the completion of the Bonus Period, but prior to the date of the Bonus payment, then the representative of the Participating Officer's estate shall be paid any Bonus to which the Participating Officer would have otherwise been entitled under the terms of this Plan, based on the Company's actual financial performance for such fiscal year, had he or she continued in the Company's employ through the date of the Bonus payment. The payment of such Bonus (if any) shall be made in accordance with the payment provisions outlined below. Such representative must provide official documents to the Company that identifies it as the official representative of the Participating Officer's estate.

Disability.

Should the Participating Officer's employment terminate due to his or her Disability after the completion of the Bonus Period, but prior to the date of the Bonus payment, then the Participating Officer shall be paid any Bonus to which he or she would have otherwise been entitled under the terms of this Plan, based on the Company's actual financial performance for such fiscal year, had he or she continued in the Company's employ through the date of the Bonus payment. The payment of such Bonus (if any) shall be made in accordance with the payment provisions outlined below.

For the sole purpose of this Plan, the term "Disability" shall mean the inability of the Participating Officer, by reason of any injury or illness, to properly perform the normal duties and responsibilities of his/her position with the Company for a period of more than one hundred eighty (180) consecutive days.

Leave of Absence.

Should a Participating Officer take an approved leave of absence during the Bonus Period, then the Bonus that may be payable under this Plan for that Participating Officer shall be limited to the dollar amount obtained by multiplying (i) the Bonus which would have otherwise been payable

to such Participating Officer under this Plan had he or she not taken such leave of absence by (ii) a fraction, the numerator of which is the total number of months of the Participating Officer's actual service during the Bonus Period and the denominator of which is the twelve (12) calendar months comprising the Bonus Period. For purposes of such calculation, an individual shall, to the extent not prohibited by law, be credited with a full month of service for each month during which that individual is not on a leave of absence for fifty percent (50%) or more of the business days in that month. Any Bonus payable to a Participating Officer who is subject to this section shall be paid in accordance with the provisions outlined below.

Mid-Year Designations of Participation and Changes in Eligibility.

For individuals who are initially designated as Participating Officers due to commencement of employment with the Company, or as a result of other employment-related action in which the effective date of the action is after January 1, 2011, but prior to October 1, 2011, the bonus that may be payable under this Plan for that Participating Officer shall be limited to the dollar amount obtained by multiplying (i) the Bonus which would have otherwise been payable to such Participating Officer under this Plan had he or she been designated as a Participating Officer for the full Bonus Period by (ii), a fraction, the numerator of which is the total number of months during the Bonus Period in which the Participating Officer was designated as such and the denominator of which is the twelve (12) calendar months comprising the Bonus Period. For purposes of this calculation, an individual shall, to the extent not prohibited by law, be credited with a full month of service for each month in which the individual was designated as a Participating Officer for fifty percent (50%) or more of the business days in that month.

Individuals may not be designated as Participating Officers, and are not eligible to participate in the Plan for the 2011 Bonus Period, if (i) their employment with the Company begins on or after October 1, 2011 or (ii) the effective date of the employment-related action that would result in their designation as a Participating Officer is on or after October 1, 2011.

EFFECTIVE DATE AND TERM OF PLAN/BONUS PERIOD

A. The Plan shall become effective on the date it is adopted by the Plan Administrator.

B. The "Bonus Period" for any Bonus payable to a Participating Officer under the Plan shall be the period beginning on January 1, 2011 and ending on December 31, 2011. Payment of Bonuses for such Bonus Period shall be made as soon as reasonably practical following the close of the 2011 fiscal year, unless the Compensation Committee determines it is in the Company's best interest to wait until the Audit Committee of the Company's Board of Directors has certified the results of the audit of the 2011 fiscal year. In no event shall any Bonus be paid under the Plan prior to January 1, 2012 or later than December 31, 2012. In order for a Participating Officer to be eligible to receive a Bonus for such period, the Participating Officer must be actively employed and in good standing on the date of any Bonus payout, except as otherwise provided in herein.

C. The Plan may be terminated at any time if the Company deems it advisable to discontinue the Plan.

DETERMINATION OF BONUS

Determinations of actual Bonuses to be paid to Participating Officers are determined in the sole discretion of the Plan Administrator, taking into account the following three factors that are more specifically defined below: (a) the Company's financial performance, as measured by actual adjusted EBITDA against the Company's 2011 EBITDA Target (45%), (b) achievement of an overall Company objective (40%), and (c) achievement of individual objectives (15%), as well as any other factors that the Plan Administrator deems relevant at the time it determines the actual Bonuses to be paid to Participating Officers.

a. For Bonus purposes, EBITDA will be adjusted as follows:

- (i) The compensation costs for the 2011 fiscal year for share based payments that must otherwise be amortized for financial reporting purposes pursuant to ASC Topic 718 Compensation—Stock Compensation (Statement of Financial Accounting Standards No. 123 (as revised)) shall be added back into the determination of EBITDA for that fiscal year.
- (ii) The financial results of any businesses acquired by the Company during the 2011 fiscal year shall not be taken into account in the calculation of EBITDA for that fiscal year, unless the EBITDA of the acquired business was included in the budgeted EBITDA Target approved by the Board.
- (iii) EBITDA will be calculated to include the effect of Bonuses paid to Officers of the Company, including Bonuses paid according to this plan.

b. 2011 Company Financial Performance (45%)

Each Participating Officer will be eligible to receive an amount ranging from 40.5% to a maximum of 67.5% of his or her Bonus Target based on actual adjusted 2011 EBITDA, calculated according to the following formula:

- (i) If actual adjusted 2011 EBITDA is equal to [**] Million (Target EBITDA), then each Participating Officer shall be eligible to receive a payment of up to 45% of his or her Bonus Target.
- (ii) If actual adjusted EBITDA is equal to or greater than [**] Million, then each Participating Officer shall be eligible to receive a payment ranging from 40.5% to 67.5% of his or her Bonus Target, calculated as outlined below, between actual adjusted 2011 EBITDA and Target EBITDA. In no event shall this payment exceed 67.5% of the Bonus Target.
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[**] Information has been omitted and submitted separately to the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

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 - Calculation between each designated segment above is determined on a linear basis.

(iii) If actual adjusted 2011 EBITDA is less than [**] Million, then no Participating Officer shall be eligible to receive any payment towards this 45% portion of his or her Bonus Target.

c. Achievement of an Overall Company Objective (40%)

If actual adjusted 2011 EBITDA is equal to or greater than [**] Million, each Participating Officer will be eligible to receive up to 40% of his or her Bonus Target based on achievement of the Company objective as listed herein.

If actual adjusted 2011 EBITDA is less than [**] Million, then no Participating Officer shall be eligible to receive any payment towards this 40% portion of his or her Bonus Target.

For Executive Officers of the Company, the overall Company objective will be as follows:

Each Participating Officer will be eligible to receive an amount ranging from 36% to a maximum of 50% of his or her Bonus Target based on organic revenue growth, calculated according to the following formula:

- (i) If actual adjusted organic revenue growth is equal to [**], then each Participating Officer shall be eligible to receive a payment of up to 40% of his or her Bonus Target.
- (ii) If actual adjusted organic revenue growth is equal to or greater than [**] growth, then each Participating Officer shall be eligible to receive a payment ranging from 36% to 50% of his or her Bonus Target, calculated on a pro rata basis, between actual adjusted organic revenue growth and Target organic revenue growth. In no event shall this payment exceed 50% of the Bonus Target.
- (iii) If actual adjusted organic revenue growth is less than [**], then no Participating Officer shall be eligible to receive any payment towards this 40% portion of his or her Bonus Target.

Actual Adjusted Organic Revenue Growth Calculation:

(Actual Adjusted Organic Revenue in January 2012) Divided By (Actual Adjusted Organic Revenue in January 2011) - 1 = percentage growth

[**] Information has been omitted and submitted separately to the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Actual Adjusted Organic Revenue is defined as:

Total revenue, less "run out" and "grace period" fees, less any revenue from any portfolio purchased during 2011, and adding back any client credits or other concessions.

2011 January Adjusted Organic Revenue is [**] (WageWorks + MHM + PBS + Fringe Benefits Management Company)

d. Achievement of Individual Objectives (15%)

If actual adjusted 2011 EBITDA is equal to or greater than [**] Million, each Participating Officer will be eligible to receive up to 15% of his or her Bonus Target based on achievement of his or her individual objectives, as determined by the Plan Administrator in its sole discretion, listed on Exhibit A attached hereto and incorporated herein by reference.

If actual adjusted 2011 EBITDA is less than [**] Million, then no Participating Officer shall be eligible to receive any payment towards this 15% portion of his or her Bonus Target.

UNFUNDED PLAN/NO ASSIGNABILITY

No amounts payable under this Plan shall actually be funded, set aside, or otherwise segregated prior to actual payment. The obligation to pay Bonuses, if any, under this Plan will at all times be an unfunded and unsecured obligation of the Company. The Participating Officers will have the status of general creditors of the Company and shall look solely and exclusively to the general assets of the Company for payment.

No Participating Officer shall have the right to any amount of Bonus under this Plan, to alienate, pledge or encumber his or her interest in the Plan, and such interest shall not (to the extent permitted by law) be subject in any way to the claims of the Participating Officer's creditors or to attachment, execution or other process of law.

AMENDMENT OF THE PLAN

Subject to the requirements of applicable laws, the Plan Administrator shall have complete and exclusive power and authority to amend or modify the Plan in any or all respects and for any reason, and at any time prior to completion of the Bonus Period. This power and authority includes, without limitation and without consideration for whether the amendment or modification adversely affects the Participating Officers, amending the Plan, cancelling the Plan and/or modifying Target Bonuses, Bonus potentials or any performance objectives.

WITHHOLDING

Any amounts payable to a Participating Officer under the Plan shall be subject to the Company's collection of all applicable Federal, state, local and foreign income and employment tax withholding requirements.

[**] Information has been omitted and submitted separately to the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

NO EMPLOYMENT OR SERVICE RIGHTS

Nothing in the Plan shall confer upon any individual any right to continue in service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company to terminate such person's employment or service relationship at any time for any reason, with or without cause.

CHOICE OF LAW

The laws of the state in which the Officer declares his or her state of residency for tax purposes for the fiscal year shall govern the interpretation of this Agreement.

WAGeworks INC.
2012 BONUS PLAN
EXECUTIVE OFFICERS

PURPOSE OF THE PLAN

This 2012 Bonus Plan (the "Plan") is intended to promote the financial interests of WageWorks, Inc., a Delaware corporation (the "Company"), by providing Executive Officers with the opportunity to receive additional compensation ("Bonus") above their base salaries in an amount determined on the basis of the Company's financial performance and attainment of Company and individual goals during the 2012 fiscal year.

ADMINISTRATION OF THE PLAN

The Company's Chief Executive Officer and Senior Vice President of Human Resources, along with the Plan Administrator (as such term is defined below) shall have the sole and exclusive power and authority to select the Executive Officers who are eligible to participate in the Plan (each a "Participating Officer," as defined in further detail below).

For purposes of this Plan, the term "Plan Administrator" shall refer to The Compensation Committee of the Company's Board of Directors.

The Plan Administrator, acting within the scope of its administrative functions under the Plan, is hereby authorized to establish such rules and regulations, as it may deem appropriate, for proper administration of the Plan, and to make such determinations under and issue such interpretations of the Plan, as it may deem necessary or advisable. Decisions of the Plan Administrator shall be final and binding on all Participating Officers.

ELIGIBILITY

The Plan Administrator, in consult with the Company's Senior Vice President of Human Resources and Company's Chief Executive Officer, shall have full authority to determine which individuals are eligible to participate in the Plan, and the time when such individuals commence and cease to be Participating Officers.

PARTICIPATION

A "Participating Officer" is defined as an officer of the Company who is selected by the Plan Administrator to participate in this Plan and who has executed the Plan document. No Bonus under this Plan shall be payable unless the individual selected for participation has agreed to the terms of this Plan and executed the Plan document. Participating Officers will be eligible to receive a Bonus that is calculated as a percentage of the Bonus Target identified for that individual on the attached Exhibit A, subject to the requirements further outlined below.

EMPLOYMENT CONDITIONS

Employment.

Notwithstanding any other provision of this Plan, or any other policies, procedures or any other agreement between the Company and the Participating Officer, an individual shall cease to be a Participating Officer, and shall not be eligible or otherwise entitled to any Bonus payment under the Plan, if that Participating Officer's employment with the Company terminates for any reason at any time prior to the completion of the Bonus Period (as defined below) or the date of payment of the Bonus; provided, however, that should the Participating Officer's employment terminate by reason of death or Disability (as defined below) after completion of the Bonus Period but prior to the date of payment of the Bonus payment, then such individual's Bonus (if any) shall be determined in accordance with the language below.

Termination Due to Death or Disability.

Death.

Should a Participating Officer die after the completion of the Bonus Period, but prior to the date of the Bonus payment, then the representative of the Participating Officer's estate shall be paid any Bonus to which the Participating Officer would have otherwise been entitled under the terms of this Plan, based on the Company's actual financial performance for such fiscal year, had he or she continued in the Company's employ through the date of the Bonus payment. The payment of such Bonus (if any) shall be made in accordance with the payment provisions outlined below. Such representative must provide official documents to the Company that identifies it as the official representative of the Participating Officer's estate.

Disability.

Should the Participating Officer's employment terminate due to his or her Disability after the completion of the Bonus Period, but prior to the date of the Bonus payment, then the Participating Officer shall be paid any Bonus to which he or she would have otherwise been entitled under the terms of this Plan, based on the Company's actual financial performance for such fiscal year, had he or she continued in the Company's employ through the date of the Bonus payment. The payment of such Bonus (if any) shall be made in accordance with the payment provisions outlined below.

For the sole purpose of this Plan, the term "Disability" shall mean the inability of the Participating Officer, by reason of any injury or illness, to properly perform the normal duties and responsibilities of his/her position with the Company for a period of more than one hundred eighty (180) consecutive days.

Leave of Absence.

Should a Participating Officer take an approved leave of absence during the Bonus Period, then the Bonus that may be payable under this Plan for that Participating Officer shall be limited to the dollar amount obtained by multiplying (i) the Bonus which would have otherwise been payable to such Participating Officer under this Plan had he or she not taken such leave of absence by (ii) a

fraction, the numerator of which is the total number of months of the Participating Officer's actual service during the Bonus Period and the denominator of which is the twelve (12) calendar months comprising the Bonus Period. For purposes of such calculation, an individual shall, to the extent not prohibited by law, be credited with a full month of service for each month during which that individual is not on a leave of absence for fifty percent (50%) or more of the business days in that month. Any Bonus payable to a Participating Officer who is subject to this section shall be paid in accordance with the provisions outlined below.

Mid-Year Designations of Participation and Changes in Eligibility.

For individuals who are initially designated as Participating Officers due to commencement of employment with the Company, or as a result of other employment-related action in which the effective date of the action is after January 1, 2012, but prior to October 1, 2012, the bonus that may be payable under this Plan for that Participating Officer shall be limited to the dollar amount obtained by multiplying (i) the Bonus which would have otherwise been payable to such Participating Officer under this Plan had he or she been designated as a Participating Officer for the full Bonus Period by (ii), a fraction, the numerator of which is the total number of months during the Bonus Period in which the Participating Officer was designated as such and the denominator of which is the twelve (12) calendar months comprising the Bonus Period. For purposes of this calculation, an individual shall, to the extent not prohibited by law, be credited with a full month of service for each month in which the individual was designated as a Participating Officer for fifty percent (50%) or more of the business days in that month.

Individuals may not be designated as Participating Officers, and are not eligible to participate in the Plan for the 2012 Bonus Period, if (i) their employment with the Company begins on or after October 1, 2012 or (ii) the effective date of the employment-related action that would result in their designation as a Participating Officer is on or after October 1, 2012.

EFFECTIVE DATE AND TERM OF PLAN/BONUS PERIOD

A. The Plan shall become effective on the date it is adopted by the Plan Administrator.

B. The "Bonus Period" for any Bonus payable to a Participating Officer under the Plan shall be the period beginning on January 1, 2012 and ending on December 31, 2012. Payment of Bonuses for such Bonus Period shall be made as soon as reasonably practical following the close of the 2012 fiscal year, unless the Compensation Committee determines it is in the Company's best interest to wait until the Audit Committee of the Company's Board of Directors has certified the results of the audit of the 2012 fiscal year. In no event shall any Bonus be paid under the Plan prior to January 1, 2013 or later than December 31, 2013. In order for a Participating Officer to be eligible to receive a Bonus for such period, the Participating Officer must be actively employed and in good standing on the date of any Bonus payout, except as otherwise provided in herein.

C. The Plan may be terminated at any time if the Company deems it advisable to discontinue the Plan.

DETERMINATION OF BONUS

Determinations of actual Bonuses to be paid to Participating Officers are determined in the sole discretion of the Plan Administrator, taking into account the following three factors that are more specifically defined below: (a) the Company's financial performance, as measured by actual adjusted EBITDA against the Company's 2012 EBITDA Target (45%), (b) achievement of an overall Company objective (45%), and (c) achievement of individual objectives (10%), as well as any other factors that the Plan Administrator deems relevant at the time it determines the actual Bonuses to be paid to Participating Officers.

a. For Bonus purposes, EBITDA will be adjusted as follows:

- (i) The compensation costs for the 2012 fiscal year for share based payments that must otherwise be amortized for financial reporting purposes pursuant to ASC Topic 718 Compensation—Stock Compensation (Statement of Financial Accounting Standards No. 123 (as revised)) shall be added back into the determination of EBITDA for that fiscal year.
- (ii) The financial results of any businesses acquired by the Company during the 2012 fiscal year shall not be taken into account in the calculation of EBITDA for that fiscal year, unless the EBITDA of the acquired business was included in the budgeted EBITDA Target approved by the Board.
- (iii) EBITDA will be calculated to include the effect of Bonuses paid to Officers of the Company, including Bonuses paid according to this plan.

b. 2012 Company Financial Performance (45%)

Each Participating Officer will be eligible to receive an amount ranging from 40.5% to a maximum of 67.5% of his or her Bonus Target based on actual adjusted 2012 EBITDA, calculated according to the following formula:

- (i) If actual adjusted 2012 EBITDA is equal to [**] Million (Target EBITDA), then each Participating Officer shall be eligible to receive a payment of up to 45% of his or her Bonus Target.
- (ii) If actual adjusted EBITDA is equal to or greater than [**] Million, then each Participating Officer shall be eligible to receive a payment ranging from 40.5% to 67.5% of his or her Bonus Target, calculated as outlined below, between actual adjusted 2012 EBITDA and Target EBITDA. In no event shall this payment exceed 67.5% of the Bonus Target.
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[**] Information has been omitted and submitted separately to the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

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 - Calculation between each designated segment above is determined on a linear basis.

(iii) If actual adjusted 2012 EBITDA is less than [**] Million, then no Participating Officer shall be eligible to receive any payment towards this 45% portion of his or her Bonus Target.

c. Achievement of an Overall Company Objective (45%)

If actual adjusted 2012 EBITDA is equal to or greater than [**] Million, each Participating Officer will be eligible to receive up to 45% of his or her Bonus Target based on achievement of the Company objective as listed herein.

If actual adjusted 2012 EBITDA is less than [**] Million, then no Participating Officer shall be eligible to receive any payment towards this 45% portion of his or her Bonus Target.

For Executive Officers of the Company, the overall Company objective will be as follows:

Each Participating Officer will be eligible to receive an amount ranging from 40.5% to a maximum of 56.25% of his or her Bonus Target based on organic revenue growth, calculated according to the following formula:

- (i) If actual adjusted organic revenue growth is equal to [**], then each Participating Officer shall be eligible to receive a payment of up to 45% of his or her Bonus Target.
- (ii) If actual adjusted organic revenue growth is equal to or greater than [**] growth, then each Participating Officer shall be eligible to receive a payment ranging from 40.5% to 56.25% of his or her Bonus Target, calculated on a pro rata basis, between actual adjusted organic revenue growth and Target organic revenue growth. In no event shall this payment exceed 56.25% of the Bonus Target.
- (iii) If actual adjusted organic revenue growth is less than [**], then no Participating Officer shall be eligible to receive any payment towards this 45% portion of his or her Bonus Target.

Actual Adjusted Organic Revenue Growth Calculation:

(Actual Adjusted Organic Revenue in January 2013) Divided By (Actual Adjusted Organic Revenue in January 2012) -1 = percentage growth

-5-

[**] Information has been omitted and submitted separately to the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Actual Adjusted Organic Revenue is defined as:

Total revenue, less "run out" and "grace period" fees, less any revenue from any portfolio purchased during 2012, and any client credits approved by management, which will be reviewed by the Administrator for possible adjustment within the calculation (Note: The TransitChek number included is their January actual adjusted organic revenue number prior to acquisition).

2012 January Adjusted Organic Revenue is [**] (WageWorks + MHM + PBS + Fringe Benefits Management Company + Choice Strategies + TransitChek)

d. Achievement of Individual Objectives (10%)

If actual adjusted 2012 EBITDA is equal to or greater than [**] Million, each Participating Officer will be eligible to receive up to 10% of his or her Bonus Target based on achievement of his or her individual objectives, as determined by the Plan Administrator in its sole discretion, listed on Exhibit A attached hereto and incorporated herein by reference.

If actual adjusted 2012 EBITDA is less than [**] Million, then no Participating Officer shall be eligible to receive any payment towards this 10% portion of his or her Bonus Target.

UNFUNDED PLAN/NO ASSIGNABILITY

No amounts payable under this Plan shall actually be funded, set aside, or otherwise segregated prior to actual payment. The obligation to pay Bonuses, if any, under this Plan will at all times be an unfunded and unsecured obligation of the Company. The Participating Officers will have the status of general creditors of the Company and shall look solely and exclusively to the general assets of the Company for payment.

No Participating Officer shall have the right to any amount of Bonus under this Plan, to alienate, pledge or encumber his or her interest in the Plan, and such interest shall not (to the extent permitted by law) be subject in any way to the claims of the Participating Officer's creditors or to attachment, execution or other process of law.

AMENDMENT OF THE PLAN

Subject to the requirements of applicable laws, the Plan Administrator shall have complete and exclusive power and authority to amend or modify the Plan in any or all respects and for any reason, and at any time prior to completion of the Bonus Period. This power and authority includes, without limitation and without consideration for whether the amendment or modification adversely affects the Participating Officers, amending the Plan, cancelling the Plan and/or modifying Target Bonuses, Bonus potentials or any performance objectives.

-6-

[**] Information has been omitted and submitted separately to the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

WITHHOLDING

Any amounts payable to a Participating Officer under the Plan shall be subject to the Company's collection of all applicable Federal, state, local and foreign income and employment tax withholding requirements.

NO EMPLOYMENT OR SERVICE RIGHTS

Nothing in the Plan shall confer upon any individual any right to continue in service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company to terminate such person's employment or service relationship at any time for any reason, with or without cause.

CHOICE OF LAW

The laws of the state in which the Officer declares his or her state of residency for tax purposes for the fiscal year shall govern the interpretation of this Agreement.

WAGeworks INC.
2013 BONUS PLAN
EXECUTIVE OFFICERS

PURPOSE OF THE PLAN

This 2013 Bonus Plan (the "Plan") is intended to promote the financial interests of WageWorks, Inc., a Delaware corporation (the "Company"), by providing Executive Officers with the opportunity to receive additional compensation ("Bonus") above their base salaries in an amount determined on the basis of the Company's financial performance and attainment of Company and individual goals during the 2013 fiscal year.

ADMINISTRATION OF THE PLAN

For purposes of this Plan, the term "Plan Administrator" shall refer to The Compensation Committee of the Company's Board of Directors.

The Plan Administrator, acting within the scope of its administrative functions under the Plan, is hereby authorized to establish such rules and regulations, as it may deem appropriate, for proper administration of the Plan, and to make such determinations under and issue such interpretations of the Plan, as it may deem necessary or advisable. Decisions of the Plan Administrator shall be final and binding on all Participating Officers.

ELIGIBILITY

The Plan Administrator, in consultation with the Company's Senior Vice President of Human Resources and Company's Chief Executive Officer, shall have full authority to determine which individuals are eligible to participate in the Plan (each, a "Participating Officer," as defined in further detail below), and the time when such individuals commence and cease to be Participating Officers.

PARTICIPATION

A "Participating Officer" is defined as an officer of the Company who is selected by the Plan Administrator to participate in this Plan and who has executed the Plan document. No Bonus under this Plan shall be payable unless the individual selected for participation has agreed to the terms of this Plan and executed the Plan document. Participating Officers will be eligible to receive a Bonus that is calculated as a percentage of the Bonus Target identified for that individual on the attached Exhibit A, subject to the requirements further outlined below.

EMPLOYMENT CONDITIONS

Employment.

Notwithstanding any other provision of this Plan, or any other policies, procedures or any other agreement between the Company and the Participating Officer, an individual shall cease to be a Participating Officer, and shall not be eligible or otherwise entitled to any Bonus payment under the Plan, if that Participating Officer's employment with the Company terminates for any reason at any time prior to the completion of the Bonus Period (as defined below) and the date of payment of the Bonus; provided, however, that should the Participating Officer's employment terminate by reason of death or Disability (as defined below) after completion of the Bonus Period but prior to the date of payment of the Bonus payment, then such individual's Bonus (if any) shall be determined in accordance with the language below.

Termination Due to Death or Disability.

Death.

Subject to a more favorable provision in the Participating Officer's employment arrangement with the Company, should a Participating Officer die after the completion of the Bonus Period, but prior to the date of the Bonus payment, then the representative of the Participating Officer's estate shall be paid any Bonus to which the Participating Officer would have otherwise been entitled under the terms of this Plan, based on the Company's actual financial performance for such fiscal year, had he or she continued in the Company's employ through the date of the Bonus payment. The payment of such Bonus (if any) shall be made in accordance with the payment provisions outlined below. Such representative must provide official documents to the Company that identifies it as the official representative of the Participating Officer's estate.

Disability.

Subject to a more favorable provision in the Participating Officer's employment arrangement with the Company, should the Participating Officer's employment terminate due to his or her Disability after the completion of the Bonus Period, but prior to the date of the Bonus payment, then the Participating Officer shall be paid any Bonus to which he or she would have otherwise been entitled under the terms of this Plan, based on the Company's actual financial performance for such fiscal year, had he or she continued in the Company's employ through the date of the Bonus payment. The payment of such Bonus (if any) shall be made in accordance with the payment provisions outlined below.

For the sole purpose of this Plan, the term "Disability" shall mean the inability of the Participating Officer, by reason of any injury or illness, to properly perform the normal duties and responsibilities of his/her position with the Company for a period of more than one hundred eighty (180) consecutive days.

Leave of Absence.

Should a Participating Officer take an approved leave of absence during the Bonus Period, then the Bonus that may be payable under this Plan for that Participating Officer shall be limited to the dollar amount obtained by multiplying (i) the Bonus which would have otherwise been payable to such Participating Officer under this Plan had he or she not taken such leave of absence by (ii) a fraction, the numerator of which is the total number of months of the Participating Officer's actual service during the Bonus Period and the denominator of which is the twelve (12) calendar months comprising the Bonus Period. For purposes of such calculation, an individual shall, to the extent not prohibited by law, be credited with a full month of service for each month during which that individual is not on a leave of absence for fifty percent (50%) or more of the business days in that month. Any Bonus payable to a Participating Officer who is subject to this section shall be paid in accordance with the provisions outlined below.

Mid-Year Designations of Participation and Changes in Eligibility.

For individuals who are initially designated as Participating Officers due to commencement of employment with the Company, or as a result of other employment-related action in which the effective date of the action is after January 1, 2013, but prior to October 1, 2013, the bonus that may be payable under this Plan for that Participating Officer shall be limited to the dollar amount obtained by multiplying (i) the Bonus which would have otherwise been payable to such Participating Officer under this Plan had he or she been designated as a Participating Officer for the full Bonus Period by (ii), a fraction, the numerator of which is the total number of months during the Bonus Period in which the Participating Officer was designated as such and the denominator of which is the twelve (12) calendar months comprising the Bonus Period. For purposes of this calculation, an individual shall, to the extent not prohibited by law, be credited with a full month of service for each month in which the individual was designated as a Participating Officer for fifty percent (50%) or more of the business days in that month.

Individuals may not be designated as Participating Officers, and are not eligible to participate in the Plan for the 2013 Bonus Period, if (i) their employment with the Company begins on or after October 1, 2013 or (ii) the effective date of the employment-related action that would result in their designation as a Participating Officer is on or after October 1, 2013.

EFFECTIVE DATE AND TERM OF PLAN/BONUS PERIOD

A. The Plan shall become effective on the date it is adopted by the Plan Administrator.

B. The "Bonus Period" for any Bonus payable to a Participating Officer under the Plan shall be the period beginning on January 1, 2013 and ending on December 31, 2013. Payment of Bonuses for such Bonus Period shall be made as soon as reasonably practical following the close of the 2013 fiscal year, unless the Compensation Committee determines it is in the Company's best interest to wait until the Audit Committee of the Company's Board of Directors has certified the results of the audit of the 2013 fiscal year. In no event shall any

Bonus be paid under the Plan prior to January 1, 2014 or later than December 31, 2014. In order for a Participating Officer to be eligible to receive a Bonus for such period, the Participating Officer must be actively employed and in good standing on the date of any Bonus payout, except as otherwise provided herein.

C. The Plan may be terminated at any time if the Company deems it advisable to discontinue the Plan.

DETERMINATION OF BONUS

Determinations of actual Bonuses to be paid to Participating Officers are determined in the sole discretion of the Plan Administrator, taking into account the following three factors that are more specifically defined below: (a) the Company's financial performance, as measured by actual adjusted EBITDA against the Company's 2013 EBITDA Target (45%), (b) achievement of an overall Company objective (45%), and (c) achievement of individual objectives (10%), as well as any other factors that the Plan Administrator deems relevant at the time it determines the actual Bonuses to be paid to Participating Officers. Notwithstanding the foregoing, the Plan Administrator, in its sole discretion and at any time prior to the payment of the actual Bonuses, may make adjustments to the factors and/or the applicable weightings in its determination of the actual Bonuses (if any) to be paid to the Participating Officers under this Plan.

- a. For Bonus purposes, EBITDA will be adjusted as follows:
 - (i) The compensation costs for the 2013 fiscal year for share based payments that must otherwise be amortized for financial reporting purposes pursuant to ASC Topic 718 Compensation – Stock Compensation (Statement of Financial Accounting Standards No. 123 (as revised)) shall be added back into the determination of EBITDA for this fiscal year.
 - (ii) The financial results of any businesses acquired by the Company during the 2013 fiscal year shall not be taken into account in the calculation of EBITDA for that fiscal year, unless the EBITDA of the acquired business was included in the budgeted EBITDA Target approved by the Board.
 - (iii) EBITDA will be calculated to include the effect of Bonuses paid to Officers of the Company, including Bonuses paid according to this Plan.

b. 2013 Company Financial Performance (45%)

Each Participating Officer will be eligible to receive an amount ranging from 40.5% to a maximum of 61.875% of his or her Bonus Target based on actual adjusted 2013 EBITDA, calculated according to the following formula:

- (i) If actual adjusted 2013 EBITDA is equal to [**] Million (Target EBITDA), then each Participating Officer shall be eligible to receive a payment of up to 45% of his or her Bonus Target.
- (ii) If actual adjusted EBITDA is equal to or greater than [**] Million, then each Participating Officer shall be eligible to receive a payment ranging from 40.5% to 61.875% of his or her Bonus Target, calculated as outlined below, between actual adjusted 2013 EBITDA and Target EBITDA. In no event shall this payment exceed 61.875% of the Bonus Target.
 - [**]
 - [**]
 - Calculation between each designated segment above is determined on a linear basis.
- (iii) Unless otherwise determined by the Plan Administrator, if actual adjusted 2013 EBITDA is less than [**] Million, then no Participating Officer shall be eligible to receive any payment towards this 45% portion of his or her Bonus Target.

c. Achievement of an Overall Company Objective (45%)

If actual adjusted 2013 EBITDA is equal to or greater than [**] Million, each Participating Officer will be eligible to receive up to 45% of his or her Bonus Target based on achievement of the Company objective as listed herein.

Unless otherwise determined by the Plan Administrator, if actual adjusted 2013 EBITDA is less than [**] Million, then no Participating Officer shall be eligible to receive any payment towards this 45% portion of his or her Bonus Target.

[**] Information has been omitted and submitted separately to the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

For Executive Officers of the Company, the overall Company objective will be as follows:

Each Participating Officer will be eligible to receive an amount ranging from 40.5% to a maximum of 61.875% of his or her Bonus Target based on organic revenue growth, calculated according to the following formula:

- (i) If actual adjusted organic revenue growth is equal to [**], then each Participating Officer shall be eligible to receive a payment of up to 45% of his or her Bonus Target.
- (ii) If actual adjusted organic revenue growth is equal to or greater than [**] growth, then each Participating Officer shall be eligible to receive a payment ranging from 40.5% to 61.875% of his or her Bonus Target, calculated on a pro rata basis, between actual adjusted organic revenue growth and Target organic revenue growth. In no event shall this payment exceed 61.875% of the Bonus Target.
- (iii) Unless otherwise determined by the Plan Administrator, if actual adjusted organic revenue growth is less than [**], then no Participating Officer shall be eligible to receive any payment towards this 45% portion of his or her Bonus Target.

Actual Adjusted Organic Revenue Growth Calculation:

(Actual Adjusted Organic Revenue in January 2014) Divided By (Actual Adjusted Organic Revenue in January 2013) -1 = percentage growth

Actual Adjusted Organic Revenue is defined as:

Total revenue, less “run out” and “grace period” fees, less any revenue from any portfolio purchased during 2013, and any client credits approved by management, which will be reviewed by the Plan Administrator for possible adjustment within the calculation.

2013 January Adjusted Organic Revenue is [**] (WageWorks + MHM + PBS + Fringe Benefits Management Company + Choice Strategies + TransitChek+BCI)

d. Achievement of Individual Objectives (10%)

If actual adjusted 2013 EBITDA is equal to or greater than [**] Million, each Participating Officer will be eligible to receive up to 10% of his or her Bonus Target based on achievement of his or her individual objectives, as determined by the Plan Administrator in its sole discretion, listed on Exhibit A attached hereto and incorporated herein by reference.

Unless otherwise determined by the Plan Administrator, if actual adjusted 2013 EBITDA is less than [**] Million, then no Participating Officer shall be eligible to receive any payment towards this 10% portion of his or her Bonus Target.

[**] Information has been omitted and submitted separately to the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

UNFUNDED PLAN/NO ASSIGNABILITY

No amounts payable under this Plan shall actually be funded, set aside, or otherwise segregated prior to actual payment. The obligation to pay Bonuses, if any, under this Plan will at all times be an unfunded and unsecured obligation of the Company. The Participating Officers will have the status of general creditors of the Company and shall look solely and exclusively to the general assets of the Company for payment.

No Participating Officer shall have the right to any amount of Bonus under this Plan, to alienate, pledge or encumber his or her interest in the Plan, and such interest shall not (to the extent permitted by law) be subject in any way to the claims of the Participating Officer's creditors or to attachment, execution or other process of law.

AMENDMENT OF THE PLAN

Subject to the requirements of applicable laws, the Plan Administrator shall have complete and exclusive power and authority to amend or modify the Plan in any or all respects and for any reason, and at any time prior to completion of the Bonus Period. This power and authority includes, without limitation and without consideration for whether the amendment or modification adversely affects the Participating Officers, amending the Plan, cancelling the Plan and/or modifying Target Bonuses, Bonus potentials or any performance objectives.

WITHHOLDING

Any amounts payable to a Participating Officer under the Plan shall be subject to the Company's collection of all applicable Federal, state, local and foreign income and employment tax withholding requirements.

NO EMPLOYMENT OR SERVICE RIGHTS

Nothing in the Plan shall confer upon any individual any right to continue in service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company to terminate such person's employment or service relationship at any time for any reason, with or without cause.

CHOICE OF LAW

The laws of the state in which the Officer declares his or her state of residency for tax purposes for the fiscal year shall govern the interpretation of this Agreement.




1100 Park Place
San Mateo, CA 94403

PHONE: 650-577-5200
TOLL-FREE: 888-990-5099
FAX: 650-577-5201

www.wageworks.com

Award Agreement – Stock Options

[Date]

Dear [First Name Last Name (legal name)]:

WageWorks' Compensation Committee has granted you an Option to purchase Shares (the "Award") pursuant to WageWorks' 2010 Equity Incentive Plan (the "Plan").

This Award Agreement – Stock Options, including the Terms and Conditions of Stock Options attached hereto as Exhibit A (the "Agreement") includes the following summary of certain terms of your Award. If there is any discrepancy between this Agreement and the Plan, the Plan shall control. All terms and conditions not defined herein shall have the same meaning as defined in the Plan. Notwithstanding anything herein, if your written employment or service agreement with the Company (or the Parent or Subsidiary employing or retaining you) provides for more favorable vesting or exercise terms, the more favorable terms shall control.

Participant:	[(legal name)]
Date of Award:	[Date of CC meeting/Established by BOD]
Type of Award:	Nonstatutory Stock Option (NSO)
Number of Shares:	[# of Shares]
Exercise Price:	[\$price per Share]
Effective Date (Vesting Commencement Date):	[Date as outlined in the Equity Grant Process]
Term of Option:	[10 years from the Date of Award]
Vesting & Exercisability:	[Twenty-five percent (25%) of the Option Shares shall vest on the first anniversary of the Effective Date, and an additional 1/48th of the Option Shares shall vest on each of the thirty-six (36) succeeding monthly anniversaries of the Effective Date. In no event shall any additional Option Shares vest after Participant's termination as a Service Provider. No unvested Option Shares may be exercised.]
Termination of Service:	The Participant may exercise any or all vested Options within [ninety (90) day]s following termination of as a Service Provider, provided that the Participant's termination is not the result of the Participant's death, Disability or termination for Cause. Notwithstanding herein, in no event may this Option be exercised after the Term of Option as provided above and this Option may be subject to earlier termination as provided in Section 13 of the Plan. For purposes of this Agreement, "Cause" shall include, but is not limited to, termination of a Participant due to: (i) the failure of the Participant to perform the duties, responsibilities and obligations of the Participant's position; (ii) engagement in any unlawful activity, including, without limitation, the commission of any act of fraud, embezzlement or dishonesty by the Participant or the commission of a felony; (iii) any intentional disclosure or use by the Participant of any confidential information or trade secrets of the Company (or any parent or subsidiary); (iv) any other intentional misconduct by the Participant that adversely affects the business or affairs of the Company; or (v) any failure of the Participant to observe Company policies and procedures.

This Agreement must be signed, dated and returned to Human Resources by [DATE].

Human Resources will provide you with a fully executed copy of this Agreement for your records. For general questions regarding this Agreement, please contact Human Resources. For financial questions, Participants are encouraged to consult with an independent financial advisor.



By executing this Agreement, you and the Company hereby agree that this Award is granted under and governed by the terms and conditions of the Plan, a copy of which is enclosed herewith and made a part of this Agreement.

WageWorks, Inc.: _____

Date: _____

Participant: _____

Date: _____

EXHIBIT A

TERMS AND CONDITIONS OF STOCK OPTIONS

1. **Grant of Option.** The Company hereby grants to the Participant named in the Award Agreement – Stock Options (the “Participant”) an option (the “Option”) to purchase the number of Shares, as set forth in the Award Agreement – Stock Options, at the exercise price per Share set forth in the Award Agreement – Stock Options (the “Exercise Price”), subject to the terms and conditions in this Award Agreement – Stock Options, including these Terms and Conditions of Stock Options (the “Agreement”) and the Plan, which is incorporated herein by reference. Subject to Section 18(c) of the Plan, in the event of a conflict between the terms and conditions of the Plan and the terms and conditions of this Agreement, the terms and conditions of the Plan shall prevail.

If designated in the Award Agreement – Stock Options as an Incentive Stock Option (“ISO”), this Option is intended to qualify as an Incentive Stock Option as defined in Section 422 of the Code. Nevertheless, to the extent that it exceeds the \$100,000 rule of Code Section 422(d), this Option shall be treated as a Nonstatutory Stock Option (“NSO”). Further, if for any reason this Option (or portion thereof) shall not qualify as an ISO, then, to the extent of such nonqualification, such Option (or portion thereof) shall be regarded as a NSO granted under the Plan. In no event shall the Administrator, the Company or any Parent or Subsidiary or any of their respective employees or directors have any liability to Participant (or any other person) due to the failure of the Option to qualify for any reason as an ISO.

2. **Administrator Discretion.** The Administrator, in its discretion, may accelerate the vesting of the balance, or some lesser portion of the balance, of the unvested Option at any time, subject to the terms of the Plan. If so accelerated, such Option shall be considered as having vested as of the date specified by the Administrator.

3. **Exercise of Option.**

(a) **Right to Exercise.** This Option shall be exercisable during its term in accordance with the Vesting Schedule set out in the Award Agreement – Stock Options and with the applicable provisions of the Plan.

(b) **Method of Exercise.** This Option shall be exercisable by delivery of an exercise notice in the form attached as Exhibit A (the “Exercise Notice”) or in a manner and pursuant to such procedures as the Administrator may determine, which shall state the election to exercise the Option, the number of Shares with respect to which the Option is being exercised (the “Exercised Shares”), and such other representations and agreements as may be required by the Company. The Exercise Notice shall be accompanied by payment of the aggregate Exercise Price as to all Exercised Shares, together with any applicable tax withholding. This Option shall be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by the aggregate Exercise Price, together with any applicable tax withholding.

No Shares shall be issued pursuant to the exercise of an Option unless such issuance and such exercise comply with Applicable Laws. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to Participant on the date on which the Option is exercised with respect to such Shares.

4. Method of Payment. Payment of the aggregate Exercise Price shall be by any of the following, or a combination thereof, at the election of the Participant:

(a) cash;

(b) check;

(c) consideration received by the Company under a formal cashless exercise program adopted by the Company in connection with the Plan; or

(d) surrender of other Shares which (i) shall be valued at its Fair Market Value on the date of exercise, and (ii) must be owned free and clear of any liens, claims, encumbrances or security interests, if accepting such Shares, in the sole discretion of the Administrator, shall not result in any adverse accounting consequences to the Company.

5. Non-Transferability of Option. This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Participant only by Participant. The terms of the Plan and this Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of Participant.

6. Term of Option. This Option may be exercised only within the term set out in the Award Agreement – Stock Options, and may be exercised during such term only in accordance with the Plan and the terms of this Agreement.

7. Tax Obligations.

(a) Tax Withholding. Participant agrees to make appropriate arrangements with the Company (or the Parent or Subsidiary employing or retaining Participant) for the satisfaction of all Federal, state, local and foreign income and employment tax withholding requirements applicable to the Option exercise. No certificate representing the Shares shall be issued to Participant, unless and until satisfactory arrangements (as determined by the Administrator) shall have been made by Participant with respect to the payment of income, employment, social insurance, payroll and other taxes which the Company determines must be withheld with respect to such Shares. To the extent determined appropriate by the Company in its discretion, it shall have the right (but not the obligation) to satisfy any tax withholding obligations by reducing the number of Shares otherwise deliverable to Participant. Participant acknowledges and agrees that the Company may refuse to honor the exercise and refuse to deliver the Shares if such withholding amounts are not delivered at the time of exercise.

(b) Notice of Disqualifying Disposition of ISO Shares. If the Option granted to Participant herein is an ISO, and if Participant sells or otherwise disposes of any of the Shares acquired pursuant to the ISO on or before the later of (i) the date two (2) years after the Date of Grant, or (ii) the date one (1) year after the date of exercise, Participant shall immediately notify the Company in writing of such disposition. Participant agrees that Participant may be subject to income tax withholding by the Company on the compensation income recognized by Participant.

(c) Code Section 409A. Under Code Section 409A, an Option that vests after December 31, 2004 (or that vested on or prior to such date but which was materially modified after October 3, 2004) that was granted with a per Share exercise price that is determined by the Internal Revenue Service (the "IRS") to be less than the Fair Market Value of a Share on the date of grant (a "discount option") may be considered "deferred compensation." An Option that is a "discount option" may result in (i) income recognition by Participant prior to the exercise of the Option, (ii) an additional twenty percent (20%) federal income tax, and (iii) potential penalty and interest charges. The "discount option" may also result in additional state income, penalty and interest tax to the Participant. Participant acknowledges that the Company cannot and has not guaranteed that the IRS will agree that the per Share exercise price of this Option equals or exceeds the Fair Market Value of a Share on the date of grant in a later examination. Participant agrees that if the IRS determines that the Option was granted with a per Share exercise price that was less than the Fair Market Value of a Share on the date of grant, Participant shall be solely responsible for Participant's costs related to such a determination.

8. Rights as Stockholder. Neither Participant nor any person claiming under or through Participant shall have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares shall have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to Participant. After such issuance, recordation and delivery, Participant shall have all the rights of a stockholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares.

9. Entire Agreement; Governing Law. The Plan is incorporated herein by reference. The Plan and this Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof, and may not be modified adversely to the Participant's interest except by means of a writing signed by the Company and Participant. This Agreement is governed by the internal substantive laws but not the choice of law rules of California.

10. No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

11. Address for Notices. Any notice to be given to the Company under the terms of this Agreement shall be addressed to the Company at WageWorks, Inc., 1100 Park Place, Suite 400, San Mateo, California 94403, or at such other address as the Company may hereafter designate in writing.

12. Binding Agreement. Subject to the limitation on the transferability of this grant contained herein, this Agreement shall be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

13. Additional Conditions to Issuance of Stock. If at any time the Company shall determine, in its discretion, that the listing, registration, qualification or rule compliance of the Shares upon any securities exchange or under any state, federal or foreign law, the tax code and related regulations or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the purchase by, or issuance of Shares to, Participant (or his or her estate) hereunder, such purchase or issuance shall not occur unless and until such listing, registration, qualification, rule compliance, consent or approval shall have been completed, effected or obtained free of any conditions not acceptable to the Company. The Company shall make all reasonable efforts to meet the requirements of any such state, federal or foreign law or securities exchange and to obtain any such consent or approval of any such governmental authority or securities exchange. Assuming such compliance, for income tax purposes the Exercised Shares shall be considered transferred to Participant on the date the Option is exercised with respect to such Exercised Shares.

14. Administrator Authority. The Administrator shall have the power to interpret the Plan and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret or revoke any such rules (including, but not limited to, the determination of whether or not any Shares subject to the Option have vested). All actions taken and all interpretations and determinations made by the Administrator in good faith shall be final and binding upon Participant, the Company and all other interested persons. No member of the Administrator shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or this Agreement.

15. Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to Options awarded under the Plan or future options that may be awarded under the Plan by electronic means or request Participant's consent to participate in the Plan by electronic means. Participant hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through any on-line or electronic system established and maintained by the Company or another third party designated by the Company.

16. Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

17. Agreement Severable. In the event that any provision in this Agreement shall be held invalid or unenforceable, such provision shall be severable from, and such invalidity or unenforceability shall not be construed to have any effect on, the remaining provisions of this Agreement.

18. Modifications to the Agreement. This Agreement constitutes the entire understanding of the parties on the subjects covered. Participant expressly warrants that he or she is not accepting this Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Agreement or the Plan can be made only in an express written contract executed by a duly authorized officer of the Company. Notwithstanding anything to the contrary in the Plan or this Agreement, the Company reserves the right to revise this Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Code Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A of the Code in connection to this Option.

19. Amendment, Suspension or Termination of the Plan. By accepting this Award, Participant expressly warrants that he or she has received an Option under the Plan, and has received, read and understood a description of the Plan. Participant understands that the Plan is discretionary in nature and may be amended, suspended or terminated by the Company at any time.

20. Governing Law. This Agreement shall be governed by the laws of California, without giving effect to the conflict of law principles thereof. For purposes of litigating any dispute that arises under this Option or this Agreement, the parties hereby submit to and consent to the jurisdiction of the State of California, and agree that such litigation shall be conducted in the courts of San Mateo County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this Option is made and/or to be performed.

EXHIBIT B
2010 EQUITY INCENTIVE PLAN
EXERCISE NOTICE

WageWorks, Inc.
1100 Park Place, Suite 400
San Mateo, CA 94403

Attention: Stock Administration

1. Exercise of Option. Effective as of today, _____, _____, the undersigned (“Purchaser”) hereby elects to exercise Purchaser’s option (the “Option”) to purchase _____ shares of the Common Stock (the “Shares”) of WageWorks, Inc. (the “Company”) under and pursuant to the 2010 Equity Incentive Plan (the “Plan”) and the Award Agreement – Stock Options, dated _____, _____, including the Terms and Conditions of Stock Options (the “Agreement”).

2. Delivery of Payment. Purchaser herewith delivers to the Company the full purchase price of the Shares as set forth in the Agreement and any and all withholding taxes due in connection with the exercise of the Option.

3. Representations of Purchaser. Purchaser acknowledges that Purchaser has received, read and understood the Plan and the Agreement and agrees to abide by and be bound by their terms and conditions.

4. Rights as Stockholder. Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Common Stock subject to an Award, notwithstanding the exercise of the Option. The Shares shall be issued to Participant as soon as practicable after the Option is exercised in accordance with the Option Agreement. No adjustment shall be made for a dividend or other right for which the record date is prior to the date of issuance except as provided in Section 13 of the Plan.

5. Tax Consultation. Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser’s purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted with any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice

6. Successors and Assigns. The Company may assign any of its rights under this Exercise Notice to single or multiple assignees, and this Exercise Notice shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Exercise Notice shall be binding upon Participant and his or her heirs, executors, administrators, successors and assigns

7. Interpretation. Any dispute regarding the interpretation of this Exercise Notice shall be submitted by Participant or by the Company forthwith to the Administrator, which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Administrator shall be final and binding on all parties.

8. Entire Agreement; Governing Law. The Plan and Agreement are incorporated herein by reference. This Exercise Notice, the Plan and the Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Purchaser with respect to the subject matter hereof, and may not be modified adversely to the Purchaser's interest except by means of a writing signed by the Company and Purchaser. This agreement is governed by the internal substantive laws, but not the choice of law rules, of California.

Submitted by:

PURCHASER

Signature

Print Name

Address:

Accepted by:

WAGeworks, INC.

By

Its



Award Agreement – Restricted Stock Units

[Date]

Dear [First Name Last Name (legal name)]:

WageWorks’ Compensation Committee has granted you the right to receive an award of Restricted Stock Units (the “Award”) pursuant to WageWorks’ 2010 Equity Incentive Plan (the “Plan”).

This Award Agreement – Restricted Stock Units, including the Terms and Conditions of Restricted Stock Unit Award attached hereto as Exhibit A (the “Agreement”) includes the following summary of certain terms of your Award. If there is any discrepancy between this Agreement and the Plan, the Plan shall control. All terms and conditions not defined herein shall have the same meaning as defined in the Plan. Notwithstanding anything herein, if your written employment or service agreement with the Company (or the Parent or Subsidiary employing or retaining you) provides for more favorable vesting or exercise terms, the more favorable terms shall control.

- Participant:** [(legal name)]
- Date of Award:** [Date of CC meeting/Established by BOD]
- Type of Award:** Restricted Stock Units (RSUs)
- Number of Restricted Stock Units:** [# of RSUs]
- Effective Date (Vesting Commencement Date):** [Date as outlined in the Equity Grant Process]
- Vesting & Exercisability:** [Twenty-five percent (25%) of the Restricted Stock Units shall vest on the first anniversary of the Effective Date, and an additional 1/48th of the Restricted Stock Units shall vest on each of the thirty-six (36) succeeding monthly anniversaries of the Effective Date. In no event shall any additional Restricted Stock Units vest after Participant’s termination as a Service Provider.]

In the event Participant ceases to be a Service Provider for any or no reason before Participant vests in the Restricted Stock Units, the Restricted Stock Units and Participant’s right to acquire any Shares hereunder will immediately terminate.

This Agreement must be signed, dated and returned to Human Resources by [DATE].

Human Resources will provide you with a fully executed copy of this Agreement for your records. For general questions regarding this Agreement, please contact Human Resources. For financial questions, Participants are encouraged to consult with an independent financial advisor.

By executing this Agreement, you and the Company hereby agree that this Award is granted under and governed by the terms and conditions of the Plan, a copy of which is enclosed herewith and made a part of this Agreement.

WageWorks, Inc.: _____ **Date:** _____
Participant: _____ **Date:** _____

EXHIBIT A

TERMS AND CONDITIONS OF RESTRICTED STOCK UNIT AWARD

1. Grant. The Company hereby grants to the individual named in the Award Agreement – Restricted Stock Units (the “Participant”) under the Plan an Award of Restricted Stock Units, subject to all of the terms and conditions in this Agreement and the Plan, which is incorporated herein by reference. Subject to Section 18(c) of the Plan, in the event of a conflict between the terms and conditions of the Plan and the terms and conditions of this Agreement, the terms and conditions of the Plan will prevail.

2. Company’s Obligation to Pay. Each Restricted Stock Unit represents the right to receive a Share on the date it vests. Unless and until the Restricted Stock Units will have vested in the manner set forth in Sections 3 or 4, Participant will have no right to payment of any such Restricted Stock Units. Prior to actual payment of any vested Restricted Stock Units, such Restricted Stock Units will represent an unsecured obligation of the Company, payable (if at all) only from the general assets of the Company. Any Restricted Stock Units that vest in accordance with Sections 3 or 4 will be paid to Participant (or in the event of Participant’s death, to his or her estate) in whole Shares, subject to Participant satisfying any applicable tax withholding obligations as set forth in Section 7. Subject to the provisions of Section 4, such vested Restricted Stock Units shall be paid in whole Shares as soon as practicable after vesting, but in each such case within the period sixty (60) days following the vesting date. In no event will Participant be permitted, directly or indirectly, to specify the taxable year of the payment of any Restricted Stock Units payable under this Agreement.

3. Vesting Schedule. Except as provided in Section 4, and subject to Section 5, the Restricted Stock Units awarded by this Agreement will vest in accordance with the vesting provisions set forth in the Award Agreement – Restricted Stock Units. Restricted Stock Units scheduled to vest on a certain date or upon the occurrence of a certain condition will not vest in Participant in accordance with any of the provisions of this Agreement, unless Participant will have been continuously a Service Provider from the Date of Grant until the date such vesting occurs.

4. Administrator Discretion. The Administrator, in its discretion, may accelerate the vesting of the balance, or some lesser portion of the balance, of the unvested Restricted Stock Units at any time, subject to the terms of the Plan. If so accelerated, such Restricted Stock Units will be considered as having vested as of the date specified by the Administrator. The payment of Shares vesting pursuant to this Section 4 shall in all cases be paid at a time or in a manner that is exempt from, or complies with, Section 409A.

Notwithstanding anything in the Plan or this Agreement to the contrary, if the vesting of the balance, or some lesser portion of the balance, of the Restricted Stock Units is accelerated in connection with Participant’s termination as a Service Provider (provided that such termination is a “separation from service” within the meaning of Section 409A, as determined by the Company), other than due to death, and if (x) Participant is a “specified employee” within the meaning of Section 409A at the time of such termination as a Service Provider and (y) the payment of such accelerated Restricted Stock Units will result in the

imposition of additional tax under Section 409A if paid to Participant on or within the six (6) month period following Participant's termination as a Service Provider, then the payment of such accelerated Restricted Stock Units will not be made until the date six (6) months and one (1) day following the date of Participant's termination as a Service Provider, unless the Participant dies following his or her termination as a Service Provider, in which case, the Restricted Stock Units will be paid in Shares to the Participant's estate as soon as practicable following his or her death. It is the intent of this Agreement that it and all payments and benefits hereunder be exempt from, or comply with, the requirements of Section 409A so that none of the Restricted Stock Units provided under this Agreement or Shares issuable thereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to be so exempt or so comply. Each payment payable under this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2). For purposes of this Agreement, "Section 409A" means Section 409A of the Code, and any final Treasury Regulations and Internal Revenue Service guidance thereunder, as each may be amended from time to time.

5. Forfeiture upon Termination of Status as a Service Provider. Notwithstanding any contrary provision of this Agreement, the balance of the Restricted Stock Units that have not vested as of the time of Participant's termination as a Service Provider for any or no reason and Participant's right to acquire any Shares hereunder will immediately terminate.

6. Death of Participant. Any distribution or delivery to be made to Participant under this Agreement will, if Participant is then deceased, be made to Participant's designated beneficiary, or if no beneficiary survives Participant, the administrator or executor of Participant's estate. Any such transferee must furnish the Company with (a) written notice of his or her status as transferee, and (b) evidence satisfactory to the Company to establish the validity of the transfer and compliance with any laws or regulations pertaining to said transfer.

7. Withholding of Taxes. Notwithstanding any contrary provision of this Agreement, no certificate representing the Shares will be issued to Participant, unless and until satisfactory arrangements (as determined by the Administrator) will have been made by Participant with respect to the payment of income, employment, social insurance, payroll and other taxes which the Company determines must be withheld with respect to such Shares. Prior to vesting and/or settlement of the Restricted Stock Units, Participant will pay or make adequate arrangements satisfactory to the Company and/or the Participant's employer (the "Employer") to satisfy all withholding and payment obligations of the Company and/or the Employer. In this regard, Participant authorizes the Company and/or the Employer to withhold all applicable tax withholding obligations legally payable by Participant from his or her wages or other cash compensation paid to Participant by the Company and/or the Employer or from proceeds of the sale of Shares. Alternatively, or in addition, if permissible under applicable local law, the Administrator, in its sole discretion and pursuant to such procedures as it may specify from time to time, may permit or require Participant to satisfy such tax withholding obligation, in whole or in part (without limitation) by (a) paying cash, (b) electing to have the Company withhold otherwise deliverable Shares having a Fair Market Value equal to the minimum amount required to be withheld, (c) delivering to the Company already vested and owned Shares having a Fair Market Value equal to the amount required to be withheld, or (d) selling a sufficient number of such Shares otherwise deliverable to Participant through such means as the Company may

determine in its sole discretion (whether through a broker or otherwise) equal to the amount required to be withheld. To the extent determined appropriate by the Company in its discretion, it will have the right (but not the obligation) to satisfy any tax withholding obligations by reducing the number of Shares otherwise deliverable to Participant. If Participant fails to make satisfactory arrangements for the payment of any required tax withholding obligations hereunder at the time any applicable Restricted Stock Units otherwise are scheduled to vest pursuant to Sections 3 or 4 or tax withholding obligations related to Restricted Stock Units otherwise are due, Participant will permanently forfeit such Restricted Stock Units and any right to receive Shares thereunder and the Restricted Stock Units will be returned to the Company at no cost to the Company.

8. Rights as Stockholder. Neither Participant nor any person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares will have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to Participant. After such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares.

9. No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF THE RESTRICTED STOCK UNITS PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS AWARD OF RESTRICTED STOCK UNITS OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND WILL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

10. Address for Notices. Any notice to be given to the Company under the terms of this Agreement will be addressed to the Company at WageWorks, Inc., 1100 Park Place, Suite 400, San Mateo, California 94403, or at such other address as the Company may hereafter designate in writing.

11. Grant is Not Transferable. Except to the limited extent provided in Section 6, this grant and the rights and privileges conferred hereby will not be transferred, assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and will not be subject to sale under execution, attachment or similar process. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of this grant, or any right or privilege conferred hereby, or upon any attempted sale under any execution, attachment or similar process, this grant and the rights and privileges conferred hereby immediately will become null and void.

12. Binding Agreement. Subject to the limitation on the transferability of this grant contained herein, this Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

13. Additional Conditions to Issuance of Stock. If at any time the Company will determine, in its discretion, that the listing, registration, qualification or rule compliance of the Shares upon any securities exchange or under any state, federal or foreign law, the tax code and related regulations or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the issuance of Shares to Participant (or his or her estate) hereunder, such issuance will not occur unless and until such listing, registration, qualification, rule compliance, consent or approval will have been completed, effected or obtained free of any conditions not acceptable to the Company. Where the Company determines that the delivery of the payment of any Shares will violate federal securities laws or other applicable laws, the Company will defer delivery until the earliest date at which the Company reasonably anticipates that the delivery of Shares will no longer cause such violation. The Company will make all reasonable efforts to meet the requirements of any such state, federal or foreign law or securities exchange and to obtain any such consent or approval of any such governmental authority or securities exchange.

14. Plan Governs. This Agreement is subject to all terms and provisions of the Plan. In the event of a conflict between one or more provisions of this Agreement and one or more provisions of the Plan, the provisions of the Plan will govern. Capitalized terms used and not defined in this Agreement will have the meaning set forth in the Plan.

15. Administrator Authority. The Administrator will have the power to interpret the Plan and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret or revoke any such rules (including, but not limited to, the determination of whether or not any Restricted Stock Units have vested). All actions taken and all interpretations and determinations made by the Administrator in good faith will be final and binding upon Participant, the Company and all other interested persons. No member of the Administrator will be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or this Agreement.

16. Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to Restricted Stock Units awarded under the Plan or future Restricted Stock Units that may be awarded under the Plan by electronic means or request Participant's consent to participate in the Plan by electronic means. Participant hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through any on-line or electronic system established and maintained by the Company or another third party designated by the Company.

17. Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

18. Agreement Severable. In the event that any provision in this Agreement will be

held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement.

19. Modifications to the Agreement. This Agreement constitutes the entire understanding of the parties on the subjects covered. Participant expressly warrants that he or she is not accepting this Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Agreement or the Plan can be made only in an express written contract executed by a duly authorized officer of the Company. Notwithstanding anything to the contrary in the Plan or this Agreement, the Company reserves the right to revise this Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A in connection to this Award of Restricted Stock Units.

20. Amendment, Suspension or Termination of the Plan. By accepting this Award, Participant expressly warrants that he or she has received an Award of Restricted Stock Units under the Plan, and has received, read and understood a description of the Plan. Participant understands that the Plan is discretionary in nature and may be amended, suspended or terminated by the Company at any time.

21. Governing Law. This Agreement will be governed by the laws of California without giving effect to the conflict of law principles thereof. For purposes of litigating any dispute that arises under this Award of Restricted Stock Units or this Agreement, the parties hereby submit to and consent to the jurisdiction of the State of California, and agree that such litigation will be conducted in the courts of San Mateo County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this Award of Restricted Stock Units is made and/or to be performed.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors
WageWorks, Inc.:

We consent to the incorporation by reference in the registration statement on Form S-8 (No. 333-181300) of WageWorks, Inc. (the Company) of our report dated February 25, 2013, with respect to the consolidated balance sheets of WageWorks, Inc. as of December 31, 2011 and 2012, and the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2012, and the related financial statement schedule, which report appears in the December 31, 2012 annual report on Form 10-K of the Company.

/s/ KPMG LLP

San Francisco, California
February 25, 2013

**Certification of Principal Executive Officer
pursuant to
Exchange Act Rules 13a-14(a) and 15d-14(a),
as adopted pursuant to
Section 302 of Sarbanes-Oxley Act of 2002**

I, Joseph L. Jackson, certify that:

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

Date: February 26, 2013

/s/ Joseph L. Jackson

Name: Joseph L. Jackson

Title: *Chief Executive Officer and Director (Principal Executive Officer)*

**Certification of Principal Financial Officer
pursuant to
Exchange Act Rules 13a-14(a) and 15d-14(a),
as adopted pursuant to
Section 302 of Sarbanes-Oxley Act of 2002**

I, Richard T. Green, certify that:

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

Date: February 26, 2013

/s/ Richard T. Green

Name: Richard T. Green

Title: *Chief Financial Officer*
(Principal Financial Officer)

**CERTIFICATIONS OF PRINCIPAL EXECUTIVE OFFICER
AND PRINCIPAL FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1350), Joseph L. Jackson, Chief Executive Officer and Director (Principal Executive Officer) of WageWorks, Inc. (the "Company"), and Richard T. Green, Chief Financial Officer (Principal Financial Officer) of the Company, each hereby certifies that, to the best of his knowledge:

1. Our Annual Report on Form 10-K for the year ended December 31, 2012, to which this Certification is attached as Exhibit 32.1 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 26, 2013

/s/ Joseph L. Jackson

Name: Joseph L. Jackson

Title: *Chief Executive Officer and Director (Principal Executive Officer)*

/s/ Richard T. Green

Name: Richard T. Green

Title: *Chief Financial Officer (Principal Financial Officer)*

