

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): June 9, 2005

PERFICIENT, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-15169
(Commission
File Number)

74-2853258
(IRS Employer
Identification No.)

**1120 South Capital of Texas Highway, Suite 220, Building 3
Austin, Texas 78746**

(Address of principal executive offices including zip code)

Registrant's telephone number, including area code:
(512) 531-6000

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

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

Item 1.01 Entry into a Material Definitive Agreement

On June 10, 2005, Perficient, Inc. (the “Perficient”), Perficient iPath, Inc., a Delaware corporation and a wholly owned subsidiary of Perficient (the “Acquisition Sub”) and iPath Solutions, Ltd. (“iPath”), a Texas limited partnership, entered into an Asset Purchase Agreement (the “Purchase Agreement”) pursuant to which Acquisition Sub acquired substantially all of the assets and assumed certain liabilities of iPath (the “Acquisition”). The Acquisition closed on June 10, 2005. The consideration paid in the transaction is approximately \$7.9 million, and includes \$3.85 million in cash and approximately \$4.0 million worth of Perficient common stock (based on the average closing price of Perficient’s common stock on the NASDAQ National Market for the thirty trading days immediately preceding the acquisition close per the terms of the acquisition agreement), subject to the satisfaction of certain conditions in the first three years following the closing of the transaction (GAAP accounting will require using the closing price of the Company’s common stock at or near the close date in reporting the value of the stock consideration paid in the acquisition).

The Purchase Agreement includes other terms and provisions of the type customary in agreements of this sort. The assets acquired in the Acquisition include accounts receivable, personal property, the rights and benefits under certain contracts and intangible assets relating to the business of iPath. Prior to the acquisition, the assets of iPath were used to provide information technology consulting services to its customers. Perficient intends to continue such uses for the assets of iPath.

The foregoing summary does not purport to be complete and is qualified in its entirety by reference to the full text of the Asset Purchase Agreement, a copy of which is included herein as Exhibit 2.1.

The press release announcing the acquisition is included herein as Exhibit 99.1 to this Form 8-K.

On June 9, 2005, Perficient entered into an Amended and Restated Loan and Security Agreement with Silicon Valley Bank and KeyBank National Association to be effective as of June 3, 2005. The amended agreement increases the total size of the Company’s senior bank credit facilities from \$14 million to \$28.5 million by increasing the accounts receivable line of credit from \$9 million to \$15 million and increasing the acquisition term line of credit from \$4 million to \$13.5 million. The cash consideration paid by Perficient in the acquisition of iPath was drawn from the amended credit facilities. In addition to increasing the borrowing capacity, certain financial covenants were redefined to be more favorable to the Company. A copy of the full text of the Amended and Restated Loan and Security Agreement is attached hereto as Exhibit 10.1.

Item 2.01 Completion of Acquisition or Disposition of Assets

The information provided under Item 1.01 above with respect to the acquisition of iPath is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation

The information provided under Item 1.01 above with respect to the Amended and Restated Loan and Security Agreement is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(a) Financial Statements of Business Acquired

No Financial Statements relating to the Acquisition are required pursuant to Rule 3-05 of Regulation S-X.

(b) Pro Forma Financial Information

No pro forma financial information relating to the Acquisition are required pursuant to Article 11 of Regulation S-X.

(c) Exhibits

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
Exhibit 2.1	Asset Purchase Agreement, dated as of June 10, 2005, by and among Perficient, Inc., Perficient iPath, Inc. and iPath Solutions, Ltd.
Exhibit 10.1	Amended and Restated Loan and Security Agreement by and among Silicon Valley Bank, KeyBank National Association, Perficient, Inc., Perficient Canada Corp., Perficient Genisys, Inc., Perficient Meritage, Inc. and Perficient Zettaworks, Inc. dated effective as of June 3, 2005.
Exhibit 99.1	Perficient, Inc. Press Release issued on June 13, 2005 regarding the acquisition of iPath Solutions, Ltd.

SIGNATURES

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

PERFICIENT, INC.

Dated June 15, 2005

/s/ Michael D. Hill

Michael D. Hill
Chief Financial Officer

PERFICIENT, INC.

EXHIBIT INDEX

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>
2.1*	Asset Purchase Agreement, dated as of June 10, 2005, by and among Perficient, Inc., Perficient iPath, Inc. and iPath Solutions, Ltd.
10.1*	Amended and Restated Loan and Security Agreement by and among Silicon Valley Bank, KeyBank National Association, Perficient, Inc., Perficient Canada Corp., Perficient Genisys, Inc., Perficient Meritage, Inc. and Perficient Zettaworks, Inc. dated effective as of June 3, 2005.
99.1	Perficient, Inc. Press Release issued on June 13, 2005 regarding the acquisition of iPath Solutions, Ltd.
*	All schedules to this Exhibit 2.1 and 10.1 filed herewith have been omitted in accordance with Item 601(b)(2) of Regulation S-K. The Company will furnish supplementally a copy of any omitted schedule to the Commission upon request.

ASSET PURCHASE AGREEMENT

By and Among

Perficient, Inc.

Perficient iPath, Inc.

and

iPath Solutions, Ltd.

Dated as of June 10, 2005

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EXHIBIT I	Form of Brown Consulting Agreement
EXHIBIT J	Form of Opinion of Counsel to the Seller
EXHIBIT K	Form of Opinion of Counsel to the Parent and Buyer

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (the “**Agreement**”) dated as of June 10, 2005, by and among Perficient, Inc., a Delaware corporation (“**Parent**”), Perficient iPath, Inc., a Delaware corporation and a wholly owned subsidiary of Parent (“**Buyer**”), and iPath Solutions, Ltd., a Texas limited partnership (the “**Seller**”).

Seller is engaged in engaged in the business of providing specialized computer and internet consulting services, including, but not limited to, information technology assessment, content and document management, enterprise portals, custom application development and project lifecycle services (the “**Business**”).

Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, substantially all of Seller’s assets and properties used or held for use in connection with the Business, and in connection therewith, Buyer has agreed to assume certain of the liabilities of Seller relating to the Business, all on the terms and conditions set forth herein (the “**Acquisition**”).

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained herein, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I DEFINITIONS

1.01 Definitions. As used in this Agreement, the following terms shall have the meanings set forth or referenced below:

“**Accounts Receivable**” means any and all accounts receivable and notes receivable of or amounts owing or payable to Seller, including costs and estimated earnings in excess of billings related to the Seller’s work in progress, all as of the Closing Date.

“**Ancillary Agreements**” means the Escrow Agreement, the Agreement and Bill of Sale, and the Transition Services Agreement.

“**Assets**” means all the tangible and intangible assets owned, leased, or licensed by Seller that are used or held for use in connection with the Business.

“**Business Records**” means any and all books, records, files, documentation, data or information of Seller that have been or now are used in connection with the Business.

“**Commercially Reasonable Efforts**” means the commercially reasonable efforts that a prudent person desirous of achieving a result and having an incentive to and interest in achieving such result would use in similar circumstances to achieve that result as expeditiously as reasonably possible.

“**Choses in Action**” means a right to receive or recover property, debt, or damages on a cause of action, whether pending or not and whether arising in contract, tort or otherwise. The

term shall include rights to indemnification, damages for breach of warranty or any other event or circumstance, judgments, settlements, and proceeds from judgments or settlements.

“**Code**” means the United States Internal Revenue Code of 1986, as amended. All references to the Code, U.S. Treasury regulations or other governmental pronouncements shall be deemed to include references to any applicable successor regulations or amending pronouncement.

“**Commonly Controlled Entity**” means any corporation, trade, business, or entity under common control with the Seller, within the meaning of Section 414(b), (c), (m), or (o) of the Code or Section 4001 of ERISA.

“**Competing Business**” means any person, entity, or other business concern that offers or is demonstrably planning to offer Competitive Products or Services.

“**Competitive Products or Services**” means any products or services that are similar to or otherwise competitive with the products or services being offered, marketed, or actively developed (as evidenced by internal company documents and records, including e-mail) by Parent, Buyer or Seller as of the Closing Date, including technology consulting services, technology design services, software development services, software integration services, systems integration services, technology outsourcing services, hosting services and technology staffing services.

“**Consents**” means all consents and approvals of third parties or Governmental Entities, in each case that are necessary in order to transfer the Acquired Assets to Buyer and otherwise to consummate the transactions contemplated hereby.

“**Continuing Employees**” means the employees of Seller that will be offered employment with Parent on or after the Closing Date, but no later than the end of the Transition Period.

“**Continuing Employee Stockholders**” means those Continuing Employees that are Seller Interest Holders or will otherwise receive distributions of shares of Parent Common Stock from Seller and/or certain of the Seller Interest Holders as bonus compensation for and in consideration of services rendered by such Continuing Employees to Seller prior to the Closing Date and in satisfaction of existing contractual obligations (whether written, oral or implied).

“**Contracts**” means all written or oral contracts, agreements, leases, licenses and other arrangements pursuant to which Seller enjoys any right or benefit or undertakes any obligation related to the Business or otherwise.

“**Covered Client**” means: (i) any of the Parent’s, Buyer’s or Seller’s clients or Prospective Clients.

“**Current Assets**” means the sum of (i) Accounts Receivable (net of allowances for doubtful accounts), and (ii) lease deposits, prepaid rent, prepaid expenses and other current assets specifically identified on the Estimated Statement, as revised by the Closing Date Statement.

“Current Employee Benefit Plan” means each Employee Benefit Plan that is currently sponsored, maintained, contributed to, or agreed to by the Seller or any Commonly Controlled Entity or under which the Seller or any Commonly Controlled Entity has any current or future obligations.

“Employee Benefit Plan” means each (i) employee benefit plan within the meaning of Section 3(3) of ERISA and (ii) personnel policy; stock option plan; stock purchase plan; equity compensation plan; phantom equity or appreciation rights plan; collective bargaining agreement; bonus plan or arrangement; incentive award plan or arrangement; vacation policy; severance pay plan, policy, or agreement; deferred compensation agreement or arrangement; executive compensation or supplemental income arrangement; consulting agreement; employment agreement; and other employee benefit plan, agreement, arrangement, program, practice, or understanding, which is sponsored, maintained, contributed to, or agreed to by the Seller or any Commonly Controlled Entity for the benefit of the employees, former employees, independent contractors, or agents of the Seller or any Commonly Controlled Entity or has been so sponsored, maintained, contributed to, or agreed to at any time within six years prior to Closing Date.

“Encumbrances” means any and all restrictions on or conditions to transfer or assignment, claims, liens, pledges, mortgages, restrictions, and encumbrances of any kind, whether accrued, absolute, contingent or otherwise affecting the Acquired Assets.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Governmental Entity” means any court, administrative agency, regulatory agency or commission or other governmental authority or instrumentality.

“Intellectual Property Rights” means all patents, copyrights, trade secrets, trade names, service marks, trademarks, domain names, know-how, software and other intellectual property that is owned or licensed by Seller and used in connection with the operation of the Business.

“Liabilities” means any direct or indirect liability, indebtedness, obligation, guarantee or endorsement, whether known or unknown, whether accrued or unaccrued, whether absolute or contingent, whether due or to become due, or whether liquidated or unliquidated, of Seller relating to the Business or the Assets.

“Net Working Capital” means the Current Assets less the Assumed Liabilities reflected on the Estimated Statement, as revised by the Closing Date Statement.

“Noncompetition Period” means the period beginning on the date hereof and ending on the fifth anniversary of the Closing Date.

“Parent Common Stock” means the Parent’s common stock, par value \$0.001 per share.

“Parent Material Adverse Effect” shall mean a material adverse effect on the business or financial condition of the Parent and its subsidiaries, taken as a whole; provided, however, that in no event shall any of the following be deemed to constitute or be taken into account in determining a Parent Material Adverse Effect: any event, circumstance, change or effect that results from (i) changes affecting the economy generally, (ii) the public announcement or

pending nature of this Agreement and the transactions contemplated hereunder, or (iii) Parent's compliance with the terms of this Agreement.

"Parent Stock Per Share Price" means the average closing sale price of one share of Parent Common Stock as reported on the Nasdaq National Market for the thirty (30) consecutive trading days ending on the date that is one (1) trading day immediately preceding the Closing Date (as adjusted as appropriate to reflect any stock splits, stock dividends, combinations, reorganizations, reclassifications or similar events).

"Permits" means all licenses, permits, authorizations, certificates, franchises, variances, waivers, consents and other approvals from any Governmental Entity relating to the operation of the Business.

"Permitted Encumbrances" means (i) any Encumbrance for current Taxes that are not yet due or payable, (ii) any Encumbrance for Tax assessments and other charges or claims with respect to Taxes that are due and payable and the validity of which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established by Seller in accordance with generally accepted accounting principles, (iii) any minor imperfection of title or similar Encumbrance which individually or in the aggregate with other such Encumbrances does not materially impair the value of the property subject to such Encumbrance or the use of such property in the conduct of the business, (iv) mechanics' and materialmen's liens incurred in the ordinary course of business, (v) statutory liens of landlords' and workmen's, repairmen's, warehousemen's and carriers' liens, and other similar Encumbrances arising in the ordinary course of business, (vi) requirements incurred or other Encumbrances relating to deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance, social security, and other similar statutory requirements, (vii) Encumbrances constituted by the terms of any Assigned Contract, (viii) Encumbrances, deposits, or pledges to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), leases, public or statutory obligations, surety, stay, appeal, indemnity, performance or other similar bonds, or other similar obligations arising in the ordinary course of business, (ix) judgment and other similar Encumbrances arising in connection with court proceedings, provided the execution or other enforcement of such Encumbrance is effectively stayed and the claim secured thereby are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established by Seller in accordance with generally accepted accounting principles; (x) easements, rights-of-way, restrictions, and other similar Encumbrances which, in the aggregate, do not materially interfere with the occupation, use, and enjoyment by Seller of the property or assets encumbered thereby in the normal course of its business or materially impair the value of the property subject thereto.

"Personal Property" means all of the machinery, equipment, computer hardware, tools, motor vehicles, furniture, furnishings, leasehold improvements, office equipment, inventories, supplies, plant, spare parts, and other tangible personal property that is owned or leased by Seller and used in connection with the operation of the Business.

"Prospective Client" means any person, entity, or business concern that, as of the Closing Date: (i) the Parent, Buyer or Seller have spent time and resources courting or developing as a potential user of the Parent's, the Buyer's or the Seller's Competitive Products or Services as

evidenced by internal company documents and records (including e-mail); or (ii) has entered into specific discussions with the Parent, the Buyer or the Seller regarding the Parent, the Buyer or the Seller potentially providing its services or products to the person, entity, or business concern.

“**Real Property**” means all office facilities and other real property that is owned or leased by Seller and used in connection with the operation of the Business.

“**Restricted Area**” means any geographic market: (i) in which the Seller conducts any material portion of the Business prior to the Closing Date; and/or (ii) in which the Parent or Buyer was conducting business or actively pursuing a material amount of business prior to the beginning of the Noncompetition Period as evidenced by definite and demonstrable actions by the Parent or Buyer with respect to the area (e.g., contacting clients or prospective clients to solicit material selling business opportunities, contacting suppliers or vendors regarding material business opportunities, actively conducting feasibility research of the area, etc.).

“**Seller Interest Holders**” means, collectively, the General Partner, each of the Limited Partners, and any other person that owns a beneficial interest in Seller, directly or indirectly through the General Partner or any Limited Partner.

“**Seller Material Adverse Effect**” shall mean any event, circumstance, condition, development or occurrence causing, resulting in or having (or with the passage of time likely to cause, result in or have) a material adverse effect on the Assets or Business of Seller, taken as a whole; provided, however, that in no event shall any of the following be deemed to constitute or be taken into account in determining a Seller Material Adverse Effect: any event, circumstance, change or effect that results from (i) changes affecting the economy generally, (ii) the public announcement or pending nature of this Agreement and the transactions contemplated hereunder, or (iii) Seller’s compliance with the terms of this Agreement

“**Tax**” and “**Taxes**” means any and all taxes, charges, fees, levies or other assessments, including, without limitation, all net income, gross income, gross receipts, premium, sales, use, ad valorem, value added, transfer, franchise, profits, license, withholding, payroll, employment, excise, estimated, severance, stamp, occupation, property or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties (including penalties for failure to file in accordance with applicable information reporting requirements), and additions to tax by any authority, whether federal, state, local, domestic or foreign.

“**Tax Return**” means any report, return, form, declaration or other document or information required to be supplied to any authority in connection with Taxes.

The following terms are defined elsewhere in the Agreement:

<i>Term</i>	<i>Section Where First Referenced</i>
Acquired Assets	2.01
Acquisition	Recitals
Agreement	Recitals
Agreement and Bill of Sale	2.09(b)(iv)
Allocation	2.08

<i>Term</i>	<i>Section Where First Referenced</i>
<i>Arbitrating Accountant</i>	2.06(b)
<i>Assigned Contracts</i>	2.01(d)
<i>Assigned Leases</i>	2.01(b)
<i>Assumed Liabilities</i>	2.03(a)
<i>Assigned Licenses</i>	2.01(c)
<i>Brown Consulting Agreement</i>	6.05(d)
<i>Business</i>	Recitals
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<i>Purchaser Indemnitees</i>	9.01(a)
<i>Rassin Employment Agreement</i>	6.05(c)

<i>Term</i>	<i>Section Where First Referenced</i>
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Stockholder Representation Letter	6.02(a)
Stock Restriction Agreement	6.03(b)
Third Party Claim	9.04(b)
to the knowledge of the Parent	ARTICLE IV
to the knowledge of the Seller	ARTICLE III
Transition Period	6.05(a)
Transition Services Agreement	2.09(b)(v)
without limitation	10.02

ARTICLE II SALE AND PURCHASE OF ASSETS; ASSUMPTION OF LIABILITIES

2.01 Agreement to Sell and Buy. Subject to the terms and conditions set forth in this Agreement, Seller shall sell, assign, transfer and deliver to Buyer on the Closing Date, and Buyer shall purchase on the Closing Date, all of Seller's right, title and interest in and to all of the Assets, except the Excluded Assets set forth in Section 2.02 (the "**Acquired Assets**"), free and clear of all Encumbrances other than Permitted Encumbrances. The Acquired Assets include the following:

- (a) All Current Assets;
- (b) All Personal Property, including, to the extent transferable, all rights and benefits of Seller under the lease agreements listed on Schedule 2.01(b), (the "**Assigned Leases**");
- (c) All Intellectual Property Rights, including, to the extent transferable, all rights and benefits of Seller under the license agreements included on Schedule 2.01(c), (the "**Assigned Licenses**");
- (d) To the extent transferable, all rights and benefits of Seller under the Contracts listed on Schedule 2.01(d) (together with the Assigned Leases and Assigned Licenses, the "**Assigned Contracts**");
- (e) To the extent transferable, all Permits;
- (f) All Choses in Action of Seller;

(g) All Business Records; and

(h) All other intangible assets of Seller relating to the Business, including goodwill, prepaid expenses and deposits.

2.02 Excluded Assets. Notwithstanding anything contained in this Agreement to the contrary, Seller shall retain all of its right, title and interest in and to, and Buyer shall not acquire any interest in any of the following assets or rights of Seller (the “**Excluded Assets**”):

(a) All rights and benefits of Seller under the Contracts, if any, identified on Schedule 2.02 (the “**Excluded Contracts**”);

(b) All rights and benefits of Seller under Employee Benefit Plans and all assets or funds held in trust, or otherwise, associated with or used in connection with the Employee Benefit Plans;

(c) All claims for refund of Taxes and other governmental charges of whatever nature related thereto and all reserves or accounts for accrued and unpaid Taxes;

(d) All Choses in Action, if any, of Seller relating to any of the other assets listed in this Section 2.02 or any of the Excluded Liabilities;

(e) All Business Records relating solely to: (i) internal corporate or partnership matters of Seller or its predecessor-in-interest or their respective partners or shareholders (including, without limitation, any minute books, ownership records, and seals), (ii) personnel records and other records that Seller is required to retain, or (iii) any of the other assets listed in this Section 2.02;

(f) The note(s) receivable described on Schedule 2.02;

(g) All personal effects and other personal property, if any, identified on Schedule 2.02;

(h) All prepaid expenses relating to Seller’s insurance policies, as identified on Schedule 2.02; and

(i) All rights of Seller under this Agreement, the Agreement and Bill of Sale and the Escrow Agreement, and all consideration payable to Seller pursuant to this Agreement.

2.03 Assumption of Liabilities.

(a) As of the Closing Date, Buyer shall assume and undertake to pay, perform and discharge according to their terms only the following Liabilities of Seller (the “**Assumed Liabilities**”):

(i) Liabilities arising under the Assigned Contracts from and after the Closing Date;

(ii) Liabilities set forth on the Estimated Statement, as revised by the Closing Date Statement, including, without limitation, trade account payables, indebtedness to Frost National Bank in the amount identified on Schedule 2.03, which will be paid at Closing, other current liabilities arising in the ordinary course of business that remain unpaid at and are not delinquent as of the Closing Date, and certain loans from shareholders;

(iii) Liabilities related to any warranty claims by Seller's customers with respect to work performed by Seller prior to the Closing Date pursuant to any of the Assigned Contracts ("***Seller Warranty Liabilities***"); and

(iv) Other Liabilities, if any, listed on Schedule 2.03.

(b) Notwithstanding anything contained in this Agreement to the contrary, except as expressly set forth in Section 2.03(a) above, Buyer shall not assume or become liable or obligated in any way, and Seller shall retain and remain solely liable for and obligated to pay, perform and discharge all Liabilities of Seller, including, without limitation any of the following (collectively, the "***Excluded Liabilities***"):

(i) Liabilities under any Excluded Contracts;

(ii) Liabilities arising under any Assigned Contracts that relate to the time period prior to the Closing Date or arise out of events occurring prior to the Closing Date;

(iii) Any forfeiture, claim or pending litigation or proceeding relating to the Business prior to the Closing Date; and

(iv) Any Liabilities relating to unpaid Taxes or to any Employee Benefit Plan or associated Contract.

2.04 Deemed Assignment of Contracts. It is understood that, as of the Closing Date, Seller has neither sought nor obtained the consent of any third party to the assignment of the Assigned Contracts. To the extent that the assignment hereunder of any of the Assigned Contracts shall require the consent of any other party (or in the event that any of the same shall be non-assignable), upon the request of Buyer, Seller shall use its Commercially Reasonable Efforts to obtain the consent of such party to the reasonable satisfaction of Parent. Prior to receipt of such consent, neither this Agreement nor any actions taken hereunder shall constitute an assignment or an agreement to assign such Assigned Contract if such assignment or attempted assignment would constitute a breach thereof or result in a loss or diminution thereof; provided, however, that Seller shall cooperate with Buyer to establish a reasonable arrangement designed to provide Buyer with the benefits and burdens of such Assigned Contract, including appointing Buyer to act as its agent to perform all of Seller's obligations under such Assigned Contract and to collect and promptly remit to Buyer all compensation received by Seller pursuant to such Assigned Contract and, at Buyer's expense, to enforce, for the account and benefit of Buyer, any and all rights of Seller against any other person arising out of the breach or cancellation of such Assigned Contract by such other person or otherwise (any and all of which arrangements shall constitute, as between the parties hereto, a deemed assignment or transfer); provided, further, that Buyer shall undertake to pay or satisfy the corresponding Liabilities under the terms of any such Assigned Contract to the extent that Buyer would have been responsible therefor if such

consent or approval had been obtained and such Liability shall be deemed an Assumed Liability for all purposes of this Agreement.

2.05 Purchase Price and Related Matters. In consideration of the sale and transfer of all of Seller's rights, title and interests in the Acquired Assets, Buyer shall assume the Assumed Liabilities and shall pay to the Seller an aggregate purchase price of \$7,886,000 (the "**Purchase Price**"), subject to adjustment pursuant to Section 2.06 below. At the Closing, Buyer shall pay the Purchase Price to Seller by:

(a) wire transfer of immediately available funds (the "**Cash Payment**") equal to \$3,850,000, subject to adjustment pursuant to Section 2.06(a), in accordance with the wiring instructions provided by Seller to Buyer on or prior to the Closing Date; and

(b) the issuance and delivery to Seller of certificate(s) in the name of Seller evidencing, in the aggregate, such number of shares of Parent Common Stock (the "**Stock Payment**") equal to (i) \$4,036,000 divided by the Parent Stock Per Share Price, less (ii) the Escrow Shares.

The Purchase Price and the Cash Payment is subject to further adjustment pursuant to Section 2.06.

2.06 Adjustment of Stock Payment.

(a) No more than three days prior to the Closing Date, the Seller will prepare and deliver to Buyer a calculation and statement of its estimated Net Working Capital as of the Closing Date (the "**Estimated Statement**"). The Seller will prepare the Estimated Statement in good faith, in a manner consistent with the procedures used to prepare the Financial Statements, subject to Buyer's good faith review and reasonable satisfaction. If the Net Working Capital set forth on the Estimated Statement (the "**Estimated Net Working Capital**") is less than \$700,000 (the "**Net Working Capital Threshold Amount**"), then the Purchase Price and the Cash Payment to be paid at the Closing will be reduced by the amount of such deficiency. If the Estimated Net Working Capital is more than the Net Working Capital Threshold Amount, then the Purchase Price and the Cash Payment to be paid at Closing will be increased by the amount of such excess, provided that such amount (the "**Holdback Amount**") shall be held back by Buyer until such time as the Net Working Capital is finally determined based upon the Closing Date Statement pursuant to Section 2.06(b) below.

(b) As soon as practicable but in no event later than forty five (45) days following the Closing Date, Buyer will prepare and deliver to Seller a calculation and statement of the Net Working Capital as of the Closing Date (the "**Closing Date Statement**"). The Buyer will prepare the Closing Date Statement in good faith, in a manner consistent with the procedures used by Seller to prepare the Financial Statements (to the extent such Financial Statements are in compliance with GAAP), subject to Seller's good faith review and reasonable satisfaction. Seller may submit to Buyer, not later than fifteen (15) days from the receipt of the Closing Date Statement from Buyer, a list of any components of the Closing Date Statement with which the Seller disagrees, if any (a "**Dispute Notice**"). If the Seller does not issue a Dispute Notice prior to such date, the Closing Date Statement, as supplied to Seller, shall be deemed to have been

accepted and agreed to by Seller, and shall be final and binding on the parties to this Agreement. In the event of a Dispute Notice by the Seller, Buyer and Seller shall thereafter for a period of up to fifteen (15) days negotiate in good faith to resolve any items of dispute. Any items of dispute regarding the Closing Date Statement which are not so resolved shall be submitted to a mutually agreed upon certified public accountant from a nationally recognized firm of public accountants mutually acceptable to Buyer and Seller, who shall serve as an arbitrator hereunder (the “**Arbitrating Accountant**”), the expenses of which shall be shared one-half by Buyer and one-half by Seller, unless otherwise determined by the Arbitrating Accountant. In connection with the resolution of any dispute, the Arbitrating Accountant shall have access to all documents, records, work papers, facilities and personnel necessary to perform its function as arbitrator. The Arbitrating Accountant so selected shall render a written decision as promptly as practicable, but in no event later than thirty (30) days after submission of the matter to the Arbitrating Accountant. The decision of the Arbitrating Accountant shall be final and binding upon the parties, and judgment may be entered on such decision in a court of competent jurisdiction. To the extent not otherwise provided herein, the commercial arbitration rules of the American Arbitration Association as in effect at the time of any arbitration shall govern such arbitration in all respects.

(c) If the Net Working Capital, as finally determined based upon the Closing Date Statement, is less than the Estimated Net Working Capital, then Buyer may retain the Holdback Amount, if any, and claim any remaining portion of such shortfall as Damages pursuant to Section 9.01.

(d) If the Net Working Capital, as finally determined based upon the Closing Date Statement, is more than the Estimated Net Working Capital, then the Buyer shall release the Holdback Amount, if any, and the Purchase Price and the Cash Payment will be further increased by the amount of such excess and Buyer shall immediately wire transfer such excess in accordance with wire instructions provided to Buyer from Seller.

2.07 Escrowed Shares. On the Closing Date, Buyer will withhold from the Stock Payment portion of the Purchase Price and deposit into escrow for and on behalf of Seller (or its designees) such a number of shares of Parent Common Stock equal to \$1,155,000 divided by the Parent Stock Per Share Price (the “**Escrowed Shares**”). The Escrowed Shares shall be held in escrow for a period of one (1) year from the Closing Date for the sole purposes of securing the indemnification obligations of Seller and/or the Seller Interest Holders and other Continuing Employee Stockholders pursuant to the provisions of Article IX hereof, pursuant to the terms and subject to the conditions set forth in an escrow agreement to be entered into among the parties hereto and Continental Stock Transfer & Trust Company, as Escrow Agent, in the form attached hereto as Exhibit A, with such modifications as may be reasonably acceptable to Parent, Buyer and Seller, as requested by the Escrow Agent (the “**Escrow Agreement**”).

2.08 Allocation. Buyer and Seller agree to use their Commercially Reasonable Efforts to finalize the allocation of the Purchase Price (and all other capitalizable costs) and the Assumed Liabilities among the Acquired Assets (the “**Allocation**”) on or prior to the Closing Date, but no later than fifteen (15) days after the Closing Date. In the event of any dispute regarding the Allocation, such dispute shall be resolved by the Arbitrating Accountant pursuant to the procedures set forth in Section 2.06(b). The Allocation shall control for all purposes

(including financial accounting and tax purposes), and neither Buyer nor Seller shall take any position for purposes of any federal, state or local income tax with respect to the allocation of the Purchase Price which is inconsistent with the Allocation.

2.09 The Closing.

(a) Time and Location. The closing of the Acquisition (the “**Closing**”) shall take place at the offices of Vinson & Elkins LLP, The Terrace 7, 2801 Via Fortuna, Suite 100, Austin, Texas 78746, at 10:00 a.m. on the business day following the satisfaction or waiver of all conditions to the obligations of the parties contained in Article VII to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective parties will take at the Closing itself) or such other date as the Parties may mutually determine (the “**Closing Date**”).

(b) Closing Deliveries of Buyer and/or Parent. Subject to the fulfillment or waiver of the conditions set forth in Sections 7.01 and 7.02 hereof, at the Closing, Buyer and/or Parent shall deliver to the Seller all of the following:

(i) the Cash Payment;

(ii) the Stock Payment;

(iii) the Escrow Agreement;

(iv) the Assignment and Assumption Agreement and Bill of Sale, in the form attached as Exhibit B hereto (the “**Agreement and Bill of Sale**”), executed by Buyer; and

(v) the Transition Services Agreement, in the form attached as Exhibit C hereto (the “**Transition Services Agreement**”), executed by Parent; and

(vi) without limitation by specific enumeration of the foregoing, all other agreements, documents, instruments, certificates, or other items required to be delivered by Buyer and/or Parent under this Agreement.

(c) Closing Deliveries of Seller. Subject to the fulfillment or waiver of the conditions set forth in Section 7.01 and 7.03 hereof, at the Closing, Seller shall deliver to Buyer and/or Parent all of the following:

(i) Seller shall put Buyer in possession and control of all tangible Personal Property and Business Records included in the Acquired Assets;

(ii) the Escrow Agreement;

(iii) the Agreement and Bill of Sale;

(iv) the Transition Services Agreement; and

(v) without limitation by specific enumeration of the foregoing, all other agreements, documents, instruments, certificates, or other items required to be delivered by Seller under this Agreement.

(d) Additional Closing Delivery of Parent. Subject to the fulfillment or waiver of the conditions set forth in Sections 7.01 and 7.02 hereof, at the Closing, Parent shall deliver to the Escrow Agent the Escrowed Shares.

2.10 Further Assurances. At any time and from time to time after the Closing Date, as and when reasonably requested by Buyer, (a) Seller shall promptly execute and deliver, or cause to be executed and delivered, all such documents, instruments and certificates and shall take, or cause to be taken, all such further or other actions as are reasonably necessary to fully vest in Buyer title to all of Seller's rights, title and interests in the Acquired Assets, and (b) subject to confidentiality obligations and other restrictions under applicable laws, Seller shall provide Buyer with copies of any Business Records related to Seller's operation of the Business prior to the Closing that are not otherwise included in the Acquired Assets.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Parent and Buyer that the statements contained below are true and correct, except as set forth in the disclosure schedule (the "***Seller Disclosure Schedule***") delivered by the Seller to Parent and Buyer on the date hereof and as of the Closing. The disclosures in any section or subsection of the Seller Disclosure Schedule shall qualify other sections and subsections in this Article III where it should be reasonably apparent that such disclosure relates to other such sections and subsections. When used herein, the phrase "***to the knowledge of the Seller***" shall mean the actual knowledge of Tom Brown and Keith Rassin, executive officers of the General Partner of Seller.

3.01 Seller Organization and Qualification; Subsidiaries.

(a) Seller is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Texas. Seller has the requisite partnership power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted, and is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified and in good standing would not have a Seller Material Adverse Effect. The Limited Partnership Agreement of Seller, as amended, a copy of which has previously been delivered to Parent, is a true, accurate and complete copy of such document as in effect as of the date of this Agreement.

(b) Seller does not own any equity interest, directly or indirectly, in any corporation, partnership, limited liability company, association, joint venture, business trust or other entity which is engaged in the Business.

3.02 Ownership.

(a) iPath Management, LLC, a Texas limited liability company (the “**General Partner**”), is the sole general partner of Seller and holds a 1% general partner interest in Seller. Such general partner interest is duly authorized by the Limited Partnership Agreement of Seller and was validly issued to the General Partner. The limited partners of Seller, identified in Schedule 3.02 (the “**Limited Partners**”), hold in the aggregate 99% limited partnership interests in Seller in the amounts as set forth in Schedule 3.02. Such limited partnership interests are duly authorized by the Limited Partnership Agreement of Seller and were validly issued to the Limited Partners.

(b) Except as provided in the Limited Partnership Agreement of Seller, there are no preemptive rights or other rights to subscribe for or to purchase, nor any restriction upon the voting of any general partner or limited partner interests in Seller pursuant to the Limited Partnership Agreement of Seller or other governing documents of Seller or any other agreement or other instrument to which Seller, the General Partner or any Limited Partner is a party or by which any of them are bound.

3.03 Authority; No Violation.

(a) The Seller has all requisite partnership power and authority to execute and deliver this Agreement and the Ancillary Agreements and to perform its obligations and consummate the transactions contemplated hereby and thereby. The execution and delivery of the Agreement and the Ancillary Agreements by Seller and the consummation by Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary partnership action on the part of the Seller and no other authorization or consent from the General Partner or Limited Partners is necessary. This Agreement and the Ancillary Agreements have been duly and validly executed and delivered by the Seller and constitute valid and binding obligations of the Seller, enforceable against the Seller in accordance with their respective terms, subject to the effect of any applicable bankruptcy, reorganization, insolvency (including, without limitation, all laws relating to fraudulent transfers), moratorium or similar laws affecting creditors’ rights and remedies generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) Except as set forth on Schedule 3.03(b) hereto, neither the execution and delivery of this Agreement and the Ancillary Agreements by the Seller, nor the consummation by the Seller of the transactions contemplated herein or therein, nor compliance by the Seller with any of the terms or provisions hereof or thereof, will (i) violate, conflict with or result in a breach of any provision of the Limited Partnership Agreement of the Seller, (ii) to the knowledge of the Seller, violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree, license or injunction applicable to the Seller or any of its properties or assets, or (iii) violate, conflict with, result in a breach of any provisions of or the loss of any benefit under, constitute a default (or any event, which, with notice or lapse of time, or both would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Encumbrance upon any of the properties

or assets of the Seller under any Assigned Contract, except where such violation, conflict or breach would not have a Seller Material Adverse Effect.

3.04 Consents and Approvals. Except for (a) such filings under securities laws as may be necessary in connection with the offer and sale of the Parent Common Stock, (b) such filings as may be necessary as a result of any facts or circumstances relating solely to Parent or Buyer, and (c) the Consents and filings listed on Schedule 3.04 hereto, no Consent of or filing with any Governmental Entity or with any third party is necessary in connection with the execution and delivery by the Seller of this Agreement and the Ancillary Agreements and the consummation by the Seller of the transactions contemplated hereby and thereby, except where the failure to obtain such Consent or make such filing would not have a Seller Material Adverse Effect.

3.05 Assigned Contracts. Except as set forth in Schedule 3.05 hereto, (i) each Assigned Contract is legal, valid and binding upon the Seller and, to the knowledge of Seller, on the other parties thereto and in full force and effect, subject to the effect of any applicable bankruptcy, reorganization, insolvency (including, without limitation, all laws relating to fraudulent transfers), moratorium or similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), (ii) the Seller has performed all material obligations required to be performed by it to date and is entitled to all material benefits under each such Assigned Contract, (iii) to the knowledge of the Seller, no party is in breach or default under any Assigned Contract, and (iv) to the knowledge of the Seller, no event or condition exists which constitutes or, after notice or lapse of time or both, would constitute, a material breach or default under any Assigned Contract. Except as set forth in Schedule 3.05, each Assigned Contract is assignable to the Buyer without penalty or other adverse consequence. Seller has not received written notice that any party to an Assigned Contract intends to terminate such contract. True, correct and complete copies of all Assigned Contracts have been delivered to the Buyer.

3.06 Title to Acquired Assets. Seller has good and valid title to all of the Acquired Assets (other than any licensed or leased Acquired Assets, as to which Seller has valid licenses or leasehold interests) and owns all of such Acquired Assets (including such licenses or leasehold interests) free and clear of any Encumbrances, other than Permitted Encumbrances and the Encumbrances identified on Schedule 3.06. Subject to receipt of any required Consents, the execution and delivery of this Agreement and the Ancillary Agreements by Seller at the Closing will convey to and vest in Buyer good title to the Acquired Assets (or valid licenses or leasehold interests in the case of the licensed or leased Acquired Assets) free and clear of any Encumbrances, except for Permitted Encumbrances. Except as disclosed on Schedule 3.06, there is no contract, agreement or other arrangement granting any person or entity any preferential right to purchase any of the Acquired Assets.

3.07 Sufficiency of Acquired Assets. The Acquired Assets constitute all of the material assets used by the Seller in the conduct of the Business, except for the Excluded Assets. The tangible Personal Property included in the Acquired Assets that are used in the conduct of the Business are in good condition and repair, ordinary wear and tear excepted, for property of comparable type, age and usage.

3.08 Financial Statements.

(a) Attached as Schedule 3.08(a) are copies of the unaudited consolidated balance sheets of the Seller as of December 31, 2004 and 2003, and the related consolidated statements of operations, partnership equity and cash flows for the years then ended, and the unaudited consolidated balance sheet of the Seller as of April 30, 2005 and the related statement of income for the four-month period ended April 30, 2005 (the “**Financial Statements**”). The Financial Statements fairly present in all material respects the consolidated financial position of the Seller as of the dates thereof and the consolidated income of the Seller for the periods then ended and have been prepared by the Seller as of their respective dates in accordance with GAAP consistently applied throughout the periods indicated (except as may be indicated therein or in the notes thereto, and provided that the Financial Statements as of and for the four-month period ended April 30, 2005 are subject to the absence of notes and to year-end adjustments).

(b) Except as set forth in the Financial Statements, the Seller has no material Liabilities, contingent or otherwise, other than (i) Liabilities incurred after April 30, 2005 in the ordinary course of business consistent with past practice, (ii) Liabilities incurred under Contracts in the ordinary course of business and not required under GAAP to be reflected in the Financial Statements. Except as disclosed in the Financial Statements, the Seller is not a guarantor or indemnitor of any indebtedness of any other person or entity. The Seller maintains and shall continue to maintain a standard system of accounting established and administered in accordance with GAAP.

3.09 Absence of Certain Changes or Events. Except as set forth on Schedule 3.09, since April 30, 2005, Seller has conducted the Business in the ordinary and usual course and, without limiting the generality of the foregoing, there has not been any Seller Material Adverse Effect and, to the knowledge of the Seller, no fact or condition specific to the Seller exists which would reasonably be expected to cause such a Seller Material Adverse Effect.

3.10 Accounts Receivable. Schedule 3.10 lists all outstanding Accounts Receivable as of the Closing Date in connection with sales arising out of the Business prior to the Closing Date. All such Accounts Receivable arose in the ordinary course of business and are collectible in the book amounts thereof, less the allowance for doubtful accounts and returns which are adequate and have been prepared in accordance GAAP and consistent with the past practices of Seller as reflected on the Financial Statements. Except as set forth on Schedule 3.10, none of such Accounts Receivable is subject to any material claim of offset or recoupment or counterclaim, and Seller has no knowledge of any specific facts that could give rise to any such claim. Except as set forth on Schedule 3.10, no material amount of such Accounts Receivable is contingent upon the performance by the Seller of any obligation which has not been performed by Seller prior to the Closing Date. Except as set forth on Schedule 3.10, no agreement for deduction or discount with respect to any such Accounts Receivable has been made with any third party.

3.11 Legal Proceedings. Except as set forth on Schedule 3.11, the Seller is not a party to any, and there are no pending or, to the knowledge of the Seller, threatened, legal, administrative, arbitrable or other proceedings, claims, actions or governmental or regulatory investigations of any nature against or affecting the Seller, the Business or any of the assets or

property of the Seller before any court, arbitrator, administrative agency or Governmental Entity, domestic or foreign. To the knowledge of the Seller, neither the Seller nor any property or asset of the Seller is subject to any order, writ, judgment, injunction, decree, determination or award which restricts its ability to conduct the Business in any area in which it is presently conducting the Business.

3.12 Taxes and Tax Returns.

(a) All Tax Returns required to be filed by the Seller have been duly filed on a timely basis or within appropriate extensions of time, and all such Tax Returns were when filed, and continue to be, correct and complete in all material respects. Except as set forth on Schedule 3.12, all Taxes owed by the Seller (whether or not shown on any Tax Return) for any taxable period or portion thereof ending on or before the Closing Date have been timely paid or adequate provision has been or will be made therefore prior to Closing. Except as set forth on Schedule 3.12, the Seller currently is not the beneficiary of any extension of time within which to file any Tax Return. No written claim has ever been made by any Governmental Entity in a jurisdiction where the Seller does not file Tax Returns that the Seller is or may be subject to taxation by that jurisdiction. There are no liens with respect to Taxes on any of the assets or property of the Seller, other than Permitted Encumbrances.

(b) All Taxes required to have been withheld or collected and paid prior to the date hereof in connection with amounts paid or owing to any employee, independent contractor, creditor, member, any other third party, or otherwise have been withheld or collected and paid by or on behalf of the Seller.

(c) The Seller has not filed any tax returns and no statements of deficiencies have been assessed against or agreed to by or on behalf of Seller. The Seller has delivered to Parent correct and complete copies of all federal income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by or on behalf of IPTSOL, Inc. since January 1, 2001 and prior to the date hereof.

(d) No claim, assessment, deficiency, audit, investigation, or administrative proceeding with respect to Taxes or any Tax Return of the Seller is pending or, to the knowledge of the Seller, has been threatened.

3.13 Employee Benefit Plans.

(a) Schedule 3.13(a) contains a true and complete list of each Current Employee Benefit Plan.

(b) Neither Seller nor any Commonly Controlled Entity contributes to or has an obligation to contribute to, nor has Seller or any Commonly Controlled Entity at any time within six years prior to the Closing Date contributed to or had an obligation to contribute to, a multiemployer plan within the meaning of Section 3(37) of ERISA or a plan subject to Title IV of ERISA.

(c) All obligations of Seller and each Commonly Controlled Entity, whether arising by operation of law or by contract, required to be performed under Section 4980B of the

Code, Sections 601 through 608 of ERISA, or similar state law, including, but not limited to, such obligations that may arise by virtue of the transaction contemplated by this Agreement, have been or will be timely performed.

(d) Schedule 3.13(d) lists all individuals performing services for Seller or any subsidiary as of the date of this Agreement and the annual compensation or rate of pay for each, with each such individual identified as (i) salaried or hourly, (ii) exempt or nonexempt, (iii) full-time or part-time, (iv) temporary or permanent, and (v) active or inactive, including the reason for such inactive status (e.g., leave of absence, suspension for substandard performance, FMLA, disability, layoff, etc.). Except as set forth on Schedule 3.13(d), none of said individuals is a common law employee of Seller, and none of said individuals is subject to a collective bargaining agreement.

3.14 Permits; Compliance with Applicable Law.

(a) Except as set forth in Schedule 3.14(a), to the knowledge of the Seller, the Seller (i) holds all Permits necessary for the lawful conduct of the Business, and (ii) has materially complied with and is not in conflict with, or in default or violation of any statute, code, ordinance, law, rule, regulation, order, writ, judgment, injunction or decree, published policies and guidelines of any Governmental Entity, applicable to the Seller or by which any property or asset of the Seller is bound or affected, except where the failure to hold such Permit or such noncompliance, default or violation would not result in a Seller Material Adverse Effect; and the Seller has not received notice of any violations of any the above.

(b) Schedule 3.14(b) contains a list of all material Permits held or applied for by Seller in connection with the conduct of the Business.

3.15 Warranty Claims. Schedule 3.15 sets forth a description of each outstanding warranty claim that has been made by any of Seller's customers with respect to products or services provided to such customer by Seller prior to the Closing Date, and the status of any work performed by Seller to satisfy any such claims. Except as set forth on Schedule 3.15, Seller has no knowledge of any specific facts that could give rise to any Seller Warranty Liabilities in the future.

3.16 Customers and Suppliers.

(a) Schedule 3.16(a) lists the Seller's top 50 customers for fiscal year 2004 and for fiscal year 2005 through the Closing Date and sets forth opposite the name of each such customer the dollar amount of sales attributable to such customer for the period between January 1, 2004 and April 30, 2005. Except as set forth on Schedule 3.16(a), no such customer has indicated that it intends to stop, or materially decrease the rate of, buying materials, products or services from Seller.

(b) Schedule 3.16(b) lists the Seller's top 20 vendors for fiscal year 2004 and for fiscal year 2005 through the Closing Date. Except as set forth on Schedule 3.16(b), no such vendor has indicated that it intends to stop, or materially decrease the rate of, supplying materials, products or services to Seller.

3.17 Properties.

(a) The Seller does not own or have any fee ownership interest in any Real Property.

(b) Except as set forth in Schedule 3.17 hereto, to the knowledge of the Seller, all Real Property leased and used by the Seller conform in all material respects with all applicable ordinances, codes or regulations. The Seller enjoys quiet and peaceful possession of all such leased properties occupied by it as lessee, subject to the terms and conditions of such leases. Schedule 3.17 contains a true, complete and correct list of all leases pursuant to which the Seller leases any Real Property or Personal Property. Seller has provided Parent with true and complete copies of all such leases.

3.18 Insurance. The Seller has made available to Parent true and complete copies of all policies of insurance of the Seller currently in effect, a list of which is attached as Schedule 3.18. All of the policies relating to insurance maintained by the Seller with the respect to the Acquired Assets and the conduct of the Business (or any comparable policies entered into as a replacement thereof) are in full force and effect and the Seller has not received any notice of cancellation with respect thereto. Except as set forth on Schedule 3.18, the Seller does not have any liability for unpaid premium or premium adjustments not properly reflected in the Seller's Interim Financial Statements. All claims under any policy or bond have been duly and timely filed.

3.19 Labor Matters. The Seller is not a party to any collective bargaining or other labor union or guild contract nor has the Seller been approached by any collective bargaining or other labor union or guild seeking to enter into a contract with the Seller. There is no pending or, to the knowledge of the Seller, threatened, labor dispute, strike or work stoppage against the Seller. Neither the Seller nor, to the knowledge of Seller, any of its representatives or employees has committed any unfair labor practices in connection with the operation of the Business, and there is no pending or, to the knowledge of the Seller, threatened charge or complaint against the Seller by the National Labor Relations Board or any comparable state agency. To the knowledge of the Seller, all employees of the Seller are authorized to be employed by Seller in the United States. To the knowledge of the Seller, the Seller has at all times been in substantial compliance with all applicable laws and regulations regarding labor and employment practices and policies, including, without limitation, those regarding: (i) wages, salaries, commissions, bonuses, vacation pay, severance or termination pay, sick pay or other compensation; (ii) employee benefits; (iii) unlawful, unfair, wrongful or discriminatory employment or labor practices; (iv) breach of contract or other claim arising under a collective bargaining agreement, other labor contract or individual agreement, or any other employment covenant whether express or implied; (v) minimum wages or maximum hours of work; (vi) occupational safety and health standards; (vii) denial of mandatory time off under law or failure to reinstate following same; or (viii) plant closing and mass layoff, immigration, workers' compensation, disability, unemployment compensation, and whistleblowing.. Except as set forth on Schedule 3.19, there are no complaints pending or, to the knowledge of the Seller, threatened against the Seller by any employee, former or current, before any domestic (federal, state or local) or foreign board, department, court, commission or agency nor, to the knowledge of the Seller, does any basis therefor exist.

3.20 Intellectual Property. To the knowledge of the Seller, the Seller owns or possesses a license or other right to use without payment of any amount (other than filing fees, continuation fees, renewal fees, and/or maintenance fees, taxes, and similar fees and charges) all Intellectual Property Rights. Schedule 3.20 sets forth a list of all patents, pending patent applications, registered copyrights, registered trademarks and service marks and applications for the registration of trademarks and service marks which are owned by the Seller as well as all intellectual property license agreements (excluding off-the-shelf software programs licensed by the Seller and licenses embodied in agreements entered into between the Seller and its customers in connection with the services performed by the Seller thereunder). Except as set forth on Schedule 3.20, the Seller has not received any notice of conflict with the Intellectual Property Rights from any third party and, to the knowledge of the Seller, the Intellectual Property Rights are valid and enforceable and do not infringe upon the rights of any third parties.

3.21 Broker's Fees. Neither the Seller nor any of its officers or directors, has employed any broker or finder or incurred any liability for any broker's fees, commissions or finder's fees in connection with any of the transactions contemplated by this Agreement.

3.22 Bank Accounts. Seller has disclosed to Parent the identity and location of all bank accounts and lock boxes maintained by the Seller at banks, trust companies, securities firms or other brokers or other financial institutions with respect to which Seller deposits collections from Accounts Receivable.

3.23 Bulk Sales Laws. Seller represents that there are no applicable bulk sale, bulk transfer or similar laws applicable to the transactions contemplated by this Agreement.

3.24 Complete Copies of Business Records and Other Materials. The Business Records to be delivered to Buyer are complete and accurate in all material respects. To the knowledge of Seller, Seller has delivered or made available true and complete copies of each document that has been requested by the Buyer or its counsel in connection with the Business and the legal and accounting review of Seller.

3.25 Disclosure. No representation or warranty of the Seller contained in this Agreement or any schedule to this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements herein or therein, in light of the circumstances in which they are made, not misleading.

3.26 Private Placement Exemption.

(a) Other than a distribution of the Parent Common Stock to the Seller Interest Holders and the other Continuing Employee Stockholders in accordance with the terms of this Agreement, Seller has no present intention of distributing any portion of such shares of Parent Common Stock (or any interest therein) in violation of applicable securities laws. Seller understands that the shares of Parent Common Stock so issued to Seller will not be registered under the Securities Act of 1933, as amended (the "**Securities Act**") at the time of such issuance by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the Seller's investment intent as

expressed herein and that of the Seller Interest Holders and other Continuing Employee Stockholders expressed in their respective Stockholder Representation Letters.

(b) Seller has such knowledge and experience in financial and business matters that Seller is capable of evaluating the merits and risks of an investment in Parent Common Stock and protecting Seller's own interests in connection with such investment.

(c) Seller acknowledges that it is sufficiently aware of the Parent's business affairs and financial condition and has acquired sufficient information about Parent to reach an informed and knowledgeable investment decision with respect to acquiring shares of Parent Common Stock pursuant to this Agreement. Seller has relied upon, and is making its investment decision upon, the information made available to Seller and other information publicly available about Parent.

(d) Seller is not acquiring the shares of Parent Common Stock as a result of any general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act), including advertisements, articles, notices or other communications published in any newspaper, magazine or similar media or broadcast over radio or television, or any seminar or meeting whose attendees have been invited by general solicitation or general advertising.

(e) With respect to the tax and other economic considerations involved in acquiring the shares of Parent Common Stock, Seller is not relying on Parent or Buyer, and Seller has carefully considered and has, to the extent Seller believes such discussion necessary, discussed with Seller's professional legal, tax, accounting and financial advisors the implications of acquiring the shares of Parent Common Stock for the Seller's particular tax, financial and accounting situation.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PARENT AND BUYER

The Parent and Buyer hereby, jointly and severally, represent and warrant to the Seller that the statements contained below are true and correct, except as set forth in the disclosure schedule (the "***Parent Disclosure Schedule***") delivered by the Parent and Buyer to Seller, on the date hereof and as of the Closing Date. The disclosures in any section or subsection of the Parent Disclosure Schedule shall qualify other sections and subsections in this Article IV where it should be reasonably apparent such disclosure relates to other such sections and subsections. When used herein, the phrase "***to the knowledge of the Parent***" shall mean the actual knowledge of the executive officers of the Parent.

4.01 Corporate Organization and Qualification. Each of Parent and Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Each of Parent and Buyer has the requisite corporate power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted.

4.02 Capitalization.

(a) The authorized capital stock of Parent consists of 40,000,000 shares of Parent Common Stock, of which 21,386,262 shares are issued and outstanding (as of April 30, 2005), and 8,000,000 shares of preferred stock, par value \$0.001 per share, none of which are issued and outstanding. All of the issued and outstanding shares of Parent Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights and were offered, issued and sold by Buyer in compliance with applicable federal and state securities laws. Except for 6,308,194 outstanding options to purchase shares of Parent Common Stock pursuant to Parent's Stock Option Plan and 403,631 outstanding warrants to purchase shares of Parent Common Stock (as of March 31, 2005), Parent does not have and is not bound by any outstanding subscriptions, options, warrants, calls, commitments or agreements of any character calling for the purchase or issuance of any shares of Parent Common Stock or any other equity security of Parent or any securities representing the right to purchase or otherwise receive any shares of Parent Common Stock or any other equity security of Parent other than as provided for in this Agreement. There are no bonds, debentures, notes, shares of preferred stock or other indebtedness of Parent having the right to vote (or convertible into, or exchangeable for securities having the right to vote) on any matters on which the stockholders of Parent may vote. There are no agreements or understandings with respect to the voting of any shares of Parent Common Stock or which restrict the transfer of such shares to which Parent is a party, other than applicable federal and state securities laws.

(b) The authorized capital stock of Buyer consists of 1,000 shares of common stock, par value \$0.001 per share ("**Buyer Common Stock**"), all of which are issued and outstanding. All of the issued and outstanding shares of Buyer Common Stock are owned by Parent, have been duly authorized and validly issued and are fully paid, non-assessable and free of preemptive rights.

4.03 Authority; No Violations.

(a) Each of Parent and Buyer have the requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements and to perform its obligations and consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements by Parent and Buyer and the consummation by Parent and Buyer of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite corporate action on the part of each of Parent and Buyer and no other authorization or consent from the board of directors or shareholders of Buyer or Parent is necessary. This Agreement and the Ancillary Agreements have been duly and validly executed and delivered by Parent and Buyer and, assuming the due authorization, execution and delivery by the Seller, constitute valid and binding obligations of Parent and Buyer, enforceable against Parent and Buyer in accordance with its terms, subject to the effect of any applicable bankruptcy, reorganization, insolvency (including, without limitation, all laws relating to fraudulent transfers), moratorium or similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) Except as set forth on Schedule 4.03(b) hereto, neither the execution and delivery of this Agreement and the Ancillary Agreements by each of Parent and Buyer, nor the consummation by either Parent or Buyer, as the case may be, of the transactions contemplated hereby and thereby, nor compliance by either Parent or Buyer with any of the terms or provisions hereof or thereof, will (i) violate, conflict with or result in a breach of any provision of the Certificate of Incorporation or Bylaws of Parent, or Buyer, as the case may be, or (ii) to the knowledge of Parent and Buyer, violate any statute, code, ordinance, rule, regulations, judgment, order, writ, decree or injunction applicable to Parent or Buyer or any of their respective properties or assets, or (iii) violate, conflict with, result in a breach of any provisions of or the loss of any benefit under, constitute a default (or any event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any lien, pledge, security interest, charge or other encumbrance upon any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, material agreement or other instrument or obligation to which Parent or Buyer is a party, or by which they or any of their respective properties or assets may be bound or affected, except where such violation, conflict or breach would not have a Parent Material Adverse Effect.

4.04 Consents and Approvals. Except for (a) such filings under securities laws as may be necessary in connection with the offer and sale of the Parent Common Stock, (b) such filings as may be necessary as a result of any facts or circumstances related solely to the Seller, and (c) the Consents and filings listed on Schedule 4.04 hereto, no Consent of or filing with any Governmental Entity or with any third party is necessary in connection with the execution and delivery by Parent and Buyer of this Agreement and the Ancillary Agreements and the consummation by Parent and Buyer of the transactions contemplated hereby and thereby, except where the failure to obtain such Consent or make such filing would not result in a Parent Material Adverse Effect.

4.05 Broker's Fees. Neither Parent nor Buyer, nor any of their respective officers or directors, has employed any broker or finder or incurred any liability for any broker's fee, commission or finder's fee in connection with any of the transactions contemplated by this Agreement, except as set forth in Schedule 4.05 hereto.

4.06 No Prior Activities of Buyer. Buyer has not incurred, directly or indirectly, any liabilities or obligations, except those incurred in connection with its incorporation or with the negotiation of this Agreement and consummation of the transactions contemplated hereby. Buyer has not engaged, directly or indirectly, in any business or activity of any type or kind, or entered into any agreement or arrangement with any person or entity, or become subject to or bound by any obligation or undertaking, that is not contemplated by or in connection with this Agreement and the transactions contemplated hereby.

4.07 Labor Matters. Parent is not a party to any collective bargaining or other labor union or guild contract nor has Parent been approached by any collective bargaining or other labor union or guild seeking to enter into a contract with Parent. There is no pending, or to Parent's knowledge, threatened labor dispute, strike or work stoppage against Parent which may interfere with the business activities of Parent. None of Parent or any of its representatives or employees has committed any unfair labor practices in connection with the operation of the

business of Parent, and there is no pending or, to Parent's knowledge, threatened charge or complaint against Parent by the National Labor Relations Board or any comparable state agency.

4.08 Reports; Financial Statements.

(a) Parent has filed all forms, reports, registration statements and documents required to be filed by it with the SEC since January 1, 2000 (such forms, reports, registration statements and documents, together with any amendments thereto, the "**Parent SEC Filings**"). As of their respective dates, the Parent SEC Filings (i) comply as to form in all material respects with the requirements of the Securities Act and the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), as the case may be, and (ii) do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or information exists with respect to Parent or its business, properties, operations or financial conditions, which, under applicable law, rule or regulation, requires public disclosure or announcement by Parent but which has not been so publicly announced or disclosed (assuming for this purpose the preparation of an effective registration statement filed by Parent under the Securities Act into which Parent's reports filed under the Exchange Act are incorporated by reference).

(b) The audited financial statements and unaudited interim financial statements included or incorporated by reference in the Parent SEC Filings (i) were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto), (ii) complied as of their respective dates in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, and (iii) fairly present the consolidated financial position of Parent as of the dates thereof and the income, cash flows, and changes in stockholder's equity for the periods involved.

4.09 No Undisclosed Material Liabilities. There are no liabilities, commitments or obligations of the Parent of any kind whatsoever whether accrued, contingent, absolute, determined, determinable or otherwise, and there is no existing condition, situation or set of circumstances that would reasonably be likely to result in such a liability, commitment or obligation, other than:

(a) liabilities, commitments or obligations disclosed or provided for in the Parent SEC Filings;

(b) liabilities, commitments or obligations incurred in the ordinary course of business consistent with past practice;

(c) liabilities, commitments or obligations under this Agreement; and

(d) liabilities, commitments or obligations that individually or in the aggregate have not had and are not reasonably likely to have a Parent Material Adverse Effect.

4.10 Absence of Certain Changes or Events. Except as set forth on Schedule 4.10, since the filing of its Quarterly Report on Form 10-Q for the quarter ending March 31, 2005,

Parent has conducted its business in the ordinary and usual course and, without limiting the generality of the foregoing, there has not been any Parent Material Adverse Effect and, to the knowledge of the Parent, no fact or condition specific to the Parent exists which would reasonably be expected to cause such a Parent Material Adverse Effect.

4.11 Legal Proceedings. The Parent is not a party to any, and there are no pending or to the knowledge of Parent threatened, legal, administrative, arbitrable or other proceedings, claims, actions or governmental or regulatory investigations of any nature against or affecting the Parent or any of its Subsidiaries or any property or asset of the Parent or any of its Subsidiaries, before any court, arbitrator, administrative agency or Governmental Entity, domestic or foreign which would reasonably be expected to have a Parent Material Adverse Effect.

4.12 Continued Listing of Stock. Parent's Common Stock is listed for trading on the Nasdaq National Market ("*Nasdaq*") and meets all maintenance criteria for continued listing thereon. Parent has not received any notices or correspondences in writing from Nasdaq regarding any current investigation or inquiry or providing any notice of a current proceeding with respect to the delisting of the Parent's securities.

4.13 Valid Issuance of Parent Common Stock. The shares of Parent Common Stock to be issued pursuant to this Agreement will, when issued, be duly authorized, validly issued, fully paid and non-assessable and not subject to preemptive rights. Assuming the accuracy of the representations and warranties of the Seller in Section 3.26 hereof and compliance with the covenants and agreements of Seller in Section 6.02(a) hereof, the shares of Parent Common Stock to be issued to Seller pursuant to this Agreement will be validly issued pursuant to the "private placement" exemption from registration provided by Section 4(2) of the Securities Act and/or Regulation D promulgated under the Securities Act.

4.14 Disclosure. No representation or warranty of Parent or Buyer contained in this Agreement or any schedule to this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements herein or therein, in light of the circumstances in which they are made, not misleading.

ARTICLE V COVENANTS RELATING TO CONDUCT OF BUSINESS

5.01 Covenants of the Seller. During the period from the date of this Agreement and continuing until the Closing or sooner termination of this Agreement, except as expressly contemplated or permitted by this Agreement or with the prior written consent of Parent, the Seller shall carry on its business in the ordinary course consistent with past practice. The Seller shall use its Commercially Reasonable Efforts to preserve its business organization, keep available the present services of its continuing employees, continue to make regularly scheduled payments on all of its existing debt and preserve for itself and Buyer and Parent the goodwill of the customers of the Seller and others with whom business relationships exist, including, but not limited to all Assigned Contracts.

5.02 Access to Information; Confidentiality.

(a) Subject to Section 5.02(b) and that certain Mutual Non-Disclosure Agreement dated on or about July 13, 2004, by and between Parent and Seller, the Seller shall afford to Parent, and shall cause its independent accountants to afford to Parent and Parent's accountants, counsel and other representatives, reasonable access during normal business hours during the period prior to the Closing to all of the Seller's assets, properties, Contracts and Business Records, and the Seller shall permit Parent and its representatives to make abstracts from and copies of such Contracts and Business Records. During such period, the Seller shall use Commercially Reasonable Efforts to furnish promptly to Parent all other information concerning the Business, assets, properties and personnel of the Seller as Parent may reasonably request.

(b) No party (or its representatives, agents, counsel, accountants or investment bankers) hereto shall disclose to any third party, other than either party's representatives, agents, counsel, accountants or investment bankers any confidential or proprietary information about the business, assets or operations of the other parties to this Agreement or the transactions contemplated hereby, except as contemplated hereby and as may be required by applicable law. The parties hereto agree that the remedy at law for any breach of the requirements of this subsection will be inadequate and that any breach would cause such immediate and permanent damage as would be impossible to ascertain, and, therefore, the parties hereto agree and consent that in the event of any breach of this subsection, in addition to any and all other legal and equitable remedies available for such breach, including a recovery of damages, the non-breaching parties shall be entitled to obtain preliminary or permanent injunctive relief without the necessity of proving actual damage by reason of such breach and, to the extent permissible under applicable law, a temporary restraining order may be granted immediately on commencement of such action.

5.03 No Solicitation of Transactions. Until the earlier of (a) the Closing or (b) termination of this Agreement pursuant to Article VIII, neither the Seller nor any of its partners, managers, officers, employees, representatives, agents and advisors nor other persons controlled by the Seller shall solicit or hold discussions or negotiations with, or assist or provide any information to, any person, entity or group (other than Parent, Buyer and their affiliates and representatives) concerning (i) any merger, consolidation, business combination, share exchange, or other similar transaction involving the Seller; (ii) any sale, lease, exchange, mortgage, pledge, license transfer or other disposition of any equity interests or significant assets of the Seller; or (iii) the issuance of any new partnership interests of the Seller or any options, warrants or other rights to acquire partnership interests of the Seller in connection with a change of control transaction. The Seller will promptly communicate to Parent, Buyer and their affiliates and representatives the terms of any proposal, discussion, negotiation or inquiry relating to a merger or disposition of a portion of its capital stock or assets or similar transaction involving the Seller and the identity of the party making such proposal or inquiry, which it may receive with respect to any such transaction.

5.04 Legal Conditions to Transaction. Each of Parent, Buyer and the Seller shall use Commercially Reasonable Efforts (a) to take, or cause to be taken, all actions necessary, proper or advisable to comply promptly with all legal requirements which may be imposed on such party with respect to the transactions contemplated having and, subject to the conditions set forth in ARTICLE VII hereof, to consummate the transactions contemplated by this Agreement and

(b) to obtain (and to cooperate with the other party to obtain) any consent, authorization, order or approval of or any exemption by, any Governmental Entity and any other third party which is required to be obtained by Parent, Buyer or the Seller in connection with the transactions contemplated by this Agreement.

5.05 All Necessary Action. Each of the parties hereto shall use Commercially Reasonable Efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable to consummate the transaction contemplated hereby as soon as reasonably practicable. No party shall intentionally perform any act which, if performed, or omit to perform any act which, if omitted to be performed, would prevent or excuse the performance of this Agreement by any party hereto or which would result in any representation or warranty herein contained of such party being untrue in any material respect as if originally made on and as of the Closing Date.

5.06 Notification. Each party shall promptly give the other party written notice of the existence or occurrence of any condition of which it becomes aware which would make any representation or warranty herein contained of either party untrue or which might reasonably be expected to prevent the consummation of the transactions contemplated hereby.

5.07 Disclosure Supplements. Prior to the Closing, each party will supplement or amend the applicable Disclosure Schedule delivered in connection with the execution of this Agreement to reflect any matter which, if existing, occurring or known at the date of this Agreement, would have been required to be set forth or described in such Disclosure Schedule or which is necessary to correct any information in such Disclosure Schedule which has been rendered inaccurate thereby. No supplement or amendment to such Disclosure Schedule shall have any effect for the purposes of determining satisfaction of the conditions set forth in Section 7.02(a) hereof (unless Parent consents in writing to such satisfaction of conditions or elects to waive such matter by closing the transactions contemplated hereby) or for the purposes of determining satisfaction of the conditions set forth in Section 7.03(a) hereof (unless the Seller consents to such satisfaction of conditions or elects to waive such matter by closing the transactions contemplated hereby).

ARTICLE VI ADDITIONAL AGREEMENTS

6.01 Regulatory Matters. The parties hereto shall cooperate with each other and use Commercially Reasonable Efforts promptly to prepare and file all necessary documentation, to effect all applications, notices, petitions and filings, and to obtain as promptly as practicable all permits, consents, approvals and authorizations of all third parties and Governmental Entities which are necessary or advisable to consummate the transactions contemplated by this

Agreement. Seller and Parent shall have the right to review in advance, and to the extent practicable each will consult with the other on, in each case subject to applicable laws relating to the exchange of information, all the information relating to the Seller, Parent or Buyer, as the case may be, which appear in any filing made with or written materials submitted to, any third party or any Governmental Entity in connection with the transactions contemplated by this Agreement. In exercising the foregoing right, each of the parties hereto shall act reasonably and as promptly as practicable. The parties hereto agree that they will consult with each other with respect to the obtaining of all permits, consents, approvals and authorizations of all third parties and Governmental Entities necessary or advisable to consummate the transactions contemplated by this Agreement and each party will keep the other apprised of the status of matters relating to completion of the transactions contemplated herein. Parent (or Buyer as the case may be) and the Seller shall promptly furnish each other with copies of written communications received by Parent, Buyer or the Seller, as the case may be, from or delivered by any of the foregoing to, any Governmental Entity in respect of the transactions contemplated hereby.

6.02 Securities Matters.

(a) The Seller understands and acknowledges that the issuance of the shares of Parent Common Stock pursuant to this Agreement will not be registered under the Securities Act and that the shares of Parent Common Stock will be issued to Seller in a private placement transaction effected in reliance on an exemption from the registration requirements of the Securities Act and in reliance on exemptions from the qualification requirements of applicable state securities laws. Seller acknowledges that the shares of Parent Common Stock so issued to Seller will be “restricted securities” under Federal and state securities laws and must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available and unless Seller complies with the restrictions set forth in this Agreement. Seller represents and acknowledges that Seller is familiar with Rule 144 of the Securities Act as presently in effect and understands the restrictions and resale limitations imposed thereby and by the Securities Act. The Seller understands and agrees not to make any disposition of all or any portion of the shares of Parent Common Stock unless (i) pursuant to registration under the Securities Act or (ii) pursuant to an available exemption from registration. Notwithstanding anything above to the contrary, the Seller shall have the right to transfer shares of Parent Common Stock to the Seller Interest Holders and the other Continuing Employee Stockholders, provided that each such transferee shall have executed and delivered to Parent a Stockholder Representation Letter in the form attached hereto as Exhibit D (a “**Stockholder Representation Letter**”) prior to such transfer. Schedule 6.02(a) lists each Seller Interest Holder and each other Continuing Employee Stockholder, the number of shares of Parent Common Stock to be distributed to such person, and the proposed transferor of such shares (if other than the Seller).

(b) The Seller covenants and agrees that, except as contemplated in Section 6.02(a) or as otherwise specified in any agreement between Buyer and Parent and any individual Seller Interest Holder with respect to transfers to the Seller Interest Holders and the other Continuing Employee Stockholders, during the thirty-six (36)-month period following the Closing Date, Seller will not offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any such shares of Parent Common Stock, or enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such shares of Parent Common Stock. Upon transfer of the shares of Parent Common Stock to the Seller Interest Holders and the other Continuing Employee Stockholders, such persons will be subject to such restrictions on transfer as set forth in the Stockholder Representation Letter. Following the third anniversary of

the Closing Date, all shares of Parent Common Stock held by Seller shall no longer be subject to such transfer restrictions under the terms of this Agreement. The certificates representing the shares of Parent Common Stock issued to Seller hereunder shall bear, in addition to any other legends required under applicable state securities laws, the following legend:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY APPLICABLE STATE SECURITIES LAWS. THESE SECURITIES MAY NOT BE SOLD, OFFERED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED EXCEPT (I) PURSUANT TO REGISTRATION UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION AND (II) IN ACCORDANCE WITH THE RESTRICTIONS AND CONDITIONS SET FORTH IN THE ASSET PURCHASE AGREEMENT DATED AS OF JUNE 10, 2005, BY AND BETWEEN THE ISSUER AND THE HOLDER OF THESE SECURITIES. A COPY OF THE APPLICABLE PROVISIONS OF SUCH AGREEMENT SHALL BE FURNISHED BY THE ISSUER TO THE HOLDER HEREOF UPON WRITTEN REQUEST. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL, IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE ISSUER, TO THE EFFECT THAT ANY SALE OR TRANSFER OF THESE SECURITIES WILL BE IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

In order to prevent any transfer from taking place in violation of this Agreement or applicable law, Parent may cause a stop transfer order to be placed with its transfer agent with respect to the shares of Parent Common Stock. Parent will not be required to transfer on its books any shares of Parent Common Stock that have been sold or transferred in violation of any provision of this Agreement or applicable law

(c) Parent shall file, subject to the delivery by Seller of the financial information required pursuant to Section 6.10 hereof, within the later of seventy five (75) days after the Closing Date or thirty (30) days after Seller has transferred shares of Parent Common Stock to the Seller Interest Holders, a registration statement ("**Registration Statement**") on Form S-3, or other appropriate registration form, with the SEC under the Securities Act with respect to the offer and sale of all of the shares of Parent Common Stock transferred by Seller to such Seller Interest Holders (excluding any such shares subject to a Stock Restriction Agreement if the Seller Interest Holder is also a Continuing Employee Stockholder) (the "**Registrable Securities**") pursuant to Rule 415 promulgated under the Securities Act and will use its Commercially Reasonable Efforts to cause such Registration Statement to become effective as soon as practicable thereafter. Parent shall use its Commercially Reasonable Efforts to cause the Registrable Securities to be listed on Nasdaq.

(d) Notwithstanding Section 6.02(c), if Parent shall furnish to the holders of the Registrable Securities a certificate signed by the president or chief executive officer of the Parent stating that in the good faith judgment of the board of directors of the Parent it would be seriously detrimental to the Parent and its Subsidiaries for such Registration Statement to be filed

or such registration to be effected at such time, the Parent shall have the right to defer the filing of the registration statement for so long as reasonably necessary, but no later than the later of one hundred twenty (120) days after the Closing Date or thirty (30) days after the Seller has transferred the Registrable Securities to the Seller Interest Holders.

(e) If the Registration Statement has not been declared effective by the later of 195th day after the Closing Date or thirty (30) days after the Seller has transferred the Registrable Securities to the Seller Interest Holders (the “**Required Effective Date**”), then Parent shall pay to each holder of Registrable Securities, for each day after the Required Effective Date until the date that the Registration Statement has been declared effective or, if earlier, the date on which all the Registrable Securities may be immediately sold without registration, and without restriction as to the number of securities to be sold, pursuant to Rule 144 under the Securities Act, an amount equal to the product of (i) the value of such holder’s Registrable Securities that would which could have been sold on each such day under the Registration Statement pursuant to Section 3.1(b) of the Stockholder Representation Letter executed by Selling Interest Holder had the Registration Statement been declared effective on the Required Effective Date (valued at the Parent Stock Per Share Price) and (ii) the quotient obtained by dividing 12% by 360 (the “**Late Effectiveness Payments**”). The Late Effectiveness Payments will be paid to the holders of Registrable Securities by wire transfer or check within five business days after the earlier of (i) the end of the month following the Required Effective Date or (ii) the effective date of the Registration Statement. Any Late Effectiveness Payments shall be deemed to be additional Purchase Price for the Acquisition.

(f) Parent shall promptly prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with the Registration Statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities and to keep such registration statement effective until the earlier of such time as the holders of the Registrable Securities have completed the distribution described in the Registration Statement or the date on which all the Registrable Securities may be immediately sold without registration, and without restriction as to the number of securities to be sold, pursuant to Rule 144 under the Securities Act.

(g) During the two (2) year period following the Closing Date, Parent shall (i) use its Commercially Reasonable Efforts to make current public information available in accordance with Rule 144(c) under the Securities Act and to maintain the continued listing of its shares of Common Stock for trading on Nasdaq and (ii) furnish to the Seller and each holder of Registrable Securities upon written request, (x) a written statement as to its compliance with the requirements of Rule 144(c) and the reporting requirements of the Securities Act and the Exchange Act and (y) a copy of the most recent annual or quarterly report of Parent.

(h) Parent shall, if required under applicable law at the time, use its Commercially Reasonable Efforts to register and qualify the resale of the Registrable Securities under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the holders; provided that Parent shall not be required in connection with such registration and qualification or as a condition to such registration and qualification (i) to qualify to do business or to file a general consent to service of process in any such states or jurisdictions or (ii) to subject itself to taxation in any jurisdiction.

(i) Parent shall promptly notify each holder of Registrable Securities at any time when a prospectus relating to the Registration Statement is required to be delivered under the Securities Act, of the happening of any event as a result of which the prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated in such prospectus or necessary to make the statements in such prospectus not misleading in the light of the circumstances then existing.

(j) Parent shall furnish, without charge, to each holder of Registrable Securities such number of conformed copies of the Registration Statement and of each amendment and supplement thereto (in each case including all exhibits and documents incorporated by reference), such number of copies of the prospectus contained in such registration statement (including each preliminary prospectus and any prospectus supplement) and any other prospectus filed under Rule 424 promulgated under the Securities Act relating to such Selling Interest Holder's shares of Registrable Securities included in the Registration Statement.

(k) Parent shall notify each holder of Registrable Securities (i) when such Registration Statement or any prospectus used in connection therewith, or any amendment or supplement thereto, (A) is proposed to be filed and shall provide each such holder of Registrable Securities with a copy of such Registration Statement or prospectus in the form proposed to be filed not less than three trading days before such filing, (B) has been filed and, (C) with respect to such Registration Statement or any post-effective amendment thereto, when the same has become effective, (ii) of any written request by the SEC for amendments or supplements to such Registration Statement or prospectus or for supplemental information, (iii) of the notification to Parent by the SEC of its initiation of any proceeding with respect to the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement; and (iv) of the receipt by Parent of any notification with respect to the suspension of the qualification of the Registrable Securities for sale under the applicable securities or "blue-sky" laws of any jurisdiction.

(l) In the event of the issuance of any stop order suspending the effectiveness of the Registration Statement, or of any order suspending or preventing the use of any related prospectus or suspending the qualification of the Registrable Securities for sale in any jurisdiction, Parent shall use Commercially Reasonable Efforts promptly to obtain the withdrawal of such order.

(m) All expenses incurred in effecting the registration under the Registration Statement shall be borne by Parent, including, without limitation, all registration fees, blue sky expenses, printing fees and listing fees. All underwriting discounts, selling commissions, and stock transfer taxes relating to the Registrable Securities shall be borne by the selling stockholders pro rata on the basis of the number of shares of Registrable Securities registered on their behalf.

(n) Parent may require each holder of Registrable Securities to furnish, and each such person shall furnish Parent with, such information regarding such person and the distribution of the Registrable Securities as Parent may from time to time reasonably request in writing and to otherwise cooperate in connection with such registration. At any time during the

effectiveness of the Registration Statement, if such person becomes aware of any change materially affecting the accuracy of the information contained in such Registration Statement or the prospectus (as then amended or supplemented) relating to such person, including but not limited to the sale or disposition of all Registrable Securities owned by each such person, he or it will promptly notify Parent of such change.

(o) Upon receipt of any notice from Parent of the happening of any event as a result of which any prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, each holder of Registrable Securities will forthwith discontinue such person's disposition of Registrable Securities pursuant to the Registration Statement until such person receives copies of a supplemented or amended prospectus from Parent and, if so directed by Parent, shall deliver to Parent (at Parent's expense) all copies, other than permanent file copies, then in such stockholder's possession of the prospectus relating to such Registration Statement current at the time of receipt of such notice.

(p) Parent shall, to the full extent permitted by law, indemnify and hold harmless each holder of Registrable Securities and its directors, managers, officers, employees, agents and other persons, if any, who control such person within the meaning of the Securities Act, against any expenses, claims, losses, damages or liabilities to which such person may become subject under the Securities Act or otherwise, insofar as such expenses, claims, losses, damages or liabilities or actions in respect thereof arise out of or are based upon any untrue statement of any material fact contained in the Registration Statement, final prospectus, preliminary prospectus, or prospectus supplement contained therein or filed with the SEC, or any amendment or supplement thereto, or any omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in the light of the circumstances under which they were made) not misleading; provided, that Parent shall not be liable in any such case to the extent that any such loss (or actions in respect thereof) arises out of or is based upon an untrue statement or omission made in any such Registration Statement, final prospectus, amendment or supplement in reliance upon and in conformity with information furnished in writing to Parent by such person and stated to be specifically for use therein.

(q) Each holder of Registrable Securities shall, to the full extent permitted by law, indemnify and hold harmless Parent, its directors, officers, employees, agents and each other person, if any, who controls Parent within the meaning of the Securities Act, against any expenses, claims, losses, damages or liabilities to which Parent or any such director, officer, employee, agent or controlling person may become subject under the Securities Act or otherwise, insofar as such expenses, claims, losses, damages or liabilities arise out of or are based upon any untrue statement of any material fact contained in the Registration Statement, final prospectus or prospectus supplement contained therein or filed with the SEC, or any amendment or supplement thereto, or any omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in the light of the circumstances under which they were made) not misleading, to the extent such untrue statement or omission was made in reliance upon and in conformity with written information furnished to Parent by such person specifically stating that it is for use in the preparation of such Registration

Statement, final prospectus, amendment or supplement; provided, however, that the obligation to provide indemnification pursuant to this Section 6.02(q), shall be several, and not joint, among such indemnifying parties on the basis of the number of shares of Parent Common Stock of each such indemnifying party included in the Registration Statement, and shall not exceed the value as of the date hereof of the shares of Parent Common Stock received by such person pursuant to this Agreement. The foregoing indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of Parent or any such director, officer, employee, agent or controlling person and shall survive the transfer of such securities by such stockholder. Each such person shall also indemnify each other person who participates in the offering or sale under the Registration Statement, their officers, directors, employees, agents and each other person, if any, who controls any such participating person within the meaning of the Securities Act to the same extent as provided above with respect to Parent.

(r) Promptly after receipt by any party of notice of the commencement of any action or proceeding involving a claim referred to in Section 6.02(p) or 6.02(q), such party shall, if a claim in respect thereof is to be made against another party pursuant to such paragraphs, give written notice to the latter of the commencement of such action, provided that any failure of any person to give notice as provided therein shall not relieve any other person of its obligations under Section 6.02(p) or 6.02(q), as the case may be, except to the extent that such other person is actually prejudiced by such failure. In case any such action is brought, the party obligated to indemnify pursuant to Section 6.02(p) or 6.02(q), as the case may be, shall be entitled to participate in and, unless, in the reasonable judgment of counsel to any indemnified party, a conflict of interest between such indemnified party and any indemnifying party exists with respect to such claim, to assume the defense thereof, jointly with any other indemnifying party similarly notified to the extent that it may wish, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof other than reasonable costs of investigation; provided that the indemnified party may participate in such defense at the indemnified party's expense. Without the consent of the indemnified party, no indemnifying party shall consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to each indemnified party of a release from all liability in respect to such claim or litigation. No indemnifying party shall be subject to any liability for any settlement made without its consent, which consent shall not be unreasonably withheld.

(s) If the indemnity and reimbursement obligation provided for in Section 6.02(p) or 6.02(q) is unavailable or insufficient to hold harmless a party entitled to indemnification hereunder in respect of any expenses, claims, losses, damages or liabilities (or actions with respect thereto) referred to therein, the party obligated to indemnify hereunder shall contribute to the amount paid or payable by the indemnified party as a result of such expenses, claims, losses, damages or liabilities (or actions) in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party on the other hand in connection with statements or omissions which resulted in such expenses, claims, losses, damages or liabilities as well as any other relevant equitable considerations. Relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact

or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The parties hereto agree that it would not be just and equitable if contributions pursuant to this paragraph were to be determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the first sentence of this paragraph. No person guilty of fraudulent misrepresentation within the meaning of the Securities Act shall be entitled to contribution from any person not guilty of such fraudulent misrepresentation.

6.03 Stock Restriction Agreements. As additional consideration for Parent, and as a material inducement for Parent and Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, each Continuing Employee Stockholder listed on Schedule 6.03 shall enter into a Stock Restriction Agreement with Parent, in the form attached hereto as Exhibit E (a "**Stock Restriction Agreement**"), prior to any distribution of shares of Parent Common Stock from Seller and/or any Seller Interest Holder to such person, pursuant to which each such person shall agree that 100% of any shares of Parent Common Stock distributed to him or her by Seller and/or any Seller Interest Holder shall be subject to a risk of forfeiture through the third anniversary of the Closing Date; provided that \$186,000 of shares of Parent Common Stock to be distributed to Keith Rassin shall not be subject to such risk of forfeiture. The Seller agrees that it will not make any such distribution of shares of Parent Common Stock to any such person unless this condition is satisfied, and further agrees to not take any other actions with respect to the shares of Parent Common Stock inconsistent with the above restrictions.

6.04 Non-Compete Agreements; Confidentiality and Intellectual Property Assignment Agreements.

(a) As additional consideration for Parent, and as a material inducement for Parent and Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, each Seller Interest Holder listed on Schedule 6.04(a) shall enter into a Non-Compete Agreement with Parent, in the form attached hereto as Exhibit F (a "**Non-Compete Agreement**") on or before the Closing Date pursuant to which each such person shall agree to certain noncompetition, nonsolicitation and no-hire provisions.

(b) As additional consideration for Parent, and as a material inducement for Parent and Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, each Continuing Employee Stockholder shall enter into a Confidentiality and Intellectual Property Assignment Agreement with Parent, in the form attached hereto as Exhibit G-1 (a "**Confidentiality and IP Assignment Agreement**") on or before the Closing Date pursuant to which each such person shall agree to certain terms and conditions of employment, including noncompetition and nonsolicitation provisions; provided, however, that in lieu of a Confidentiality and IP Assignment Agreement, Keith Rassin shall enter into Parent's standard Confidentiality and Intellectual Property Assignment Agreement in the form attached as Exhibit G-2.

(c) The Seller agrees not to, during the Noncompetition Period, directly or indirectly: (i) solicit (or assist another in soliciting) any Covered Client for Competitive Products or Services; or (ii) provide (or assist another in providing) Competitive Products or Services to

any Covered Client; (iii) encourage (or assist another in encouraging) any employee, contractor, consultant, supplier, or vendor of the Parent, Buyer or Seller to terminate his or her relationship, as it relates to the Competitive Services, with the Parent or Buyer, as applicable; (iv) engage, hire or solicit (or assist another in engaging, hiring or soliciting) for employment or other personal service engagement any employee or, as it relates to the performance of Competitive Services, any contractor or consultant of the Parent or Buyer; or (v) offer Competitive Products or Services within the Restricted Area (for itself to others or on behalf of any Competing Business); provided, that the Seller may own up to 5% of any class of securities of any company that is traded on a national securities exchange or through the Nasdaq National Market. Notwithstanding the preceding sentence, the Seller may engage in any of the activities listed in the preceding sentence with the Parent's prior written approval, which approval may be withheld in Parent's sole discretion.

(d) During the Noncompetition Period, the Seller expressly consents to and authorizes the Parent and Buyer to disclose both the existence and terms of the applicable provisions of this Agreement to any future user of the Seller's services and to take any steps the Parent or the Buyer deems necessary to enforce this Agreement.

(e) The Seller hereby acknowledges that the Parent and Buyer have invested, and will continue to invest, significant time, cost, and effort in developing and maintaining their customer base and in developing and maintaining their prospective customer base. The Seller further acknowledges that the Parent's and Buyer's relationships with their customers and prospective customers are intended to be continuous and long-term.

6.05 Transition Services Agreement; Hiring of Employees; Employment/Consulting Agreements. As additional consideration for Parent, and as a material inducement for Parent and Buyer to enter into this Agreement and to consummate the transactions contemplated hereby:

(a) Parent and Seller agree to enter into the Transition Services Agreement on or before the Closing Date, pursuant to which Seller will use its Commercially Reasonable Efforts to (i) retain each of the Continuing Employees listed on Schedule 6.05(a), and (ii) cause each of the Continuing Employees to perform services exclusively for the benefit of the Parent (at the level and to the extent such services were performed for the Seller prior to the Closing) from the Closing Date through June 30, 2005 (the "**Transition Period**").

(b) On or after the Closing Date, but no later than the end of the Transition Period, Parent will offer employment, effective no later than July 1, 2005, to each Continuing Employee. It shall be a condition to the employment of each Continuing Employee with the Parent that such person execute the Parent's standard Confidentiality and Intellectual Property Assignment Agreement in the form attached hereto as Exhibit G-2.

(c) Keith Rassin, COO of Seller, shall enter into an Employment Agreement with Parent, in the form attached hereto as Exhibit H (the "**Rassin Employment Agreement**"), on or before the Closing Date.

(d) Tom Brown, Founder and CEO of Seller, shall enter into a Consulting Agreement with Parent, in the form attached hereto as Exhibit I (the “**Brown Consulting Agreement**”), on or before the Closing Date.

6.06 Employee Benefit Plans and Stock Incentive Grants.

(a) Effective as of no later than July 1, 2005, Parent shall (i) cause each Continuing Employee that accepts employment with Parent to be covered under each employee benefit plan, program, or arrangement, including, but not limited to, any qualified retirement, medical, dental, vision, life insurance, cafeteria, disability, severance, nonqualified deferred compensation, or paid time-off plan, maintained by Parent or any of its affiliates (“**Parent Plan**”) for which such Continuing Employee is eligible under the terms and conditions of each such Parent Plan. With respect to such Parent Plans, Parent shall credit prior service of the Continuing Employees with Seller as reflected on the records of Seller provided to Parent for purposes of participation and vesting under any such Parent Plan and for purposes of participation, vesting, and calculation of benefits for periods after the Closing Date with respect to vacation, sick days, severance and post-employment benefits to the extent that such service is recognized under the analogous benefit plans and programs maintained by or on behalf of Seller (but this credit will not obligate Parent or Buyer to continue the employee benefit plans and programs maintained by Parent or Buyer or otherwise alter the terms and conditions of the Parent Plans or Parent’s or Buyer’s vacation, sick days, severance and post-employment benefits or any of them); provided, that such service need not be credited to the extent it will result in duplication of benefits. Any pre-existing condition restrictions and waiting period limitations that were deemed satisfied with respect to a particular person under any Current Employee Benefit Plan that is a group health plan immediately prior to the Closing Date shall be deemed satisfied by Parent and Buyer under their respective group health plans with respect to such person on or after the Closing Date to the extent (and only to the extent) agreed to by the insurer, if any, of the applicable Parent or buyer group health plan. The Parent shall assume and honor all paid time-off obligations such as vacation and sick days, to the extent that such obligations are reflected on the Closing Date Statement.

(b) The parties hereby agree that (i) Seller or its Commonly Controlled Entities will retain all Employee Benefit Plans and all associated liabilities and obligations and (ii) neither Buyer nor Parent will assume any Employee Benefit Plan or any obligations or liabilities thereunder, and none shall be considered to be either an “Acquired Asset,” an “Assigned Contract,” or an “Assumed Liability” for purposes of this Agreement, except as specifically set forth on the Estimated Statement, as revised by the Closing Date Statement. The Seller or a Commonly Controlled Entity will maintain a group health plan (within the meaning of Section 4980B of the Code) through the end of the Transition Period. Parent will use Commercially Reasonable Efforts to cause its retirement plan that is intended to be qualified within the meaning of section 401(a) of the Code (the “**Parent Qualified Plan**”) to accept the “eligible rollover distributions” (within the meaning of section 402(c)(4) of the Code) of each Continuing Employee who is eligible to participate in the Parent Qualified Plan distributed in cash from any Current Employee Benefit Plan that is a defined contribution plan qualified within the meaning of section 401(a) of the Code.

(c) On or before the Closing Date, Parent shall have reserved an aggregate number of shares of Parent Common Stock with an aggregate value as of the Closing Date of \$250,000, such value to be determined in accordance with the Black-Scholes valuation method, for the grant of non-qualified stock options to the Continuing Employees listed on Schedule 6.06(c), in the amounts set forth opposite their respective names on Schedule 6.06(c) (the “**Employee Option Pool**”), as an inducement material to such Continuing Employee’s acceptance of employment with Buyer or Parent, as the case may be. All such options grants from the Employee Option Pool will be effective as of the date such Continuing Employees commence employment with Buyer or Parent. The exercise price per share of Parent Common Stock purchasable under each such option shall be equal to the fair market value per share of Parent Common Stock on the effective date of such option grant. Each such option shall have a term of ten years and shall vest over a five year period, with 10% of the shares becoming vested on the first anniversary of the Closing Date, an additional 15% on the second anniversary of the Closing Date, an additional 20% on the third anniversary of the Closing Date, an additional 25% on the fourth anniversary of the Closing Date and the remaining 30% on the fifth anniversary of the Closing Date. Each Continuing Employee receiving a stock option grant will be required to enter into Parent’s standard form of Stock Option Agreement.

6.07 Publicity. Except as otherwise required by law or the rules of Nasdaq, from the date of this Agreement until the Closing Date or earlier termination of this Agreement, none of Parent, Buyer or the Seller shall issue or cause the publication of any press release or other public announcement with respect to, or otherwise make any public statement concerning, the transactions contemplated by this Agreement without the consent of the other party. Notwithstanding the above, the Seller acknowledges that Parent, as a publicly held company, is subject to certain disclosure requirements under federal securities laws. Accordingly, Parent reserves the right to disclose this Agreement and the transactions contemplated hereby, including financial information regarding the Seller and the status of negotiations, at any time it decides that such disclosure is appropriate under the securities laws or the rules of any stock exchange, provided, however, that Parent shall provide the Seller and its counsel a reasonable time to review and comment upon such disclosure.

6.08 Taxes. Seller shall pay the cost of all sales, transfer and use Taxes arising out of the transfer of the Acquired Assets pursuant to this Agreement. Seller shall pay all costs and expenses (including, without limitation, recording fees and real estate transfer Taxes and real estate transfer stamps) incurred in connection with obtaining or recording title to the Acquired Assets. The sales, use and transfer Tax returns required by reason of said transfer shall be timely prepared and filed by the party normally obligated by law or regulation to make such filing. Seller and Buyer agree to reasonably cooperate with each other in connection with the preparation and filing of such returns, in obtaining all available exemptions from such sales, use and transfer Taxes, and in timely providing each other with resale certificates and any other documents necessary to satisfy any such exemptions. Within two (2) years from the Closing Date, the Seller shall either (i) deliver to the Parent a Certificate of Account Status for Seller showing no tax due, certified by the Texas Comptroller of Public Accounts, as of the Closing Date or (ii) deliver a Certificate of Dissolution issued by the Texas Secretary of State.

6.09 Accounts Receivable. Following the Closing, the right to collect payment on all Accounts Receivable included in the Acquired Assets shall belong to Buyer. Following the

Closing, to the extent that the Seller receives any cash payments with respect to any such Accounts Receivable, or any other accounts receivable of Buyer or Parent arising from the Business from and after the Closing Date, Seller shall remit such payments to Buyer or Parent within three business days after the end of the month in which the cash was collected, together with a detailed summary of all such collections.

6.10 Quarterly Financial Statements. Within 20 days after the Closing, Seller shall deliver to Parent unaudited consolidated balance sheets of Seller and its predecessor entities, as the case may be, prepared for the quarterly periods ended March 31, June 30, September 30 and December 31, 2003 and 2004, for the quarterly period ended March 31, 2005 and for the period from April 1, 2005 through the Closing Date, and the related consolidated statements of income for the periods then ended, fairly presenting in all material respects the consolidated financial position of the Seller and its predecessor entities, as the case may be, as of the dates thereof and the consolidated income of the Seller and its predecessor entities, as the case may be, for the periods then ended, and prepared as of their respective dates in accordance with GAAP consistently applied throughout the periods indicated, subject to the absence of notes.

ARTICLE VII CONDITIONS PRECEDENT

7.01 Conditions to Each Party's Obligation. The respective obligation of each party under this Agreement shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(a) Regulatory Approvals. All necessary approvals, authorizations and consents of all Governmental Entities required to consummate the transactions contemplated hereby shall have been obtained and shall remain in full force and effect and all statutory waiting periods in respect thereof shall have expired or been terminated (all such approvals and the expiration of all such waiting periods being referred to herein as the “**Requisite Regulatory Approvals**”).

(b) No Injunctions or Restraints; Illegality. No order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition (an “**Injunction**”) preventing any of the transactions contemplated by this Agreement shall be in effect and no proceeding initiated by any Governmental Entity seeking an injunction shall be pending. No statute, rule, regulation, order, injunction or decree shall have been enacted, entered, promulgated or enforced by any Governmental Entity which prohibits, restricts or makes illegal any of the transactions contemplated by this Agreement.

7.02 Conditions to Obligations of Parent and Buyer. The obligation of Parent and Buyer to effect the transactions contemplated hereby is also subject to the satisfaction or waiver by Parent or Buyer, at or prior to the Closing, of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Seller set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date

as though made on and as of the Closing Date (except to the extent such representations and warranties speak as of an earlier date), except to the extent that such representations and warranties are qualified by the term “material” or contain terms such as “Seller Material Adverse Effect” in which case such representations and warranties shall be true and correct in all respects as of the date of this Agreement and at and as of the Closing Date (except to the extent such representations and warranties speak as of an earlier date). Parent shall receive at Closing a certificate signed on behalf of the Seller by an authorized officer to the foregoing effect.

(b) Performance of Obligations of the Seller. The Seller shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and Parent shall receive at Closing a certificate signed on behalf of the Seller by an authorized officer to such effect.

(c) Consents Under Agreements. The consent, approval, waiver or amendment of each person (other than the Governmental Entities) set forth on Schedule 7.02(c) hereto shall have been obtained and shall be reasonably satisfactory to Parent.

(d) Stockholder Representation Letters. Each of the Seller Interest Holders and other Continuing Employee Stockholders shall have executed and delivered a Stockholder Representation Letter to Parent.

(e) Stock Restriction Agreements. Each of the Continuing Employee Stockholders shall have executed and delivered a Stock Restriction Agreement to Parent.

(f) Non-Compete Agreements. Each of the Seller Interest Holders listed on Schedule 6.04(a) shall have executed and delivered a Non-Competition Agreement to Parent.

(g) Confidentiality and IP Assignment Agreements. Each of the Continuing Employee Stockholders, except Keith Rassin, shall have executed and delivered a Confidentiality and IP Assignment Agreement to Parent and Keith Rassin shall have executed and delivered Parent’s standard Confidentiality and Intellectual Property Assignment Agreement to Parent.

(h) Rassin Employment Agreement. Keith Rassin shall have executed and delivered the Rassin Employment Agreement to Parent.

(i) Brown Consulting Agreement. Tom Brown shall have executed and delivered the Brown Consulting Agreement to Parent.

(j) Opinion of Counsel for Seller. The Parent and Buyer shall have received an Opinion of Counsel of the Seller in substantially the form attached as Exhibit J.

(k) Escrow Agreement. The Seller and the Escrow Agent shall each have executed and delivered the Escrow Agreement.

(l) Agreement and Bill of Sale. The Seller shall have executed and delivered the Agreement and Bill of Sale.

(m) Transition Services Agreement. The Seller shall have executed and delivered the Transition Services Agreement.

(n) Lien Releases. The Seller shall have delivered lien releases, pay-off letters and UCC-3 termination statements as may be necessary to evidence the release and termination of all material Encumbrances (other than Permitted Encumbrances) on the Acquired Assets and on Seller's rights, title and interests in the Acquired Assets that are not owned by Seller.

(o) No Material Adverse Changes. During the period between the execution of this Agreement and the Closing Date, there shall not have been any Seller Material Adverse Effect and no fact or condition specific to the Seller shall exist which has had or would reasonably be expected to cause such a Seller Material Adverse Effect after the Closing.

7.03 Conditions to Obligations of the Seller. The obligations of the Seller to effect the transactions contemplated hereby is also subject to the satisfaction, or waiver by the Seller, at or prior to the Closing of the following conditions:

(a) Representations and Warranties. The representations and warranties of Parent and Buyer set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (except to the extent such representations and warranties speak as of an earlier date), except to the extent that such representations and warranties are qualified by the term "material" or contain terms such as "Parent Material Adverse Effect" in which case such representations and warranties shall be true and correct in all respects as of the date of this Agreement and at and as of the Closing Date (except to the extent such representations and warranties speak as of an earlier date). The Seller shall receive at Closing a certificate signed on behalf of Parent and Buyer by an authorized officer of each company to the foregoing effect.

(b) Performance of Obligations of Parent and Buyer. Parent and Buyer shall have each performed all obligations required to be performed by them under this Agreement at or prior to the Closing Date, and the Seller shall receive at Closing a certificate signed on behalf of Parent and Buyer by an authorized officer of each company to such effect.

(c) Opinion of Counsel for the Parent and Buyer. The Seller shall have received an opinion of counsel of Parent and Buyer in substantially the form attached as Exhibit K.

(d) Escrow Agreement. The Parent, Buyer, and the Escrow Agent shall each have executed and delivered the Escrow Agreement.

(e) Agreement and Bill of Sale. The Parent and Buyer shall each have executed and delivered the Agreement and Bill of Sale.

(f) Transition Services Agreement. The Parent shall have executed and delivered the Transition Services Agreement.

(g) Rassin Employment Agreement. The Parent shall have executed and delivered the Rassin Employment Agreement to Keith Rassin.

(h) Brown Consulting Agreement. The Parent shall have executed and delivered the Brown Consulting Agreement to Tom Brown.

(i) No Material Adverse Changes. During the period between the execution of this Agreement and the Closing Date, there shall not have been any Parent Material Adverse Effect and no fact or condition specific to the Parent shall exist which has had or would reasonably be expected to cause such a Parent Material Adverse Effect after the Closing.

ARTICLE VIII TERMINATION AND AMENDMENT

8.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual consent of Parent and the Seller in a written instrument, if the Board of Directors of each so determines by a vote of a majority of the members of its entire Board;

(b) by either Parent or the Seller (provided, however, that the right to terminate this Agreement under this clause shall not be available to any party whose breach or failure to fulfill any of its obligations under this Agreement has been the cause of or resulted in the failure of the Closing to occur) if there shall have been any material breach of any of the covenants or agreements set forth in this Agreement on the part of the other party, or any of the representations and warranties of such party shall cease to be materially true and correct, such that the provisions of Sections 7.02(a) and 7.02(b) or Sections 7.03(a) and 7.03(b), as the case may be, would not be satisfied and such breach has not been cured within ten (10) days after notice thereof to the breaching party; provided, however, that no cure period shall be required for a breach which by its nature cannot be cured; or

(c) by either Parent or the Seller if the Closing shall not have occurred by September 30, 2005; provided, however, such date may be increased by an additional thirty (30) days at the request of the Parent if the Closing is delayed solely because any Requisite Regulatory Approval has not been obtained and Parent is diligently undertaking such efforts required to obtain the same; provided, further, that the right to terminate this Agreement under this Section 8.01(c) shall not be available to any party whose actions or failure to act has been a primary cause of, or resulted in, the failure of the Closing to occur on or before such date and such action or failure to act constitutes a breach of this Agreement.

8.02 Effect of Termination. In the event of termination of this Agreement by either Parent or the Seller as provided in Section 8.01, this Agreement shall forthwith become void and have no effect, except that Section 5.02(b) shall survive any termination of this Agreement for a period of two (2) years following such termination, and there shall be no further obligation on the part of Parent, Buyer, Seller, or their respective officers or directors or the Seller Interest Holders and the other Continuing Employee Stockholders except for the obligations under such provisions. Notwithstanding anything to the contrary contained in this Agreement, no party shall

be relieved or released from any liabilities or damages arising out of its intentional breach of any provision of this Agreement.

8.03 Expenses. Regardless of whether the transactions contemplated by this Agreement close, each party shall bear its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby.

8.04 Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

8.05 Extension; Waiver. Any agreement on the part of a party hereto to (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto or (c) waive compliance with any of the agreements or conditions contained herein shall be valid only if set forth in a written instrument signed on behalf of such party, but such extension or waiver shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

ARTICLE IX INDEMNIFICATION

9.01 Agreement to Indemnify. Following the Closing and subject to the limitations set forth herein,

(a) the Seller and, pursuant to the Stockholder Representation Letters, the Seller Interest Holders and other Continuing Employee Stockholders listed on Schedule 9.01(a) (together with the Seller, the “***Seller Indemnitors***”) shall severally indemnify and agree to defend and hold harmless Parent and Buyer (and their respective affiliates, officers, directors, employees, representatives and agents) (“***Purchaser Indemnitees***” and, singularly, a “***Purchaser Indemnitee***”) against and in respect of any and all Damages, by reason of or otherwise arising out of:

- (i) any Excluded Liability;
- (ii) any Net Working Capital shortfall determined pursuant to Section 2.06(c);
- (iii) any Seller Warranty Liabilities; or
- (iv) any breach by the Seller of a representation, warranty or covenant contained in this Agreement;

provided, that, the Purchaser Indemnities will not be entitled to indemnification pursuant to this Section 9.01(a) unless the aggregate amount of all Damages for which indemnification is sought by the Purchaser Indemnities exceeds \$80,000 (the “***Purchaser Indemnification Basket***”), in which case the Purchaser Indemnities will be entitled to indemnification for the full amount of

such Damages; provided, further, that the Purchaser Indemnification Basket shall not apply to any claim for indemnification based on items (i) -(iii) above or any breach of Section 3.10 due to uncollectability of Accounts Receivable.

“**Damages**” shall mean the amount reasonably required to compensate the Indemnified Party for the adverse economic effect the occurrence or breach complained of taking into consideration all relevant factors, including the practical and legal effect of the occurrence or breach, including reasonable attorneys’ fees and disbursements, reasonable accountants’ fees and disbursements, costs of litigation and other expenses incurred by them (or their respective affiliates, officers, directors or employees) in the defense of any claim asserted against them (or their respective affiliates, officers, directors, employees or agents) and any amounts paid in settlement or compromise of any claim asserted against them to the extent that the claim asserted is or would have been subject to the indemnification provisions hereof, subject to the limitations on indemnification set forth in Sections 9.02 and 9.03. “**Damages**” shall not include any amount for which reimbursement is received by Parent, the Buyer or the Seller, as the case may be, pursuant to insurance policies or third-party payments by virtue of indemnification or subrogation received by such party which the Parent, the Seller and the Buyer shall use their Commercially Reasonable Efforts to pursue, and shall be determined net of any tax benefit actually realized by the Indemnified Party as a result of the claim.

(b) Parent shall indemnify and agrees to defend and hold harmless the Seller and the Seller Interest Holders (and their respective affiliates, representatives and agents) (the “**Seller Indemnitees**”) against and in respect of any and all Damages by reason of or otherwise arising out of:

(i) any Assumed Liability; or

(ii) any breach by Parent or Buyer of any representation, warranty or covenant contained in this Agreement;

provided, that, the Seller Indemnitees will not be entitled to indemnification pursuant to this Section 9.01(b) unless the aggregate amount of all Damages for which indemnification is sought by the Seller Indemnities exceeds \$80,000 (the “**Seller Indemnification Basket**”), in which case the Seller Indemnitees will be entitled to indemnification for the full amount of such Damages; provided, further, that the Seller Indemnification Basket will not apply to any claim for indemnification based on item (i) above.

9.02 Survival of Indemnity. The representations, warranties and covenants of the Seller and Parent, and the indemnification obligations related thereto pursuant to Section 9.01 shall survive the Closing for a period of two (2) years after Closing, except for Damages arising from (a) any failure of Seller to pay, perform or discharge any Excluded Liabilities or (b) any failure of Parent or Buyer to pay, perform or discharge any Assumed Liabilities, in each which case the obligations of the applicable Indemnifying Party pursuant to Section 9.01 shall survive indefinitely. Any claims for indemnification in accordance with this ARTICLE IX with respect to Damages resulting from any representation or warranty must be made (and will be null and void unless made) prior to the end of the applicable survival period. Upon expiration of such period, no Indemnifying Party shall have any liability for Damages under such indemnification

obligations unless it has received written notice from an Indemnified Party claiming indemnification prior to the expiration of the applicable period as required.

9.03 Additional Provisions.

(a) Limitations on Indemnified Amounts of the Seller Indemnitors. In no event shall the aggregate indemnity obligations of the Seller Indemnitors exceed an amount equal to the aggregate Purchase Price received by such persons and the liability of each such person (other than Seller) shall be further limited such that no single Seller Indemnitor (other than Seller) shall be obligated to pay more than his or her proportionate share of any such indemnification liability. The liability of the Seller Indemnitors for indemnification under this ARTICLE IX by reason of or arising out of any breach by the Seller of any representation, warranty or covenant shall not be modified, waived or diminished by any examination or investigation conducted by Parent or Buyer of the books, records or operations of the Seller.

(b) Limitations on Indemnified Amounts of Parent. In no event shall the Parent's aggregate indemnity obligations exceed an amount equal to the maximum potential aggregate indemnification obligation of the Seller Indemnitors as provided in Section 9.03(a). The liability of Parent for indemnification under this ARTICLE IX by reason of or arising out of any breach by Parent or Buyer of any representation, warranty or covenant shall not be modified, waived or diminished by any examination or investigation conducted by the Seller of the books, records or operations of Parent and Buyer.

(c) No Limitation in Event of Fraud. Notwithstanding any other provision hereof, nothing in this ARTICLE IX (including the provisions of paragraphs (a) and (b) of this Section 9.03) or otherwise shall limit, in any manner, any remedy at law or equity, to which any party may be entitled as a result of fraud by any Indemnifying Party or its employees, officers or directors.

(d) Exclusivity of Remedy; Survival of Covenants. Following the Closing, except in respect of claims based upon fraud, the indemnification accorded by this Section shall be the sole and exclusive remedy of the parties indemnified under this ARTICLE IX in respect of any misrepresentation or inaccuracy in, or breach of, any representation or warranty or any breach or failure in performance of any covenant or agreement made in this Agreement or in any document or certificate delivered pursuant hereto. Notwithstanding the foregoing, in the event of any breach or failure in performance after the Closing of any covenant or agreement, a non-breaching party shall also be entitled to seek specific performance, injunctive or other equitable relief. The covenants of any party shall terminate according to the terms of such covenant and the expiration of the applicable statutes of limitations.

(e) Subrogation. Upon making any payment to an Indemnified Party for any indemnification claim pursuant to this ARTICLE IX, an Indemnifying Party shall be subrogated, to the extent of such payment, to any rights that the Indemnified Party may have against any other persons with respect to the subject matter underlying such indemnification claim and the Indemnified Party shall take such actions as the Indemnifying Party may reasonably require to perfect such subrogation or to pursue such rights against such other persons as the Indemnified Party may have.

9.04 Claim Notice; Definitions; Third Party Claim Procedures.

(a) Claim Notice. An Indemnified Party shall give each Indemnifying Party from whom indemnification is sought prompt written notice (a “**Claim Notice**”) of any claim, demand, action, suit, proceeding or discovery of fact upon which the Indemnified Party intends to base the claim for indemnification under this ARTICLE IX, which shall contain (i) a description and a good faith estimate of the amount of any Damages incurred or reasonably expected to be incurred by the Indemnified Party, (ii) a statement that the Indemnified Party is entitled to indemnification under this ARTICLE IX for such Damages, and (iii) a demand for payment, provided, however, that no failure to give such Claim Notice shall excuse any Indemnifying Party from any obligation hereunder except to the extent the Indemnifying Party is materially and actually prejudiced by such failure. Parent, Buyer, and Seller agrees that the procedures set forth in the Escrow Agreement with respect to Claim Notices and responses thereto shall govern all claims made against the Escrowed Shares.

(b) Definitions. The term “**Indemnified Party**” shall mean a party (or its successor) who is entitled to indemnification from a party hereto pursuant to this ARTICLE IX; the term “**Indemnifying Party**” shall mean a party (or its successor) hereto who is required to provide indemnification under this ARTICLE IX to another party; and the term “**Third Party Claim**” shall mean any claim, action, suit, proceeding, investigation or like matter which is asserted or threatened by a party other than the parties hereto, their successors and permitted assigns, against any Indemnified Party or to which any Indemnified Party is subject.

(c) Third Party Claim Procedures. The Indemnified Party may, upon reasonable notice, tender the exclusive defense of a Third Party Claim (subject to the provisions of this Section 9.04(c)) to the Indemnifying Party. If (i) the defense of a Third Party Claim is so tendered and within thirty (30) days thereafter such tender is accepted without qualification (or reservation of rights) by the Indemnifying Party; or (ii) within thirty (30) days after the date on which written notice of a Third Party Claim has been given pursuant to this Section 9.04(c), the Indemnifying Party shall acknowledge in writing to the Indemnified Party and without qualification (or reservation of rights) its indemnification obligations as provided in this ARTICLE IX; then, except as hereinafter provided, the Indemnified Party shall not, and the Indemnifying Party shall, have the right to contest, defend, litigate or settle such Third Party Claim. The Indemnified Party shall have the right to be represented by counsel at its own expense in any such contest, defense, litigation or settlement conducted by the Indemnifying Party provided that the Indemnified Party shall be entitled to reimbursement therefor if the Indemnifying Party shall lose its right to contest, defend, litigate and settle the Third Party Claim as herein provided. The Indemnifying Party shall lose its right to defend and settle the Third Party Claim if it shall fail to diligently contest, defend, litigate and settle the Third Party Claim as provided herein. So long as the Indemnifying Party has not lost its right, defend, litigate and settle and/or obligation to contest, defend, litigate and settle as herein provided, the Indemnifying Party shall have the exclusive right to contest, defend and litigate the Third Party Claim and shall have the right, upon receiving the prior written approval of the Indemnified Party (which shall not be unreasonably withheld unless such settlement does not fulfill the conditions set forth in the following sentence and which shall be deemed automatically given if a response has not been received within the thirty (30) day period following receipt of the proposed settlement by the Indemnified Party), to settle any such matter, either before or after the initiation of litigation, at

such time and upon such terms as it deems fair and reasonable. Notwithstanding anything to the contrary herein contained, in connection with any settlement negotiated by an Indemnifying Party, no Indemnified Party or Indemnifying Party (as the case may be) that is not controlling the defense and or settlement of the Third Party Claim (the “**Non-Control Party**”) shall be required by an Indemnifying Party or Indemnified Party controlling the litigation to (and no such party shall) (x) enter into any settlement that does not include as an unconditional term thereof the delivery by the claimant or plaintiff to the Non-Control Party of a release from all liability in respect of such claim or litigation, (y) enter into any settlement that attributes by its terms liability to the Non-Control Party or which may otherwise have an adverse effect on the Indemnified Party’s business, or (z) consent to the entry of any judgment that does not include as a term thereof a full dismissal of the litigation or proceeding with prejudice. All expenses (including attorneys’ fees) incurred by the Indemnifying Party in connection with the foregoing shall be paid by the Indemnifying Party. No failure by an Indemnifying Party to acknowledge in writing its indemnification obligations under this ARTICLE IX shall relieve it of such obligations to the extent they exist. If an Indemnified Party is entitled to indemnification against a Third Party Claim, and the Indemnifying Party fails to accept a tender of, or assume, the defense of a Third Party Claim pursuant to this ARTICLE IX, or if, in accordance with the foregoing, the Indemnifying Party does not have the right or shall lose its right to contest, defend, litigate and settle such a Third Party Claim, the Indemnified Party shall have the right, without prejudice to its right of indemnification hereunder, in its discretion exercised in good faith and upon the advice of counsel, to contest, defend and litigate such Third Party Claim, and may settle such Third Party Claim, either before or after the initiation of litigation, at such time and upon such terms as the Indemnified Party deems fair and reasonable, provided that at least twenty (20) days prior to any such settlement, written notice of its intention to settle is given to the Indemnifying Party. If, pursuant to this Section 9.04(c), the Indemnified Party so contests, defends, litigates or settles a Third Party Claim, for which it is entitled to indemnification hereunder as provided herein, the Indemnified Party shall be reimbursed by the Indemnifying Party for the reasonable attorneys’ fees and other expenses of defending, contesting, litigating and/or settling the Third Party Claim which are incurred from time to time, forthwith following the presentation to the Indemnifying Party of itemized bills for said attorneys’ fees and other expenses. The Indemnified Party or the Indemnifying Party, as the case may be, shall furnish such information in reasonable detail as it may have with respect to a Third Party Claim (including copies of any summons, complaint or other pleading which may have been served on such party and any written claim, demand, invoice, billing or other document evidencing or asserting the same) to the other party if such other party is assuming defense of such claim, and make available all records and other similar materials which are reasonably required in the defense of such Third Party Claim and shall otherwise cooperate with and assist the defending party in the defense of such Third Party Claim.

ARTICLE X GENERAL PROVISIONS

10.01 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given when delivered personally or telecopied (with confirmation from recipient) provided that a copy of all telecopies is sent by one of the other delivery methods set

forth in this Section 10.01 within one (1) day of being telecopied, three (3) days after mailed by registered or certified mail (return receipt requested) or on the day delivered by an express courier (with confirmation from recipient) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Parent or Buyer, to:

Perficient, Inc.
1120 S. Capital of Texas Highway
Building 3, Suite 220
Austin, Texas 78746
Attn: Chief Financial Officer
Phone: (512) 531-6022
Facsimile: (512) 531-6011

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

Vinson & Elkins LLP
The Terrace 7
2801 Via Fortuna, Suite 100
Austin, Texas 78746
Attn: J. Nixon Fox III, Esq.
Phone: (512) 542-8427
Facsimile: (512) 236-3216

(b) if to the Seller, to:

iPath Solutions, Ltd.
c/o 7700 Holdings, LLC
9801 Westheimer, Suite 206
Houston, Texas 77042
Attn: Thomas Brown
Phone: (832) 242-6451
Facsimile: (832) 252-1137

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

Schaeffer Hutchinson, P.C.
2204 Louisiana, Suite 220
Houston, Texas 77002-8657

Attn: Eric S. Schaeffer, Esq
Phone: (713) 524-7300
Facsimile: (713) 528-5677

10.02 Interpretation. When a reference is made in this Agreement to Sections, Exhibits or Schedules, such reference shall be to a Section of or Exhibit or Schedule to this Agreement unless otherwise indicated. The table of contents and headings contained in this

Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words “**include**,” “**includes**” or “**including**” are used in this Agreement, they shall be deemed to be followed by the words “**without limitation**.”

10.03 Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. Furthermore, this Agreement may be executed by the facsimile signature of any party hereto; it being agreed that the facsimile signature of any party hereto shall be deemed an ink-signed original for all purposes.

10.04 Entire Agreement. This Agreement (including the documents and the instruments referred to herein) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

10.05 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to any applicable conflicts of law principles thereof.

10.06 Arbitration. If any dispute relating to this Agreement arises between the parties, and no agreement relating to such dispute can be reached after good faith negotiation, either Parent or Buyer, on the one hand, or Seller, on the other hand, may, by written notice to the other, demand that such dispute be settled by arbitration conducted by one arbitrator to be mutually agreed to by the parties. The decision of the arbitrator shall be written, shall be in accordance with applicable law and with this Agreement, and shall be supported by written findings of fact and conclusion of law which shall set forth the basis for the decision of the arbitrator. The costs of any such arbitration proceeding shall be shared equally by the parties unless otherwise determined by the arbitrator. The decision of the arbitrator as to the validity and amount of any claim shall be binding and conclusive upon the parties to this Agreement. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction. Any such arbitration shall be held in Austin, Texas under the commercial rules then in effect of the American Arbitration Association. Notwithstanding any of the foregoing or any other provision of this Agreement, a court of competent jurisdiction shall have the power to maintain the *status quo* pending the arbitration of any dispute under this Section, and this Section shall not require the arbitration of an application for emergency or temporary injunctive relief by either party pending arbitration; provided, however, that the remainder of any such dispute beyond the application for emergency or temporary injunctive relief shall be subject to arbitration under this Section.

10.07 Enforcement of Agreement. The parties hereto agree that irreparable damage would occur in the event that the provisions contained in Sections 5.03 or 6.04(b) of this Agreement were not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of Sections 5.03 or 6.04(b) of this Agreement and to enforce specifically the terms and

provisions thereof in any court of the United States or any court located in Austin, Texas, this being in addition to any other remedy to which they are entitled at law or in equity.

10.08 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is deemed to be so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

10.09 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. Except as otherwise expressly provided herein, this Agreement (including the documents and instruments referred to herein) is not intended to, and shall not, confer upon any person other than the parties hereto any rights or remedies hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, Parent, Buyer and the Seller have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

PARENT:

Perficient, Inc.

By: _____
Name: John T. McDonald
Title: Chief Executive Officer

BUYER:

Perficient iPath, Inc.

By: _____
Name: John T. McDonald
Title: Chief Executive Officer

SELLER:

iPath Solutions, Ltd.

By: _____
Name: _____
Title: _____

Signature Page to the Asset Purchase Agreement

AMENDED AND RESTATED
LOAN AND SECURITY AGREEMENT
by and among
SILICON VALLEY BANK
3003 Tasman Drive
Santa Clara, CA 95054
Attn: Loan Services
(408) 496-2429

as Administrative Agent and a Lender

and
KEYBANK NATIONAL ASSOCIATION
601 108th Avenue NE
Bellevue, WA 98004
Attn: Institutional Banking
(425) 709-4580

as Syndication Agent and a Lender

and
PERFICIENT, INC.,
PERFICIENT GENISYS, INC.,
PERFICIENT CANADA CORP.,
PERFICIENT MERITAGE, INC., and
PERFICIENT ZETTAWORKS, INC.
1120 S. Capital of Texas Highway
Building 3, Suite 220
Austin, Texas 78746

as Borrowers

Dated as of the Effective Date
(as hereinafter defined)

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This AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this "Agreement") dated as of the Effective Date among SILICON VALLEY BANK, a California chartered bank ("SVB"), with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054, and with a loan production office located at 9020 Capital of Texas Highway, North, Building 1, Suite 350, Austin, Texas, 78759, in its capacity as administrative agent ("Agent") and as a lender, KEYBANK NATIONAL ASSOCIATION ("Key"; and collectively with SVB, the "Lenders" and each a "Lender") as syndication agent and a lender, and PERFICIENT, INC., PERFICIENT GENISYS, INC., PERFICIENT CANADA CORP., PERFICIENT MERITAGE, INC. AND PERFICIENT ZETTAWORKS, INC., jointly and severally (collectively, the "Borrowers" and, individually, each a "Borrower")), each with its principal place of business at the location set forth on the Cover Page of this Agreement, provides the terms on which Lenders will lend to Borrower and Borrower will repay Lenders.

WHEREAS, the Lenders have appointed SVB as administrative agent hereunder pursuant to that certain Intercreditor Agreement dated of even date herewith by and between SVB and Key.

NOW THEREFORE, the parties hereto agree as follows:

1 ACCOUNTING AND OTHER TERMS.

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. The term "financial statements" includes the notes and schedules. The terms "including" and "includes" always mean "including (or includes) without limitation" in this or any Loan Document. Capitalized terms in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meanings provided by the Code, to the extent such terms are defined therein.

2 LOAN AND TERMS OF PAYMENT.

2.1 Promise to Pay. For value received, each Borrower, jointly and severally, promises to pay to the order of Agent and the Lenders the unpaid principal amount of all Credit Extensions and interest on the unpaid principal amount of the Credit Extensions.

2.1.1 Revolving Advances.

(a) SVB will make Advances not exceeding (i) the lesser of (A) the Committed Revolving Line or (B) the Borrowing Base, minus (ii) the outstanding principal balance of the Advances, the amount of all outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit) and all unpaid amounts utilized for Cash Management Services. Amounts borrowed under this Section may be repaid and reborrowed during the term of this Agreement.

(b) To obtain an Advance, Borrowers must deliver to Agent by facsimile by 3:00 p.m. Pacific time on the Business Day the Advance is to be made, the Payment/Advance Form attached as Exhibit B (a "Payment/Advance Form"). Following receipt of funds from SVB, Agent will credit Advances to Borrowers' deposit account. SVB may make Advances under this Agreement without instructions if the Advances are necessary to meet Obligations which have become due.

(c) The Committed Revolving Line terminates on the Revolving Maturity Date, when all Advances are immediately payable to Agent, for the benefit of SVB.

(d) SVB's obligation to make Advances hereunder will terminate if, in Agent's good faith judgment, there has been a material adverse change in the general affairs, management, results of operation, condition (financial or otherwise) or the prospect of repayment of the Obligations, or there has been any material adverse deviation by Borrowers from the most recent business plan of Borrowers presented to and accepted by Agent prior to the execution of this Agreement.

2.1.2 Cash Management; Letters of Credit.

(a) Borrowers may use up to \$1,500,000 (the "Cash Management Services/Letters of Credit Sublimit") of the Committed Revolving Line for (a) SVB's Cash Management Services, which may include merchant services, direct deposit of payroll, business credit card, and check cashing services identified in various cash management services agreements related to such services (the "Cash Management Services"), and (b) the issuance by SVB of Letters of Credit for Borrowers' account. Such aggregate amounts utilized under the Cash Management Services Sublimit will at all times reduce the amount otherwise available to be borrowed under the Committed Revolving Line. Any amounts SVB pays on behalf of Borrowers or any amounts that are not paid by Borrowers for any Cash Management Services will be treated as Advances under the Committed Revolving Line and will accrue interest at the rate for Advances.

(b) SVB has issued, as set forth on Schedule 2.1.2, and may in the future issue letters of credit (each a "Letter of Credit" and collectively, the "Letters of Credit") for any Borrower's account not exceeding (i) the lesser of the Committed Revolving Line or the Borrowing Base minus (ii) the outstanding principal balance of the Advances and all unpaid amounts utilized for Cash Management Services; however the aggregate face amount of all outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit) plus unpaid amounts utilized for Cash Management Services may not exceed the Cash Management Services/Letters of Credit Sublimit. Each Letter of Credit will have an expiry date of no later than 180 days after the Revolving Maturity Date but Borrowers' reimbursement obligation will be secured by cash on terms acceptable to SVB at any time after the Revolving Maturity Date if the term of this Agreement is not extended by SVB. The appropriate Borrower agrees to execute any further documentation in connection with the Letters of Credit as SVB may reasonably request.

(c) All issued Letters of Credit identified on Schedule 2.1.2, attached hereto, for the benefit of a Borrower shall be governed by this Agreement.

2.1.3 Acquisition Term Loan Facility.

(a) Subject to the terms and conditions of this Agreement, Key agrees to lend to Borrower, from time to time prior to the Term Loan Commitment Termination Date, advances (each a "Term Loan Advance" and collectively the "Term Loan Advances") in an aggregate amount not to exceed the Committed Term Loan Line. When repaid, the Term Loan Advances may not be re-borrowed. The proceeds of the Term Loan Advances will be used solely to fund Permitted Acquisitions. Each Term Loan Advance shall be considered a promissory note evidencing the amounts due hereunder for all purposes. Key's obligation to lend hereunder shall terminate on the earlier of (i) the occurrence and continuance of an Event of Default, or (ii) the Term Loan Commitment Termination Date.

(b) To obtain a Term Loan Advance, Borrower will deliver to Agent (i) a completed supplement in substantially the form attached as Exhibit F ("Loan Supplement") signed by a Responsible Officer, (ii) a certificate signed by a Responsible Officer affirming that following such requested Term Loan Advance and following such Permitted Acquisition, based on pro forma projections reviewed by a Responsible Officer, Borrowers will remain in compliance with all representations, warranties, covenants and agreements contained in this Agreement, and (iii) such additional information as Agent may request at least five (5) Business Days before the proposed funding date (the "Funding Date"). At least three (3) Business Days before the Funding Date, Agent shall notify Key of Borrower's request for such Term Loan Advance. On each Funding Date, Agent will specify in the Loan Supplement for each Term Loan Advance, the Basic Rate and the Payment Dates. If Borrowers satisfy the conditions for a Term Loan Advance specified herein and Key delivers the requested funds to Agent, Agent will disburse such Term Loan Advance by internal transfer to Borrowers' deposit account with SVB on the Funding Date. Term Loan Advances for any Permitted Acquisition may not exceed in the aggregate fifty percent (50%) of the Total Acquisition Cost for such Permitted Acquisition.

(c) Key's obligation to lend the undisbursed portion of the Committed Term Loan Line will terminate if, in Agent's or Key's good faith judgment, there has been a material adverse change in the general affairs, management, results of operation, condition (financial or otherwise) or the prospect of repayment of the Obligations, or there has been any material adverse deviation by Borrowers from the most recent

business plan of Borrowers presented to and accepted by Agent and the Lenders prior to the execution of this Agreement.

2.1.4 Existing Facilities. This Agreement amends and restates that certain Loan and Security Agreement dated December 5, 2003 (as amended, the "Original Loan Agreement"), under which SVB made available to Borrowers (a) a \$4,000,000 acquisition term loan facility (the "Existing Term Loan") and (b) a \$9,000,000 line of credit (the "Existing Line of Credit"). Borrowers shall continue to repay the Existing Term Loan pursuant to terms set forth on the Loan Supplements identified on Schedule 2.1.4, attached hereto and made a part hereof. The Existing Term Loan may only be prepaid pursuant to terms identical to Sections 2.3.3(c) and 2.3.3(d). Such payments shall be delivered directly to SVB. All amounts outstanding under the Existing Line of Credit shall be considered an Advance hereunder and shall be due and owing pursuant to the terms hereof.

2.2 Overadvances. If Borrowers' Credit Extensions under Section 2.1.1 and 2.1.2 exceed the lesser of either (a) the Committed Revolving Line or (b) the Borrowing Base, Borrower must immediately pay in cash to Agent, for the benefit of SVB, the excess. Notwithstanding the foregoing, if such overadvance is caused by a reduction in the percentage of the Borrowing Base or a change to the definition of Eligible Accounts, Borrower's failure to immediately pay in cash the excess shall not be an Event of Default, but Borrower shall within thirty (30) days pay in cash to Agent, for the benefit of SVB, the excess and no further Credit Extensions will be made until Borrower is in compliance with the revised Borrowing Base formula.

2.3 Interest Rate; Payments.

2.3.1 In General.

(a) Spreading of Interest. Due to irregular periodic balances of principal, the variable nature of the interest rate, or prepayment, the total interest that will accrue under this Agreement cannot be determined in advance. Lenders do not intend to contract for, charge or receive more than the Maximum Lawful Rate or Maximum Lawful Amount permitted by applicable state or federal law, and to prevent such an occurrence Lenders and Borrowers agree that all amounts of interest, whenever contracted for, charged or received by Lenders, with respect to the Obligations, will be spread, prorated or allocated over the full period of time the Obligations are outstanding, including the period of any renewal or extension thereof. If the maturity of the Obligations is accelerated for any reason whether as a result of an Event of Default or otherwise prior to the full stated term, the total amount of interest contracted for, charged or received to the time of such demand shall be spread, prorated or allocated along with any interest thereafter accruing over the full period of time that the Obligations thereafter remain unpaid for the purpose of determining if such interest exceeds the Maximum Lawful Amount.

(b) Excess Interest. At maturity (whether by acceleration or otherwise) or on earlier final payment of the Obligations, each Lender will compute the total amount of interest that has been contracted for, charged or received by each Lender or payable by Borrowers hereunder and compare such amount to the Maximum Lawful Amount that could have been contracted for, charged or received by such Lender. If such computation reflects that the total amount of interest that has been contracted for, charged or received by either Lender or payable by any Borrower exceeds the Maximum Lawful Amount, then such Lender shall apply such excess to the reduction of the principal balance, and any remaining excess shall be refunded to such Borrower. This provision concerning the crediting or refund of excess interest shall control and take precedence over all other agreements between Borrowers and Lenders so that under no circumstances shall the total interest contracted for, charged or received by Lenders exceed the Maximum Lawful Amount.

(c) Computation of Interest; Default Rate. Interest is computed on a 360 day year for the actual number of days elapsed. Lenders will not compute the interest in a manner that would cause Lenders to contract for, charge or receive interest that would exceed the Maximum Lawful Rate or the Maximum Lawful Amount. After an Event of Default, Obligations accrue interest at the Default Interest Rate. The Default Interest Rate is the least of (i) the Maximum Lawful Rate, or (ii) the interest rate applicable immediately prior to the occurrence of the Event of Default plus 5 percentage points; or (iii) such lesser rate of interest as each Lender in its sole discretion may choose to charge; but in no event more than the Maximum Lawful Rate.

(d) Request to Debit Accounts. SVB, in its capacity as Agent, may debit any of Borrowers' deposit accounts including Account Number 3300402717 for principal and interest payments or any amounts any Borrower owes Lenders. SVB will notify Borrowers when it debits Borrowers' accounts. These debits are not a set-off. Payments received after 12:00 noon Pacific time are considered received at the opening of business on the next Business Day.

2.3.2 Committed Revolving Line.

(a) Interest Rate. Advances under the Committed Revolving Line accrue interest on the outstanding principal balance thereof at a per annum rate 1.25 percentage points (1.25%) above the Prime Rate. The interest rate on the Committed Revolving Line increases or decreases when the Prime Rate changes.

(b) Payments. Interest on the Committed Revolving Line is payable to Agent, for the benefit of SVB, on the first day of each month. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest accrue.

2.3.3 Term Loan Payments.

(a) Principal and Interest Payments On Payment Dates. Borrower will repay the Term Loan Advances on the terms provided herein and in the Loan Supplement. Borrowers will make payments to Agent, for the benefit of Key, monthly of principal in advance and/or accrued interest, as set forth herein and in the Loan Supplement, for each Term Loan Advance (collectively, "Scheduled Payments"), commencing on the first day of the next month following the Funding Date with respect to such Term Loan Advance and continuing thereafter during the Repayment Period on the first day of each calendar month (each a "Payment Date"). On each Payment Date prior to the Term Loan Commitment Termination Date, Borrower shall make payments to Agent, for the benefit of Key, of accrued but unpaid interest only for each Term Loan Advance. Beginning on the first Payment Date following the Term Loan Commitment Termination Date and continuing thereafter during the Repayment Period, Borrower will pay to Agent, for the benefit of Key, thirty-six (36) equal installments of principal and all accrued interest for each Term Loan Advance (collectively with the interest-only payments required in the preceding sentence, each a "Term Loan Payment"). Borrowers' final Term Loan Payment for each Term Loan Advance shall be due and payable to Agent, for the benefit of Key, on the Term Loan Maturity Date and shall include all outstanding principal and all accrued but unpaid interest for all Term Loan Advances. Payments received after 12:00 noon Pacific time are considered received at the opening of business on the next Business Day. A Term Loan Advance may only be prepaid in accordance with Sections 2.3.3(c) and 2.3.3(d).

(b) Interest Rate. Borrowers will pay interest on the Payment Dates (as described above) at the per annum rate of interest equal to the Basic Rate determined by Agent, in consultation with Key, as of the Funding Date for each Term Loan Advance in accordance with the definition of the Basic Rate. Any amounts outstanding during the continuance of an Event of Default shall bear interest at a per annum rate equal to the Default Interest Rate, as defined in Section 2.3.1(c).

(c) Mandatory Prepayment Upon an Acceleration. If the Term Loan Advances are accelerated following the occurrence of an Event of Default or otherwise, then Borrowers will immediately pay to Agent, for the benefit of Key, (i) all outstanding principal and all accrued but unpaid interest, including interest accruing at the Default Interest Rate, with respect to each Term Loan Advance to the date of such prepayment, and (ii) all other sums, if any, that shall have become due and payable with respect to this Agreement.

(d) Permitted Prepayment of Loans. Borrowers shall have the option to prepay all, but not less than all, of any Term Loan Advance advanced by Key under this Agreement without any prepayment fees or penalties, provided Borrowers (i) provide written notice to Agent of their election to prepay such Term Loan Advance at least fifteen (15) days prior to such prepayment, and (ii) pay, on the date of the prepayment (A) all outstanding principal and all accrued but unpaid interest with respect to such Term Loan Advance; and (B) all

other sums, if any, that shall have become due and payable hereunder with respect to such Term Loan Advance.

2.4 Fees.

(a) Term Loan Facility Fee. Borrowers will pay to Agent, for the benefit of Key, a fully earned, non-refundable term loan facility fee in the amount of \$25,000, due on the date that Borrowers execute and deliver this Agreement to Agent;

(b) Committed Revolving Line Facility Fee. Borrowers will pay to Agent, for the benefit of SVB, (a) a fully earned, non-refundable committed revolving line facility fee in the amount of \$7,500, due on the date that Borrowers execute and deliver this Agreement to Agent, and (b) an annual facility fee on the Committed Revolving Line in the amount of \$18,750 shall be payable on each anniversary of the Effective Date hereafter so long as SVB has a commitment to make Advances hereunder;

(c) Usage Fee. Borrowers will pay to Agent, for the benefit of SVB, a usage fee, payable in arrears within 15 days of the end of each calendar quarter, in an amount equal to the product of .08% times the per annum average Unused Balance. The term "Unused Balance" shall mean the result of (i) the Committed Revolving Line minus (ii) the aggregate amount of all Advances, and minus (iii) the face amount of all outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit); and

(d) Bank Expenses. Borrowers will pay to Agent and to each Lender, without duplication, all Bank Expenses (including reasonable attorney's fees and expenses) incurred through and after the Effective Date when due.

2.5 Additional Costs. If any law or regulation increases Lenders' costs or reduces either Lender's income for any loan, Borrowers will pay such Lender the increase in cost or reduction in income or additional expense.

2.6 Obligations of Lenders. Each Lenders' obligations hereunder, including, but not limited to, each Lender's obligation to make Credit Extensions, are several, but not joint. Notwithstanding either Lender acting as Agent hereunder, Borrowers shall not seek to receive Advances from Key or Term Loan Advances from SVB.

3 CONDITIONS OF LOANS.

3.1 Conditions Precedent to Initial Credit Extension. Each Lender's obligation to make the initial Credit Extension is subject to the condition precedent that Agent receives the agreements, documents and fees contemplated in this Agreement, including, if requested by Agent, a Consent of Landlord from the landlord of each Borrower in the form attached as Exhibit E or such other form as may be approved by Agent.

3.2 Conditions Precedent to all Credit Extensions. Each Lender's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following:

(a) timely receipt of any Payment/Advance Form or Loan Supplement, as applicable; and

(b) the representations and warranties in Section 5 must be materially true on the date of the Payment/Advance Form or Loan Supplement, as applicable, and on the effective date of each Credit Extension and no Event of Default may have occurred and be continuing, or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 remain materially true.

4 CREATION OF SECURITY INTEREST.

4.1 Grant of Security Interest. Each Borrower grants Agent, for the benefit of Lenders, a continuing security interest in all presently existing and later acquired Collateral to secure all Obligations and performance of each of such Borrower's duties under the Loan Documents. Except for Permitted Liens, any security interest will be a first priority security interest in the Collateral. Any Lender may place a "hold" on any deposit account pledged as Collateral. Except as disclosed on Schedule 4.1, each Borrower is not a party to, nor is bound by, any license or other agreement with respect to which such Borrower is the licensee that prohibits or otherwise restricts such Borrower from granting a security interest in such Borrower's interest in such license or agreement or any other property. Such Borrower will provide written notice to Agent within ten (10) days of entering or becoming bound by any such license or other agreement (other than over-the-counter software that is commercially available to the public). Each Borrower shall take such steps as Agent reasonably requests to obtain the consent of, authorization by, or waiver by, any person whose consent or waiver is necessary for such licenses or contract rights to be deemed "Collateral" and for Agent, for the benefit of Lenders, to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such license or agreement (such consent or authorization may include a licensor's agreement to a contingent assignment of the license to Agent, for the benefit of Lenders if Agent determines such agreement necessary in its good faith judgment), whether now existing or entered into in the future. If this Agreement is terminated, Agent's lien and security interest in the Collateral will continue until Borrowers fully satisfy their Obligations.

4.2 Authorization to File. Each Borrower authorizes Agent to file financing statements without notice to such Borrower, with all appropriate jurisdictions, as Agent deems appropriate, in order to perfect or protect Agent's interest in the Collateral.

5 REPRESENTATIONS AND WARRANTIES. Each Borrower represents and warrants as follows:

5.1 Due Organization and Authorization. Each Borrower and each Subsidiary is duly existing and in good standing in its state of formation and qualified and licensed to do business in, and in good standing in, any state in which the conduct of its business or its ownership of property requires that it be qualified except where failure to be so qualified could not be reasonably expected to cause a Material Adverse Change.

The execution, delivery and performance of the Loan Documents have been duly authorized, and do not conflict with any Borrower's formation documents, nor constitute an event of default under any material agreement by which such Borrower is bound. Each Borrower is not in default under any agreement to which or by which it is bound in which the default could cause a Material Adverse Change.

5.2 Collateral. Each Borrower has good title to the Collateral, free of Liens except Permitted Liens, or Borrower has Rights to each asset that is Collateral. Borrowers have no other deposit account, other than the deposit accounts with SVB or otherwise described on the Schedule. The Accounts are bona fide, existing obligations, and the service or property has been performed or delivered to the account debtor or its agent for immediate shipment to and acceptance by the account debtor. The Collateral is not in the possession of any third party bailee (such as at a warehouse). In the event that any Borrower, after the date hereof, intends to store or otherwise deliver the Collateral to such a bailee, then such Borrower will receive the prior written consent of Agent and such bailee must acknowledge in writing that the bailee is holding such Collateral for the benefit of Agent. No Borrower has notice of any actual or imminent Insolvency Proceeding of any account debtor whose accounts are an Eligible Account in any Borrowing Base Certificate. All Inventory is in all material respects of good and marketable quality, free from material defects. Borrower is the sole owner of the Intellectual Property, except for non-exclusive licenses granted to its customers in the ordinary course of business. Each Patent is valid and enforceable and no part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim could not reasonably be expected to cause a Material Adverse Change.

5.3 Litigation. Except as shown in the Schedule, there are no actions or proceedings pending or, to the knowledge of Borrower's Responsible Officers, threatened by or against any Borrower or any Subsidiary in which a likely adverse decision could reasonably be expected to cause a Material Adverse Change.

5.4 No Material Adverse Change in Financial Statements. All consolidated financial statements for Borrower delivered to Agent fairly present in all material respects Borrowers' consolidated financial condition and Borrowers' consolidated results of operations. There has not been any material deterioration in Borrowers' consolidated financial condition since the date of the most recent financial statements submitted to Agent.

5.5 Solvency. As determined on a consolidated basis, the fair salable value of Borrowers' assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; Borrowers are not left with unreasonably small capital after the transactions in this Agreement; and Borrowers are able to pay their debts (including trade debts) as they mature.

5.6 Regulatory Compliance. No Borrower is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Each Borrower has complied with the Federal Fair Labor Standards Act. No Borrower has violated any laws, ordinances or rules, the violation of which could cause a Material Adverse Change. None of any Borrower's or any Subsidiary's properties or assets has been used by such Borrower or such Subsidiary or, to the best of Borrowers' knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Each Borrower and each Subsidiary has timely filed all required tax returns and paid, or made adequate provision to pay, all material taxes. Each Borrower and each Subsidiary has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all government authorities that are necessary to continue its business as currently conducted.

5.7 Subsidiaries. Except for the Subsidiaries disclosed in Borrower's most recent Form 10-KSB filed with the Securities and Exchange Commission ("SEC"), No Borrower owns any stock, partnership interest or other equity securities except for Permitted Investments.

5.8 Full Disclosure. No written representation, warranty or other statement of a Borrower in any certificate or written statement given to any Lender or to Agent contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading.

5.9 Use of Proceeds. Borrowers shall use the proceeds of the Credit Extensions solely to fund acquisitions, working capital and general business requirements and not for personal, family, household, or agricultural purposes.

6 AFFIRMATIVE COVENANTS. Borrowers will do all of the following for so long as any Lender has an obligation to lend, or there are outstanding Obligations:

6.1 Government Compliance. Borrowers will maintain their legal existence and good standing in their respective jurisdiction of formation and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to cause a Material Adverse Change. Each Borrower will comply, with all laws, ordinances and regulations to which it is subject, noncompliance with which could reasonably be expected to cause a Material Adverse Change. Notwithstanding the foregoing, Borrowers and any Subsidiary may merge pursuant to Section 7.3.

6.2 Financial Statements, Reports, Certificates.

(a) Borrowers will deliver to Agent: (i) as soon as available, but no later than 30 days after the last day of each month, a company prepared consolidated balance sheet and income statement covering

Borrowers' consolidated operations during the period, in a form acceptable to Agent and certified by a Responsible Officer; (ii) as soon as available, but no later than 120 days after the end of Borrowers' fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent; (iii) within 15 days of filing, copies of all statements, reports and notices made available to Borrowers' security holders or to any holders of Subordinated Debt, excluding any reports filed with the SEC; (iv) a prompt report of any legal actions pending or threatened against any Borrower or any Subsidiary that could result in damages or costs to a Borrower or any Subsidiary of \$100,000 or more; (v) prompt notice of any material change in the composition of the Intellectual Property, including any subsequent ownership right of such Borrower in or to any Copyright, Patent or Trademark not shown in any intellectual property security agreement between Borrower and Agent, for the benefit of Lenders, or knowledge of an event that materially adversely affects the value of the Intellectual Property; and (vi) a prompt report of any complaints filed with the Texas Workforce Commission ("TWC") against Borrower in the aggregate of \$100,000 or more; and (vii) budgets, sales projections, operating plans or other financial information Agent or any Lender reasonably request.

(b) Within 30 days after the last day of each month, Borrowers will deliver to Agent a Borrowing Base Certificate signed by a Responsible Officer in the form of Exhibit D, with aged listings of accounts receivable and accounts payable.

(c) Within 30 days after the last day of each month, Borrowers will deliver to Agent with the monthly financial statements a Compliance Certificate signed by a Responsible Officer in the form of Exhibit D.

(d) Allow Agent to audit Borrower's Collateral at Borrowers' expense. Such audits will be conducted no more often than once every 12 months unless an Event of Default has occurred and is continuing.

6.3 Inventory; Returns. Borrowers will keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between each Borrower and its account debtors will follow such Borrower's customary practices as they exist at the Effective Date. Borrowers must promptly notify Agent of all returns, recoveries, disputes and claims, net of credits from suppliers, that involve more than \$100,000.

6.4 Taxes. Borrowers will make, and cause each Subsidiary to make, timely payment of all material federal, state, and local taxes or assessments, unless such taxes or assessments are being disputed by Borrower in good faith and Borrower maintains adequate reserves in accordance with GAAP, and will deliver to Agent, on demand, appropriate certificates attesting to the payment.

6.5 Insurance. Each Borrower will keep its business and the Collateral insured for risks and in amounts, as Agent requests. Insurance policies will be in a form, with companies, and in amounts that are reasonably satisfactory to Agent. All property policies will have a lender's loss payable endorsement showing Agent, for the benefit of Lenders, as an additional loss payee and all liability policies will show the each Agent, for the benefit of Lenders, as an additional insured and all policies will provide that the insurer must give Agent at least 20 days notice before canceling its policy. At Agent's request, Borrowers will deliver certified copies of policies and evidence of all premium payments. So long as no Event of Default has occurred and is continuing, Borrowers shall have the option of applying the proceeds of any casualty policy to the replacement or repair of destroyed or damaged property; provided that, after the occurrence and during the continuance of an Event of Default, all proceeds payable under any such casualty policy shall, at the option of Agent, be payable to Agent, for the benefit of Lenders, on account of the Obligations.

6.6 Primary Accounts. Borrowers will maintain their primary depository and operating accounts with SVB, which shall constitute not less than 85% of Borrower's total cash, cash equivalents and investment accounts. At SVB's request, Borrowers will deliver account control agreements on SVB's standard form from each financial institution at which any Borrower maintains an account.

6.7 Financial Covenants. Borrowers will maintain:

(a) **Debt Service Coverage.** As of the last day of each month and at any time Borrowers have any outstanding obligation under the Committed Term Loan Line, a ratio of earnings after tax plus interest, depreciation and amortization for the specified period on an annualized basis to current maturities of long term debt and capitalized leases, plus interest expense annualized of at least 1.50 to 1.00. The debt service coverage ratio shall be computed on a trailing three month basis. The Debt Service Coverage ratio shall exclude any maturities on the Revolving Line.

(b) **Liquidity Coverage.** As of the last day of each month, ratio of (i) unrestricted cash (and equivalents) on deposit with SVB, plus the aggregate amount of all Eligible Accounts, and minus the aggregate principal amount of all outstanding Advances, divided by (ii) the aggregate amount of all outstanding Term Loan Advances hereunder plus the aggregate amount of all outstanding Term Loan Advances under the Existing Term Loan of not less than 0.75 to 1.00.

(c) **Debt to EBITDA Ratio.** As of the last day of each quarter and as tested on a trailing 12 month basis, Borrowers will maintain a ratio of the aggregate amount of all Obligations to Borrowers' consolidated earnings before interest expense, income taxes, depreciation, amortization of intangible assets and other non-cash charges, including, but not limited to, stock option and restricted stock compensation expenses ("EBITDA") made to Borrowers' income of no greater than 2.50 to 1.00. For purposes of this Section 6.7(c), EBITDA shall include historical results for the Person acquired in a Permitted Acquisition plus applicable Pro Forma Adjustments.

6.8 Registration of Intellectual Property Rights. Each Borrower will register with the United States Patent and Trademark Office or the United States Copyright Office, to the extent that its board of directors deems appropriate for the development of Borrower's business, its Intellectual Property and additional Intellectual Property rights developed or acquired including revisions or additions with any product before the sale or licensing of the product to any third party.

Borrowers will (a) protect, defend and maintain the validity and enforceability of the Intellectual Property and promptly advise Agent in writing of material infringements and (b) not allow any Intellectual Property material to Borrowers' business to be abandoned, forfeited or dedicated to the public without Agent's written consent.

6.9 Further Assurances. Borrowers will execute any further instruments and take further action as Agent reasonably requests to perfect or continue Agent's security interest in the Collateral or to effect the purposes of this Agreement.

6.10 Intentionally Omitted.

6.11 Permitted Acquisitions. Promptly following any Permitted Acquisition, but in no event later than thirty (30) days following such Permitted Acquisition, Borrowers shall deliver to Agent:

(a) the original stock certificates or ownership certificates for all of the capital stock purchased by Borrower or for any entity formed by Borrower in connection with an asset purchase in such Permitted Acquisition, and an executed, but blank and undated, stock power certificate in the form attached hereto as Exhibit G for each certificate of capital stock; and

(b) a joinder agreement in the form attached hereto as Exhibit H, whereby the newly acquired Person shall agree to become a Borrower under this Agreement and the Loan Documents, and shall grant to each Lender a continuing security interest in the Collateral.

6.12 Permitted Acquisitions Financial Covenant. As soon as available, but no later than thirty (30) days after the last day of the month during which the Acquisition Covenant Date occurs, Borrowers shall deliver to Agent, with respect to each Permitted Acquisition in connection with which any Lender has made a Credit Extension hereunder, evidence satisfactory to Agent that the Person acquired in such Permitted Acquisition shall have a minimum Net Income as of the Acquisition Covenant Date of no less than one dollar (\$1.00),

after giving effect to Pro Forma Adjustments. In the event that Borrower fails to deliver the evidence required in this Section 6.12 or the Person so acquired fails to satisfy the Net Income requirements of this Section 6.12 within the time allotted herein, such failure shall not constitute an Event of Default hereunder, but Borrower shall repay to Agent, for the benefit of Lenders, immediately, but no later than three (3) days after the last day of the month during which the Acquisition Covenant Date occurs, all Credit Extensions made hereunder in connection with such Permitted Acquisition. Notwithstanding anything contained herein to the contrary, this Section 6.12 shall not apply to any Permitted Acquisition for which no Credit Extensions were made by Lenders.

7 NEGATIVE COVENANTS.

Borrowers will not do any of the following without the Lenders' prior written consent, which will not be unreasonably withheld, for so long as any Lender has an obligation to lend or there are any outstanding Obligations:

7.1 Dispositions. Convey, sell, lease, transfer or otherwise dispose of (collectively "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of non-exclusive licenses and similar arrangements for the use of the property of a Borrower or its Subsidiaries in the ordinary course of business; or (c) of worn-out or obsolete Equipment.

7.2 Changes in Business, Ownership, Management or Business Locations. Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrowers or reasonably related thereto or have a material change in its ownership of greater than 25% (other than by the sale of a Borrower's equity securities in a public offering or private placement, including in connection with an acquisition) or in the Chief Executive Officer or President of Perficient, Inc. No Borrower will, without at least 30 days prior written notice, relocate its chief executive office. Borrower will promptly notify Agent of any new offices or business locations in which such Borrower maintains or stores over \$5,000 in any Borrower's assets or property.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person, except where no Event of Default has occurred and is continuing or would result from such action during the term of this Agreement. Any Subsidiary, including, without limitation any Subsidiary that is a Borrower, may merge or consolidate into another Subsidiary or into a Borrower.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance. Create, incur, or allow any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein, subject to Permitted Liens.

7.6 Investments; Distributions. Directly or indirectly acquire or own any Person, or make any Investment in any Person, other than Permitted Investments and Permitted Acquisitions, or permit any of its Subsidiaries to do so. Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock, except repurchases of capital stock issued pursuant to any stock incentive plans at the original price issued to the recipient under any such plan.

7.7 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower except for transactions that are in the ordinary course of such Borrower's business, upon fair and reasonable terms that are no less favorable to such Borrower than would be obtained in an arm's length transaction with a nonaffiliated Person.

7.8 Subordinated Debt. Make or permit any payment on any Subordinated Debt, except under the terms of the Subordinated Debt, or amend any provision in any document relating to the Subordinated Debt, without Agent's prior written consent.

7.9 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 important activities extending credit to purchase or carry margin stock, 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 on Borrower's business or operations or could reasonably be expected to cause a Material Adverse Change, or permit any of its Subsidiaries to do so.

8 EVENTS OF DEFAULT. Any one of the following is an Event of Default:

8.1 Payment Default. If Borrowers fail to pay any of the Obligations within 3 days after their due date. During the additional period the failure to cure the default is not an Event of Default (but no Credit Extensions will be made during the cure period);

8.2 Covenant Default. If any Borrower (a) does not perform any obligation in Sections 6.4 or 6.7, or violates any covenant in Article 7 (for which failures or violations there are no grace or cure periods) or (b) does not perform or observe any other material term, condition or covenant in this Agreement, any Loan Documents, or in any agreement between Borrowers and Agent or any Lender and as to any default under a term, condition or covenant that can be cured, has not cured the default within 15 days after it occurs, or if the default cannot be cured within 15 days or cannot be cured after Borrowers' attempts in the 15 day period, and the default may be cured within a reasonable time, then Borrowers have an additional period, (of not more than an additional 30 days) to attempt to cure the default. During the additional period the failure to cure the default is not an Event of Default (but no Credit Extensions will be made during the cure period);

8.3 Material Adverse Change. The occurrence of (a) a material impairment in the perfection or priority of Agent's security interest in the Collateral or in the aggregate value of such Collateral which is not covered by adequate insurance occurs; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrowers occurs; or (c) a material impairment in the financial ability of Borrowers to repay the Obligations when they become due (a "Material Adverse Change");

8.4 Attachment. (a) If any material portion of Borrowers' assets is attached, seized, levied on, or comes into possession of a trustee or receiver and the attachment, seizure or levy is not removed in 10 days; (b) if a Borrower is enjoined, restrained, or prevented by court order from conducting a material part of its business; (c) if a judgment or other claim becomes a Lien on a material portion of a Borrower's assets; or (d) if a notice of lien, levy, or assessment is filed against any Borrower's assets by any government agency and not paid within 10 days after such Borrower receives notice. These are not Events of Default if stayed or if a bond is posted pending contest by Borrowers (but no Credit Extensions will be made during the cure period);

8.5 Insolvency. (a) if a Borrower becomes insolvent; (b) if a Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against a Borrower and not dismissed or stayed within 30 days (but no Credit Extensions will be made before any Insolvency Proceeding is dismissed);

8.6 Other Agreements. If there is a default in any agreement between a Borrower and a third party that gives the third party the right to accelerate any Indebtedness exceeding \$100,000 or that could cause a Material Adverse Change;

8.7 Judgments. If a money judgment(s) in the aggregate of at least \$100,000 is rendered against a Borrower and is unsatisfied and unstayed for 15 days (but no Credit Extensions will be made before the judgment is stayed or satisfied); or

8.8 Misrepresentations. If a Borrower or any Person acting for a Borrower makes any material misrepresentation or material misstatement now or later in any warranty or representation in this Agreement or in any writing delivered to Agent or to Lenders or to induce Lenders to enter this Agreement or any Loan Document.

9 BANK'S RIGHTS AND REMEDIES.

9.1 Rights and Remedies. When an Event of Default occurs and continues Lenders, or Agent pursuant to the instructions of Lenders, may, without notice or demand, do any or all of the following:

(a) Declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Agent or Lenders);

(b) Stop advancing money or extending credit for Borrowers' benefit under this Agreement or under any other agreement between Borrowers and Agent or Lenders;

(c) Settle or adjust disputes and claims directly with account debtors for amounts, on terms and in any order that Lenders consider advisable;

(d) Make any payments and do any acts it considers necessary or reasonable to protect its security interest in the Collateral. Borrowers will assemble the Collateral if Agent or Lenders request and make it available as Agent or Lenders designate. Agent or any Lender may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Each Borrower grants Agent and each Lender a license to enter and occupy any of its premises, without charge, to exercise any of Agent's or Lender's rights or remedies;

(e) Apply to the Obligations any (i) balances and deposits of Borrowers it holds, or (ii) any amount held by Lenders owing to or for the credit or the account of Borrowers;

(f) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Agent, for the benefit of Lenders, is granted a non-exclusive, royalty-free license or other right to use, without charge, any Borrower's labels, Patents, Copyrights, Mask Works, rights of use of any name, trade secrets, trade names, Trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Section, any Borrower's rights under all licenses and all franchise agreements inure to Agent's benefit;

(g) Dispose of the Collateral according to the Code; and

(h) Transfer this Agreement and all of Borrowers' Obligations hereunder to SVB's Specialty Finance Division, at which time Borrowers agree, if SVB shall so require, to amend and restate the terms of this Agreement on documents provided by SVB's Specialty Finance Division.

9.2 Power of Attorney. Effective only when an Event of Default occurs and continues, each Borrower irrevocably appoints Agent, for the benefit of Lenders, as its lawful attorney to: (a) endorse such Borrower's name on any checks or other forms of payment or security; (b) sign such Borrower's name on any invoice or bill of lading for any Account or drafts against account debtors, (c) make, settle, and adjust all claims under such Borrower's insurance policies; (d) settle and adjust disputes and claims about the Accounts directly with account debtors, for amounts and on terms Agent determine reasonable; and (e) transfer the Collateral into the name of Agent, Lender or a third party as the Code permits. Agent may exercise the power of attorney to sign such Borrower's name on any documents necessary to perfect or continue the perfection of any security interest regardless of whether an Event of Default has occurred. Agent's appointment as such Borrower's attorney in fact, and all of Agent's rights and powers, coupled with an interest, are irrevocable until all

Obligations have been fully repaid and performed and each Lenders' obligation to provide Credit Extensions terminates.

9.3 Accounts Collection. When an Event of Default occurs and continues, Agent may notify any Person owing Borrowers money of Lenders' security interest in the funds and verify the amount of the Account. Borrowers must collect all payments in trust for Lenders and, if requested by Agent, immediately deliver the payments to Agent or Lenders in the form received from the account debtor, with proper endorsements for deposit.

9.4 Bank Expenses. If any Borrower fails to pay any amount or furnish any required proof of payment to third persons Agent or any Lender may make all or part of the payment or obtain insurance policies required in Section 6.5, and take any action under the policies Agent or such Lender deems prudent. Any amounts paid by Agent or such Lender are Bank Expenses and immediately due and payable, bearing interest at the then applicable rate and secured by the Collateral. No payments by Agent or such Lender are deemed an agreement to make similar payments in the future or Lenders' waiver of any Event of Default.

9.5 Agent's Liability for Collateral. If Agent complies with reasonable banking practices, it is not liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other person. Borrowers bear all risk of loss, damage or destruction of the Collateral.

9.6 Remedies Cumulative. Agent's and Lenders' rights and remedies under this Agreement, the Loan Documents, and all other agreements are cumulative. Agent, for the benefit of Lenders, and Lenders have all rights and remedies provided under the Code, by law, or in equity. Agent's or Lenders' exercise of one right or remedy is not an election, and Agent's or Lenders' waiver of any Event of Default is not a continuing waiver. Agent's or Lenders' delay is not a waiver, election, or acquiescence. No waiver is effective unless signed by Agent and each Lender and then is only effective for the specific instance and purpose for which it was given.

9.7 Demand Waiver. Each Borrower waives demand, notice of default or dishonor, notice of acceleration, notice of intent to accelerate, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guaranties held by any Lender on which such Borrower is liable.

10 NOTICES AND WAIVERS.

10.1 Notices. Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, or by telefacsimile to Borrowers or to Agent or Lenders, as the case may be, at its addresses set above.

10.2 Subrogation and Similar Rights. Notwithstanding any other provision of this Agreement or any other document related to this Agreement, until payment to Agent, for the benefit of Lenders, in full and performance of all Obligations, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrowers to the rights of Agent or Lenders under this Agreement) to seek contribution, indemnification, or any other form of reimbursement from any other Borrower, or any other entity now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by Borrowers with respect to the Obligations in connection with this Agreement or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by Borrowers with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section 10.2 shall be null and void. If any payment is made to a Borrower in contravention of this Section 10.2, such Borrower shall hold such payment in trust for Agent and Lenders and such payment shall be promptly delivered to Agent, for the benefit of Lenders, for application to the Obligations, whether matured or unmatured.

10.3 Waivers of Notice. Each Borrower waives notice of acceptance hereof; notice of the existence, creation or acquisition of any of the Obligations; notice of an Event of Default; notice of the amount of the Obligations outstanding at any time; notice of intent to accelerate; notice of acceleration; notice of any adverse change in the financial condition of any other Borrower or of any other fact that might increase such Borrower's risk; presentment for payment; demand; protest and notice thereof as to any instrument; default; and all other notices and demands to which such Borrower would otherwise be entitled. Each Borrower waives any defense arising from any defense of any other Borrower, or by reason of the cessation from any cause whatsoever of the liability of any other Borrower. Agent's or Lenders' failure at any time to require strict performance by any Borrower of any provision of this Agreement shall not waive, alter or diminish any right of Agent or Lenders thereafter to demand strict compliance and performance therewith. Nothing contained herein shall prevent Agent, for the benefit of Lenders, or Lenders from foreclosing on the lien of any deed of trust, mortgage or other security instrument, or exercising any rights available thereunder, and the exercise of any such rights shall not constitute a legal or equitable discharge of any Borrower. Each Borrower also waives any defense arising from any act or omission of Agent or Lenders that changes the scope of such Borrower's risks hereunder. Each Borrower hereby waives any right to assert against Agent or Lenders any defense (legal or equitable), setoff, counterclaim, or claims that such Borrower individually may now or hereafter have against another Borrower or any other entity liable to a Borrower with respect to the Obligations in any manner or whatsoever until the Obligations are paid in full to Lenders.

10.4 Subrogation Defenses. Each Borrower waives the benefits, if any, of any statutory or common law rule that may permit such Borrower to assert any defenses of a surety or guarantor, or that may give a borrower the right to require a senior creditor to marshal assets, and such Borrower agrees that it shall not assert any such defenses or rights.

10.5 Right to Settle, Release.

(a) The liability of Borrowers hereunder shall not be diminished by (i) any agreement, understanding or representation that any of the Obligations is or was to be guaranteed by another entity or secured by other property, or (ii) any release or unenforceability, whether partial or total, or rights, if any, which Borrowers may now or hereafter have against any other entity, including another Borrower, or property with respect to any of the Obligations.

(b) Without notice to any Borrower and without affecting the liability of any Borrower hereunder, Agent, for the benefit of Lenders, may (i) compromise, settle, renew, extend the time for payment, change the manner or terms of payment, discharge the performance of, decline to enforce, or release all or any of the Obligations with respect to a Borrower, (ii) grant other indulgences to a Borrower in respect of the Obligations, (iii) modify in any manner any documents, relating to the Obligations with respect to a Borrower, (iv) release, surrender or exchange any deposits or other property securing the Obligations, whether pledged by a Borrower or any other entity, or (v) compromise, settle, renew, or extend the time for payment, discharge the performance of, decline to enforce, or release all or any obligations of any guarantor, endorser or other entity who is now or may hereafter be liable with respect to any of the Obligations.

11 CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER.

Texas law governs the Loan Documents without regard to principles of conflicts of law as if performed entirely within the State of Texas by Texas residents. Borrowers, Agent and Lenders each submit to the exclusive jurisdiction of the State and Federal courts in Travis County, Texas.

BORROWERS, AGENT AND LENDERS EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL AND, BY ITS EXECUTION OF THIS AGREEMENT CONFIRMS THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH COUNSEL.

12 GENERAL PROVISIONS.

12.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrowers may not assign this Agreement or any rights or Obligations under it without Lenders' prior written consent which may be granted or withheld in each Lender's discretion. Each Lender has the right, without the consent of or notice to Borrowers, to sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, such Lender's obligations, rights and benefits under this Agreement, the Loan Documents or any related agreement.

12.2 Indemnification. EACH BORROWER WILL INDEMNIFY, DEFEND AND HOLD HARMLESS AGENT, LENDERS AND THEIR OFFICERS, EMPLOYEES AND AGENTS AGAINST: (A) ALL OBLIGATIONS, DEMANDS, CLAIMS, AND LIABILITIES ASSERTED BY ANY OTHER PARTY IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THE LOAN DOCUMENTS; AND (B) ALL LOSSES OR BANK EXPENSES INCURRED, OR PAID BY AGENT OR ANY LENDER FROM, FOLLOWING, OR CONSEQUENTIAL TO TRANSACTIONS BETWEEN LENDERS AND BORROWERS (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES), EXCEPT FOR LOSSES CAUSED BY AGENT'S OR ANY LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE FOREGOING INDEMNITY BINDS SUCH BORROWER TO INDEMNIFY AGENT, LENDERS AND THEIR OFFICERS, EMPLOYEES AND AGENTS FOR ITS OWN NEGLIGENCE (WHETHER SOLE, COMPARATIVE, CONTRIBUTORY OR OTHERWISE, BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) AND THAT OF ITS OFFICERS, EMPLOYEES, AGENTS AND CONTRACTORS, AS WELL AS ANY LIABILITY ARISING BY VIRTUE OF ANY SUCH PERSON'S STRICT LIABILITY.

12.3 Time of Essence. Time is of the essence for the performance of all obligations in this Agreement.

12.4 Severability of Provision. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.5 Amendments in Writing, Integration. All amendments to this Agreement must be in writing signed by both Agent, Lenders and Borrowers. This Agreement and the Loan Documents represent the entire agreement about this subject matter, and supersedes prior or contemporaneous negotiations or agreements. All prior or contemporaneous agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

12.6 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, are an original, and all taken together, constitute one Agreement.

12.7 Survival. All covenants, representations and warranties made in this Agreement continue in full force while any Obligations remain outstanding. The obligations of Borrowers in Section 12.2 to indemnify Agent and Lenders will survive until all statutes of limitations for actions that may be brought against Agent or any Lender have run.

12.8 Confidentiality. In handling any confidential information, Agent and Lenders will exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made (a) to Agent's or Lenders' subsidiaries or affiliates in connection with their business with Borrowers, (b) to prospective transferees or purchasers of any interest in the loans (provided, however, Agent and Lenders shall use commercially reasonable efforts in obtaining such prospective transferee or purchasers agreement of the terms of this provision), (c) as required by law, regulation, subpoena, or other order, (d) as required in connection with Agent's or any Lender's examination or audit and (e) as Agent or any Lender considers appropriate in exercising remedies under this Agreement. Confidential information does not include information that either: (i) is in the public domain or in Agent's or Lenders' possession when disclosed to Agent or such Lender, or becomes part of the public domain after disclosure to Agent or any Lender; or (ii) is disclosed to Agent or any Lender by a third party, if Agent or such Lender, as the case may be, does not know that the third party is prohibited from disclosing the information. Notwithstanding anything contained

herein to the contrary, the term "confidential information" shall not include, and Agent and Lenders may disclose without limitation of any kind, any information with respect to the "tax treatment" and "tax structure" (in each case within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analysis) that are provided to Agent or Lenders relating to such tax treatment or tax structure.

12.9 Attorneys' Fees, Costs and Expenses. In any action or proceeding between Borrowers and Agent or any Lender arising out of the Loan Documents, the prevailing party will be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled, whether or not a lawsuit is filed.

12.10 Qualified Commercial Loan Certification. Each Borrower hereby certifies to Agent and the Lenders that:

(a) Such Borrower has been advised by Agent to seek the advice of an attorney and accountant in connection with the loans evidenced by this Agreement; and

(b) Such Borrower has had the opportunity to seek the advice of an attorney and accountant of such Borrower's choice in connection with the loans evidenced by this Agreement.

(c) The loans contemplated herein are made solely for business purposes and are not for personal, family, household or agricultural purposes.

12.11 Syndication Agent. None of the Lenders or other persons identified herein as a "syndication agent" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than, in the case of such lenders, those applicable to all Lenders as such. Without limiting the foregoing, none of Lenders or other persons so identified as a "syndication agent" shall have or be deemed to have any fiduciary relationship with any Lenders. Each Lender acknowledges that it has not relied, and will not rely, on any of Lenders or other persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

13 DEFINITIONS. In this Agreement:

13.1 Definitions.

"**Accounts**" are all existing and later arising accounts, contract rights, and other obligations owed to a Borrower in connection with its sale or lease of goods (including licensing software and other technology) or provision of services, all credit insurance, guaranties, other security and all merchandise returned or reclaimed by such Borrower and such Borrower's Books relating to any of the foregoing.

"**Acquisition Covenant Date**" means the date ninety (90) days after any Permitted Acquisition Date.

"**Advance**" or "**Advances**" is a loan advance (or advances) under the Committed Revolving Line.

"**Affiliate**" of a Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

"**Bank Expenses**" are all audit fees and expenses and reasonable costs or expenses (including reasonable attorneys' fees and expenses) for preparing, negotiating, administering, defending and enforcing the Loan Documents (including appeals or Insolvency Proceedings).

"Basic Rate" is, as of the Funding Date, the per annum rate of interest (based on a year of 360 days) equal to the sum of (a) the U.S. Treasury note yield to maturity for a four-year term as quoted in The Wall Street Journal on the day the Loan Supplement is prepared, plus (b) three and one-quarter percent (3.25%).

"Borrower's Books" are all of a Borrower's books and records including ledgers, records regarding such Borrower's assets or liabilities, the Collateral, business operations or financial condition and all computer programs or discs or any equipment containing the information.

"Borrowing Base" is the sum of (a) 80% of Eligible Accounts, plus (b) 80% of Unbilled Eligible Accounts; provided, however, that SVB may lower the percentage of the Borrowing Base after performing an audit of, and discovering a material adverse change to, Borrowers' Collateral by giving Borrower 10 days prior written notice. Notwithstanding anything contained herein to the contrary, the amount of all Unbilled Eligible Accounts included in the Borrowing Base shall not exceed 40% of the total Borrowing Base.

"Business Day" is any day that is not a Saturday, Sunday or a day on which any Lender is closed.

"Code" is the Texas Business and Commerce Code.

"Collateral" is the property described on Exhibit A.

"Committed Revolving Line" is a Credit Extension of up to \$15,000,000.

"Committed Term Loan Line" is a Credit Extension of up to \$10,000,000.

"Contingent Obligation" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under the guarantee or other support arrangement.

"Copyrights" are all copyright rights, applications or registrations and like protections in each work or authorship or derivative work, whether published or not (whether or not it is a trade secret) now or later existing, created, acquired or held.

"Credit Extension" is each Advance, Letter of Credit, Term Loan Advance or any other extension of credit by Lenders for Borrowers' benefit.

"Current Liabilities" are the aggregate amount of Borrowers' Total Liabilities which mature within one (1) year.

"Deferred Maintenance Revenue" is all amounts received in advance of performance under maintenance contracts and not yet recognized as revenue.

"Effective Date" is the date that the last Lender executes this Agreement, as evidenced by the date below its signature block on the signature page of this Agreement.

"Eligible Accounts" are Accounts in the ordinary course of a Borrower's business that meet all such Borrower's representations and warranties in Section 5.2; but SVB may change eligibility standards by giving

Borrowers 30 days prior written notice. Unless SVB agrees otherwise in writing, Eligible Accounts will not include:

- (a) Accounts that the account debtor has not paid within 90 days of invoice date;
- (b) Accounts for an account debtor, 50% or more of whose Accounts have not been paid within 90 days of invoice date;
- (c) Credit balances;

(d) Accounts for an account debtor (other than IBM) whose total obligations to Borrower and Affiliates exceed 25% of all Accounts and Accounts for IBM that exceed 40% of all Accounts, but only to the extent of any such excess, unless Agent approves in writing;

(e) Accounts for which the account debtor does not have its principal place of business in the United States except for Eligible Foreign Accounts;

(f) Accounts for which the account debtor is a federal, state or local government entity or any department, agency, or instrumentality except for Accounts of the United States if the payee has assigned its payment rights to SVB and the assignment has been acknowledged under the Assignment of Claims Act of 1940 (31 U.S.C. 3727);

(g) Accounts for which Borrowers owe the account debtor, but only up to the amount owed (sometimes called “contra” accounts, accounts payable, customer deposits or credit accounts);

(h) Accounts for demonstration or promotional equipment, or in which goods are consigned, sales guaranteed, sale or return, sale on approval, bill and hold, or other terms if account debtor’s payment may be conditional;

(i) Accounts for which the account debtor is a Borrower’s Affiliate, officer, employee, or agent;

(j) Accounts in which the account debtor disputes liability or makes any claim and SVB believes there may be a basis for dispute (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding, or becomes insolvent, or goes out of business;

(k) Accounts for which the account debtor paid using a credit card; and

(l) Accounts for which SVB reasonably determines collection to be doubtful.

“**Eligible Foreign Accounts**” are Accounts for which the account debtor does not have its principal place of business in the United States but are: (a) covered by credit insurance satisfactory to SVB, less any deductible; or (b) supported by letter(s) of credit acceptable to SVB; (c) that SVB approves in writing, or (d) Accounts for which the principal place of business of the account debtor is Canada and the aggregate amount of such Accounts does not exceed \$400,000.

“**ERISA**” is the Employment Retirement Income Security Act of 1974, and its regulations.

“**Funding Date**” is any date on which an Term Loan Advance is made to or on account of Borrower.

“**GAAP**” is generally accepted accounting principles.

“**Indebtedness**” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations and (d) Contingent Obligations.

"Insolvency Proceeding" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"Intellectual Property" is:

(a) Copyrights, Trademarks, Patents, and Mask Works including amendments, renewals, extensions, and all licenses or other rights to use and all license fees and royalties from the use;

(b) Any trade secrets and any Intellectual Property rights in computer software and computer software products now or later existing, created, acquired or held;

(c) All design rights which may be available to a Borrower now or later created, acquired or held;

(d) Any claims for damages (past, present or future) for infringement of any of the rights above, with the right, but not the obligation, to sue and collect damages for use or infringement of the intellectual property rights above; and

(e) All proceeds and products of the foregoing, including all insurance, indemnity or warranty payments.

"Inventory" is present and future inventory in which a Borrower has any interest, including merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or later owned by or in the custody or possession, actual or constructive, of Borrower, including inventory temporarily out of its custody or possession or in transit and including returns on any accounts or other proceeds (including insurance proceeds) from the sale or disposition of any of the foregoing and any documents of title.

"Investment" is any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

"Letter of Credit" and **"Letters of Credit"** are defined in Section 2.1.2.

"Lien" is a mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

"Loan Documents" are, collectively, this Agreement, any note, or notes executed by Borrowers, and any other present or future agreement between Borrowers and/or for the benefit of Agent or Lenders in connection with this Agreement, all as amended, extended or restated.

"Material Adverse Change" is defined in Section 8.3.

"Mask Works" are all mask works or similar rights available for the protection of semiconductor chips, now owned or later acquired.

"Maximum Lawful Rate" is the maximum rate of interest and the term **"Maximum Lawful Amount"** means the maximum amount of interest that is permissible under applicable state or federal laws for the type of loan evidenced by the Loan Documents. If the Maximum Lawful Rate is increased by statute or other governmental action after the Effective Date, then the new Maximum Lawful Rate will be applicable to the payments from the effective date of the rate change, unless otherwise prohibited by law.

"Net Income" means for any period, such Person's after-tax net income for such period on a consolidated basis, as determined in accordance with GAAP.

"Obligations" are all debts, principal, interest, Bank Expenses and other amounts Borrowers owe Lenders now or later, including Letters of Credit and including interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrowers assigned to any Lender.

"Patents" are patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"Payment/Advance Form" is defined in Section 2.1.1.

"Permitted Acquisition" means an acquisition of all or substantially all of the capital stock or property of another Person, as permitted by Section 7.3 of this Agreement.

"Permitted Acquisition Date" means the date of any Permitted Acquisition for which a Term Loan Advance is made

"Permitted Indebtedness" is:

- (a) Borrowers' indebtedness to Lenders under this Agreement or the Loan Documents;
- (b) Indebtedness existing on the Effective Date and shown on the Schedule;
- (c) Subordinated Debt, including in connection with an acquisition;
- (d) Indebtedness to trade creditors incurred in the ordinary course of business; and
- (e) Indebtedness secured by Permitted Liens.

"Permitted Investments" are:

- (a) Investments shown on the Schedule and existing on the Effective Date; and
- (b) marketable direct obligations issued or unconditionally guaranteed by the United States or its agency or any State maturing within 1 year from its acquisition, (ii) commercial paper maturing no more than 1 year after its creation and having the highest rating from either Standard & Poor's Corporation or Moody's Investors Service, Inc., and (iii) SVB's certificates of deposit issued maturing no more than 1 year after issue.

"Permitted Liens" are:

- (a) Liens existing on the Effective Date and shown on the Schedule or arising under this Agreement or other Loan Documents;
- (b) Liens for taxes, fees, assessments or other government charges or levies, either not delinquent or being contested in good faith and for which a Borrower maintains adequate reserves on its Books, if they have no priority over any of Lenders' security interests;
- (c) Purchase money Liens (i) on Equipment acquired or held by a Borrower or its Subsidiaries incurred for financing the acquisition of the Equipment, or (ii) existing on equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the equipment;
- (d) Leases or subleases and licenses or sublicenses granted in the ordinary course of a Borrower's business, if the leases, subleases, licenses and sublicenses permit granting Lenders a security interest;

(e) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Pro Forma Adjustments" means upward adjustments to Net Income made to reflect (a) an amount equal to the actual cost savings, retroactively applied to the beginning of the fiscal year of Borrower occurring prior to the Permitted Acquisition Date, of any operating expense that has been permanently eliminated prior to the Acquisition Covenant Date, and (b) other demonstrable adjustments, each as submitted in writing to, and approved by, Agent, in Agent's reasonable discretion.

"Prime Rate" is SVB's most recently announced "prime rate," even if it is not SVB's lowest rate.

"Quick Assets" is, on any date, the Borrowers' consolidated, unrestricted cash, cash equivalents, net billed accounts receivable and investments with maturities of less than 12 months determined according to GAAP.

"Repayment Period" as to each Term Loan Advance, the period from the Funding Date of such Term Loan Advance to the Term Loan Maturity Date.

"Responsible Officer" means any of the Chief Executive Officer, the President, the Chief Financial Officer and the Controller of Borrower.

"Revolving Maturity Date" is June 3, 2008, which such date is the third anniversary of the Effective Date.

"Schedule" is any attached schedule of exceptions.

"Subordinated Debt" is debt incurred by a Borrower subordinated to such Borrower's indebtedness owed to Lenders and which is reflected in a written agreement in a manner and form acceptable to Lenders and approved by Lenders in writing.

"Subsidiary" is for any Person, a joint venture, or any other business entity of which more than 50% of the voting stock or other equity interests is owned or controlled, directly or indirectly, by the Person or one or more Affiliates of the Person.

"Tangible Net Worth" is, on any date, the consolidated total assets of Borrowers and their Subsidiaries minus, (a) any amounts attributable to (i) goodwill, (ii) intangible items such as unamortized debt discount and expense, Patents, trade and service marks and names, Copyrights and research and development expenses except prepaid expenses, and (iii) reserves not already deducted from assets, and (b) Total Liabilities.

"Term Loan Advance" has the meaning set forth in Section 2.1.3(a).

"Term Loan Commitment Termination Date" is July 3, 2006.

"Term Loan Fee" has the meaning set forth Section 2.4(d).

"Term Loan Maturity Date" is, with respect to each Term Loan Advance, July 3, 2009, or, if earlier, the date of acceleration of such Term Loan Advance by Agent following an Event of Default.

“Total Acquisition Cost” means the total cost of any Permitted Acquisition, including all direct and indirect costs associated with such Permitted Acquisition.

“Total Liabilities” is on any day, obligations that should, under GAAP, be classified as liabilities on Borrowers' consolidated balance sheet, including all Indebtedness and Subordinated Debt.

“Trademarks” are trademark and service mark rights, registered or not, applications to register and registrations and like protections, and the entire goodwill of the business of Assignor connected with the trademarks.

“Unbilled Eligible Accounts” are Accounts in the ordinary course of a Borrower's business that meet all of such Borrower's representations and warranties in Section 5.2 with regard to Accounts but that have not yet been invoiced and which such invoice will be delivered to such account debtor within thirty (30) days.

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

BORROWER:

PERFICIENT, INC.
MARKETS

By: _____
Name: _____
Its: _____

PERFICIENT GENISYS, INC.

By: _____
Name: _____
Its: _____

PERFICIENT CANADA CORP.

By: _____
Name: _____
Its: _____

PERFICIENT MERITAGE, INC.

By: _____
Name: _____
Its: _____

PERFICIENT ZETTAWORKS, INC.

By: _____
Name: _____
Its: _____

LENDERS

KEYBANK NATIONAL ASSOCIATION MARKETS

By: _____
Name: _____
Its: _____

Date: _____

SILICON VALLEY BANK

By: _____
Name: _____
Its: _____

Date: _____

AGENT

SILICON VALLEY BANK

By: _____
Name: _____
Its: _____

FOR IMMEDIATE RELEASE**Exhibit 99.1**

Contact: Bill Davis
Perficient, Inc.
(314) 995-8822
bill.davis@perficient.com

Perficient Acquires iPath Solutions

~Deal Expected to be Accretive to Earnings Per Share Immediately~

AUSTIN, Texas, June 13, 2005 —Perficient, Inc. (NASDAQ: PRFT), a leading information technology consulting firm in the central United States, today announced it has acquired iPath Solutions, Ltd., a Houston-based information technology consulting firm with approximately \$8 million in annual revenues. The transaction is expected to increase Perficient's annualized revenues to over \$85 million, with more than 510 consulting, technology, sales and support professionals in 11 offices in the central US and client relationships with more than 400 Global 2000 companies. The acquisition is expected to be accretive to earnings per share immediately.

"This transaction increases the breadth and depth of solutions Perficient brings to our clients and further expands our footprint in Houston, the fourth largest city in the nation," said Jack McDonald, Perficient chairman and chief executive. "With this acquisition, and our continued strong organic growth, we remain on track to achieve our \$100 million revenue goal this year. We are also well positioned to pursue, subject to market conditions and completion of additional acquisitions, our stretch goal of a \$200 million revenue run rate by the end of 2006."

The acquisition of iPath Solutions:

- Immediately increases Perficient's ability to deliver strategic technology assessment, document and content management and enterprise portal solutions to current and future clients;
- Adds top-tier enterprise clients including JPMorganChase, Tyson Foods, Sysco Foods, Marathon Oil, BHP, BMC, Halliburton, Dynegy, National Instruments and many others;
- Adds proven management leadership and more than 45 consulting, technology, sales and support professionals;
- Introduces a premiere partnership with content management industry leader EMC|Documentum, by whom iPath was named the 2004 Regional Systems Integrator of the Year;
- Expands on Perficient's south-central US platform, in one of the largest technology markets in Texas; and
- Presents the potential to utilize Perficient's branch network and client relationships to provide additional opportunities for iPath's solutions.

"We're excited to join Perficient, a firm that's already the clear IT consulting leader in the central United States," said Keith Rassin, iPath's chief operating officer. "There are selling synergies to be realized by combining our skill sets and client relationships. Joining the Perficient team provides tremendous opportunities to grow the business going forward."

Rassin will assume a leadership role at Perficient, serving as general manager of Perficient's enterprise content management practice. He will report directly to Tom Pash, Perficient's general manager of the Houston region.

The consideration paid in the transaction is approximately \$7.9 million, and includes \$3.85 million in cash and approximately \$4.0 million worth of Perficient common stock (based on the average closing price of Perficient's common stock on the NASDAQ National Market for the thirty trading days immediately preceding the acquisition close per the terms of the acquisition agreement), subject to the satisfaction of certain conditions in the first three years following the closing of the transaction (GAAP accounting will

require using the closing price of the Company's common stock at or near the close date in reporting the value of the stock consideration paid in the acquisition). Perficient's acquisition of iPath is being structured as an asset purchase, which is expected to give rise to substantial future cash tax benefits over the next 15 years, estimated at a present value of \$1.0 million. DecisionPoint International served as an advisor to Perficient on the transaction.

The iPath acquisition is the fourth in the last two years for Perficient. In 2004, the company acquired Chicago-based Genisys Consulting, Cincinnati-based Meritage Technologies and Houston-based ZettaWorks LLC.

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About Perficient

Perficient is a leading information technology consulting firm serving Global 2000 and midsize companies in the central United States. Perficient helps clients gain competitive advantage by using Internet-based technologies to make their businesses more responsive to market opportunities and threats, strengthen relationships with customers, suppliers and partners, improve productivity and reduce information technology costs. Our solutions enable our clients to operate a real-time enterprise that dynamically adapts business processes and the systems that support them to the changing demands of an increasingly global, Internet-driven and competitive marketplace. Perficient is an award-winning "Premier Level" IBM business partner, a TeamTIBCO partner and a Microsoft Gold Certified Partner. For more information about Perficient, which has more than 510 professionals in the central United States and Canada, please visit www.perficient.com. IBM is a trademark of International Business Machines Corporation in the United States, other countries, or both.

About iPath Solutions

A Houston-based, privately held information technology consulting firm founded in 1998, iPath provides strategic technology assessment, document and content management and enterprise portal solutions to Global 2000 clients throughout the United States. iPath helps clients improve business process performance through solutions that include single source information architecture, real-time processing, business activity monitoring and smart workflow. iPath is a business partner of Documentum, IBM, BEA, Microsoft, Autonomy and Vignette. For more information about iPath, please visit www.ipathsolutions.com.

Safe Harbor Statement

"Safe Harbor" statement under the Private Securities Litigation Reform Act of 1995: This news release contains forward-looking statements that are subject to risk and uncertainties. These forward-looking statements are based on management's current expectations and are subject to certain risks and uncertainties that could cause actual results to differ materially from management's current expectations and the forward-looking statements made in this press release. These risks and uncertainties include, but not limited to, the impact of competitive services, demand for services like those provided by the company and market acceptance risks, fluctuations in operating results, cyclical market pressures on the technology industry, the ability to manage strains associated with the company's growth, credit risks associated with the company's accounts receivable, the company's ability to continue to attract and retain high quality employees, accurately set fees for and timely complete its current and future client projects, the company's ability to identify, compete for and complete strategic acquisition and partnership opportunities, and other risks detailed from time to time in the company's filings with Securities and Exchange Commission, including the most recent Form 10-KSB and Form 10-Q. The foregoing information concerning Perficient's business outlook represents our outlook as of the date of this news release, and Perficient undertakes no obligation to update or revise any forward-looking statements whether as a result of new developments or otherwise.