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

Form 10-K

(Mark One)

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

For the fiscal year ended December 31, 2008

or

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

For the transition period from to

Commission File number 0-27275

Akamai Technologies, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**04-3432319**
(State or Other Jurisdiction of Incorporation or Organization)	*(I.R.S. Employer Identification No.)*
8 Cambridge Center, Cambridge, MA	**02142**
(Address of Principal Executive Offices)	*(Zip Code)*

Registrant's telephone number, including area code: (617) 444-3000

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

Title of Each Class	Name of Exchange on Which Registered
Common Stock, $.01 par value	NASDAQ Global Select Market

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

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Yes ☐ No ☑

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company (as defined in Exchange Act Rule 12b-2).

Large accelerated filer ☑ Accelerated Filer ☐

Non-accelerated filer ☐ (Do not check if smaller reporting company) Smaller reporting company ☐

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

The aggregate market value of the voting and non-voting common stock held by non-affiliates of the registrant was approximately $5,674.7 million based on the last reported sale price of the common stock on the Nasdaq Stock Market on June 30, 2008.

The number of shares outstanding of the registrant's Common Stock, par value $0.01 per share, as of February 25, 2009: 170,493,271 shares.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement to be filed with the Securities and Exchange Commission relative to the registrant's 2009 Annual Meeting of Stockholders to be held on May 19, 2009 are incorporated by reference into Items 10, 11, 12, 13 and 14 of Part III of this annual report on Form 10-K.

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AKAMAI TECHNOLOGIES, INC.

ANNUAL REPORT ON FORM 10-K

For the Fiscal Year Ended December 31, 2008

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PART I

Forward-Looking Statements

This annual report on Form 10-K contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to risks and uncertainties and are based on the beliefs and assumptions of our management based on information currently available to them. Use of words such as "believes," "continues," "expects," "anticipates," "intends," "plans," "estimates," "forecasts," "should," "likely" or similar expressions indicates a forward-looking statement. Forward-looking statements are not guarantees of future performance and involve risks, uncertainties and assumptions. Important factors that could cause actual results to differ materially from the forward-looking statements include, but are not limited to, those set forth under the heading "Risk Factors." We disclaim any obligation to update any forward-looking statements as a result of new information, future events or otherwise.

Item 1. *Business*

Overview

Akamai provides services for accelerating and improving the delivery of content and applications over the Internet ranging from live and on-demand streaming video capabilities to conventional content on websites, to tools that help people transact business and reach out to new and existing customers. Hundreds of customers worldwide use our services to help sell, inform, entertain, market, advertise, deliver software, and conduct their business online.

Our solutions are designed to help companies, government agencies and other enterprises improve communications with people they are trying to reach, enhance their revenue streams and reduce costs by maximizing the performance of their online businesses. We believe that our solutions offer the superior reliability, sophistication and insight that businesses with an Internet presence demand. At the same time, by relying on our infrastructure, customers can reduce expenses associated with internal infrastructure build-outs. In short, we strive to help our customers efficiently offer better websites that improve visitor experiences and increase the effectiveness of their Internet-focused operations.

We were incorporated in Delaware in 1998 and have our corporate headquarters at 8 Cambridge Center, Cambridge, Massachusetts. We have been offering content delivery services and streaming media services since 1999. In subsequent years, we introduced private content delivery networks; Internet-based delivery of applications such as store/dealer locators and user registration; large-scale software distribution capabilities; content targeting technology and enhanced security features.

In 2008, we launched our Advertising Decision Solutions, or ADS, which provides information that is intended to help online advertisers better target potential customers. Our first service — Insight for Publishers — provides cross-site audience intelligence, enabling real-time ad targeting across different websites. The introduction of ADS was complemented by our acquisition of aCerno, Inc., which we call acerno, in November 2008. We view this acquisition as giving us the capacity to offer a unique online co-operative of shopping and purchase data that is structured to enable more targeted online advertising.

Our Internet website address is www.akamai.com. We make available, free of charge, on or through our Internet website our annual reports on Form 10-K, quarterly reports on Form 10-Q, periodic reports on Form 8-K and amendments thereto that we have filed with the Securities and Exchange Commission, or the Commission, as soon as reasonably practicable after we electronically file them with the Commission. We are not, however, including the information contained on our website, or information that may be accessed through links on our website, as part of, or incorporating it by reference into, this annual report on Form 10-K.

Meeting the Challenges of the Internet

The Internet plays a crucial role in the way companies, government agencies and other entities conduct business and reach the public. The Internet, however, is a complex system of networks that was not originally created to accommodate the volume or sophistication of today's communication demands. As a result, information is frequently delayed or lost on its way through the Internet due to many factors, including:

- inefficient or nonfunctioning peering points, or points of connection, between Internet service providers, or ISPs;
- traffic congestion at data centers;
- Internet traffic exceeding the capacity of routing equipment;
- increasingly dynamic and personalized websites;
- growth in the transmission of rich content due to the increasingly widespread use of broadband connectivity to the Internet for videos, music and games; and
- Internet bandwidth constraints between an end user and the end user's network provider, such as an ISP, cable provider or digital subscriber line provider.

The challenges inherent in delivering content over the Internet are compounded by the internal technology challenges facing enterprises. Driven by competition, globalization and cost-containment strategies, companies need an agile Internet-facing infrastructure that cost-effectively meets real-time strategic and business objectives. For example, many companies use the Internet as a key marketing tool for product launches, distribution of promotional videos or contests. These one-time events may draw millions of visitors to a company's website over a brief period of time so the enterprise must have in place the capacity to deal with a flood of visitors seeking to view content or use applications. At the same time, budget limitations may preclude a company from putting in place extensive internal infrastructure, knowing that it will not always need such capacity. In addition, as reliance on the Internet has become more pervasive, website operators have been experiencing higher levels of traffic to their sites on a constant basis, which place extensive demands on infrastructure.

To address these challenges, we have developed solutions designed to help companies, government agencies and other enterprises increase revenues and reduce costs by improving the performance, reliability and security of their Internet-facing operations. We particularly seek to address the following market needs:

Superior Performance. Commercial enterprises invest in websites to attract customers, transact business and provide information about themselves. If, however, a company's Internet site fails to provide visitors with a fast and dependable experience, they will likely abandon that site, potentially leading to lost revenues and damage to the enterprise's reputation. Through a combination of people, processes and technology, we help our customers improve the scalability and predictability of their websites without the need for them to spend a lot of money to develop their own Internet-related infrastructure. Instead, we have a presence in more than 900 networks around the world so that content can be delivered from Akamai servers located closer to website visitors — from what we call the "edge" of the Internet. We are thus able to reduce the impact of traffic congestion, bandwidth constraints and capacity limitations for our customers. At the same time, our customers have access to control features to enable them to provide content to end users that is current and customized for visitors accessing the site from different parts of the world.

Scalability. We believe that scalability is one of the keys to reliability. Many Akamai customers experience seasonal or erratic demand for access to their websites and almost all websites experience demand peaks at different points during the day. With the proliferation of Internet video, enterprises of all types must be able to cope with rapidly increasing numbers of requests for bandwidth-intensive digital media assets and the storage of those assets. In all of these instances, it can be difficult and expensive to plan for, and deploy solutions to meet,

such peaks and valleys. With more than 40,000 servers deployed worldwide managed by our proprietary software technology, our network is designed with the robustness and flexibility to handle planned and unplanned traffic peaks and related storage needs, without additional hardware investment and configuration on the part of our customers. As a result, we are able to provide an on-demand solution to address our customers' capacity needs in the face of unpredictable traffic spikes, which helps them avoid expensive investment in a centralized infrastructure.

Security. Security is one of the most significant challenges facing use of the Internet for business and government processes. Security threats — in the form of attacks, viruses, worms and intrusions — can impact every measure of performance, including information security, speed, reliability and customer confidence. Unlike traditional security strategies that can negatively impact performance, Akamai's approach is designed to allow for proactive monitoring and rapid response to security incidents and anomalies. We rely on both built-in defense mechanisms and the ability to route traffic around potential security issues so performance may not be compromised. Perhaps most significantly, our distributed network of thousands of servers is designed to eliminate a single point of failure and can reduce the impact of security attacks.

Functionality. Websites have become increasingly dynamic, complex and sophisticated. To meet these challenges, we have added solutions through both internal investment and acquisitions. These new solutions have included services designed to help our customers accelerate dynamic content and applications; more effectively manage their online media assets; and improve the quality of their online advertising initiatives.

Our Core Solutions

We offer application performance services, services and solutions for digital media and software distribution and storage, content and application delivery, online advertising-related services and other specialized Internet-based offerings.

Application Performance Solutions

Akamai's Application Performance Solutions are designed to improve the performance of highly dynamic applications used by enterprises to connect with their employees, suppliers and customers. Traditionally, this market has been addressed primarily by hardware and software products. We believe our managed service approach offers a more cost-effective and comprehensive solution in this area without requiring customers to make significant infrastructure investments. In addition to reducing infrastructure costs, our Application Performance Solutions are intended for customers that want to offer effective and reliable portal applications and other Web-based systems for communicating with their customers, employees and business partners. Our Application Performance Solutions consist of the following:

Web Application Accelerator

Our Web Application Accelerator service is designed to improve the performance of Web-based applications through a combination of dynamic caching, routing and connection optimization and compression of content before it is sent. This service is appropriate for companies involved in technology, business services, travel and leisure, manufacturing and other industries where there is a movement to Internet-based communication with remote customers, suppliers and franchisees. Enterprise customers are using the Web Application Accelerator service to run applications such as online airline reservations systems, training tools, customer relationship management and human resources applications. Akamai's Web Application Accelerator is designed to allow enterprise customers and their remote customers, suppliers and franchisees to enjoy more reliable performance through connection and route optimization techniques that avoid problem spots on the Internet and otherwise accelerate application performance without the enterprise customer needing to undertake significant internal infrastructure build-out.

IP Application Accelerator

With a growing global workforce accessing IP-based applications online and from mobile devices, enterprises that rely on such applications find high quality and performance to be crucial. Examples of IP-based applications include voice over IP calling, email hosting services and sales order processing tools. While enterprises have been using the Internet to support communication needs for Web-based applications for some time, businesses are increasingly relying on the Internet to support connection needs for IP-based applications. Akamai's IP Application Accelerator solution is designed to address core Internet weaknesses to optimize the performance, availability and real-time sensitivity associated with IP-enabled applications delivered over Internet-related protocols such as SSL, IPSec, UDP and FTP. IP Application Accelerator uses Akamai's global network of servers and optimized routing and connection technologies to improve the stability and reliability of connections between end users and the IP-based application.

Digital Asset Solutions

The Internet provides end users with access to new and varied types of media, and content providers continue to seek ways to monetize the content they offer. Akamai's Digital Asset Solutions are designed to enable enterprises to execute their large file management and distribution strategies by improving the end-user experience, boosting reliability and scalability and reducing the cost of Internet-related infrastructure. Within our Digital Asset Solutions, customers can choose from the following:

Akamai Media Delivery

As the demand for Internet access to music, movies, games, streaming news, sports events and social networking communities grows, there are many challenges to profitably offering media assets online, particularly with respect to user-generated content. In particular, media companies need cost-effective means to deliver large files to millions of users in different formats compatible with multiple end-user devices and platforms. Akamai Media Delivery addresses these challenges by delivering media content on behalf of our customers. By relying on our technology, customers are able to bypass internal constraints such as traditional server and bandwidth limitations to better handle peak traffic conditions and provide their site visitors with access to larger file sizes. We support all major streaming formats, and our technology and breadth of deployment provide capacity levels that individual enterprises or other outsourced providers may not be able to cost-effectively replicate on their own. Complementary features include digital rights management protections, storage, media management tools and reporting functionalities.

Our Akamai Media Delivery solution is primarily used by companies in the following industries: entertainment, including television, radio, sports, music and media; gaming; social networking; and Internet search/portal access. The solution can accommodate the many different business models used by our customers including pay-per-view, subscription, advertising and syndication.

Electronic Software Delivery

Due to the expanding prevalence of broadband access, distribution of computer software is increasingly occurring over the Internet. As a result, companies no longer need to mail CDs with new software to their many customers. Internet traffic conditions and high loads can, however, dramatically impact software download speed and reliability. Furthermore, surges in traffic from product launches or periodic distributions of anti-virus security updates can overwhelm traditional centralized software delivery infrastructure, adversely affecting website performance and causing users to be unable to download software. Our Electronic Software Delivery solution handles the distribution of software for our customers. Our network is designed to withstand large surges in traffic related to software launches and other distributions with a goal of improved customer experiences, increased use of electronic delivery and successful online product launches. We also offer a number of tools to enhance the effectiveness of this distribution model including electronic download receipts, storage, a download

manager to provide end users with control over the handling of files received and reporting. This solution is appropriate for software companies of all types including consumer, enterprise, anti-virus and gaming software companies.

Stream OS

Stream OS is a Web-based suite of configurable tools that enables publishing of rich media to the Web. Stream OS can be used with all major media formats, software downloads and delivery of electronic documents and incorporated tools such as:

- Content Manager for uploading, storing, managing and editing media files and information about those files;
- RSS Manager for managing, delivering and distributing content via automatically-generated Really Simple Syndication, or RSS, feeds;
- Tools for scheduling and provisioning live streaming events; and
- Digital rights management and profile tools for targeting, protecting and controlling the distribution of content based on business rules, licensing terms, geography and other criteria.

Stream OS customers include all types of media content owners seeking to reach consumers over the Web, including sports leagues, music companies and broadcasters of news, sports and other forms of entertainment.

Advertising Decision Solutions (ADS)

Akamai ADS is designed to enable more effective online advertising by helping advertisers reach their target audiences. Our solutions are intended to address some of the fundamental challenges in the advertising industry today — enabling advertisers, agencies, publishers, and networks to buy and sell advertising in an effective, scalable, easy-to-use way. At the same time, our platform is architected so that none of the user data tracked by us consists of personally identifiable information; therefore, customers can maintain the integrity of their data and privacy policies.

Dynamic Site Solutions

Akamai's Dynamic Site Solutions — particularly our core Dynamic Site Accelerator offering — are designed for accelerating business-to-consumer websites that integrate rich, collaborative content and applications into their online architecture. Leveraging our international network of servers and sophisticated mapping and routing technologies, we provide whole-site and object delivery for our customers' websites. As a result, our customers have access to a more efficient way to implement and maintain a global Internet presence. While site owners maintain a source copy of their content and applications, Dynamic Site Accelerator provides global delivery, load balancing and storage of content and applications, enabling businesses to focus valuable resources on strategic matters, rather than on technical infrastructure issues.

Our Dynamic Site Solutions include advanced site delivery service features such as:

- *Secure Content Distribution* — distribution of content over the Internet using SSL transport, a protocol to secure transmission of content over the Internet.
- *Site Failover* — delivery of default content in the event that the primary, or source, version of the website of a customer becomes unavailable.
- *Content Targeting* — a feature that enables content providers to deliver localized content, customized store-fronts, targeted advertising and adaptive marketing to their customers.

- *EdgeComputing* — a service that enables enterprises to deliver Java (J2EE) Web applications that scale on demand and are designed to perform more quickly and reliably than a customer's own internal information technology, or IT, infrastructure.
- *Cache Optimization* — features designed to enhance the cacheability of content including expiration dates and other parameters for the handling of stored content.
- *Compression* — compression of content before it is sent to an end user in an effort to reduce transfer times for users.
- *Capacity On-Demand* — offers dynamic load-balancing decisions that are based on real-time analysis of an end user's location, Internet conditions, server and data center infrastructure capacity and overall demand.

Akamai's Dynamic Site Accelerator solution is appropriate for any enterprise that has a website, particularly, retail and travel companies dependent on their commerce-related websites and enterprises that rely on the Internet for brand-building through research, discussion and other interactive tools for their current and potential customers.

Other Solutions

Site Intelligence Offerings

Akamai's offerings in this area include our network data feeds and our website analytics offering, which provide customers with real time data about the performance of their content and applications over the Internet and Akamai's network. In addition, our business performance management services help customers better understand their Web operations with tools that measure all aspects of an application's performance. For example, a customer could use website data feeds from Akamai's customer portal to assist in managing their online distribution costs and budget. The core of these offerings is our EdgeControl tools, which provide comprehensive reporting and management capabilities.

EdgeControl tools are Web-portal based and can be integrated with existing enterprise management systems, allowing our customers to manage their distributed content and applications. EdgeControl also allows integration with third-party network management tools, including those offered by IBM, Hewlett-Packard and BMC Software. Having created one of the industry's first commercially proven utility computing platforms, Akamai now provides a global network of servers that can be utilized by customers for troubleshooting, monitoring and reporting, all based on their individual business requirements.

Custom Solutions

In addition to our core commercial services, we are able to leverage the expertise of our technology, networks and support personnel to provide custom solutions to both commercial and government customers. These solutions include replicating our core technologies to facilitate content delivery behind the firewall, combining our technology with that of other providers to create unique solutions for specific customers and supporting mission-critical applications that rely on the Internet and intranets. Additionally, numerous federal government agencies rely on Akamai for tailored solutions to their content delivery needs as well as information about traffic conditions and activity on the Internet.

Our Technology and Network

Our expansive network infrastructure and sophisticated technology are the foundation of our services. We believe Akamai has deployed the world's largest globally distributed computing platform, with more than 40,000

servers located in more than 900 networks around the world. Applying our proprietary technology, we deliver our customers' content and computing applications across a system of widely distributed networks of servers; the content and applications are then processed at the most efficient places within the network. Servers are deployed in networks ranging from large, backbone network providers to medium and small ISPs, to cable modem and satellite providers to universities and other networks. By deploying servers within a wide variety of networks, we are better able to manage and control routing and delivery quality to geographically diverse users. We also have more than 1,000 peering relationships that provide us with direct paths to end user networks, which reduces data loss, while also potentially giving us more options for delivery at reduced cost.

To make this wide-reaching deployment effective, we use specialized technologies, such as advanced routing, load balancing, data collection and monitoring. Our intelligent routing software is designed to ensure that website visitors experience fast page loading, access to applications and content assembly wherever they are on the Internet, regardless of global or local traffic conditions. Dedicated professionals staff our Network Operations Control Center on a 24/7 basis to monitor and react to Internet traffic patterns and trends. We frequently deploy enhancements to our software globally to introduce new service offerings, which are designed to improve the effectiveness of our network. Technology updates are efficiently replicated across our system. Customers are also able to control the extent of their use of Akamai services to scale on demand, using as much or as little capacity of the global platform as they require, to support widely varying traffic and rapid growth without the need for an expensive and complex internal infrastructure.

Business Segments and Geographic Information

We operate in one industry segment: providing services for accelerating and improving delivery of content and applications over the Internet. For the years ended December 31, 2008, 2007 and 2006, approximately 25%, 23% and 22%, respectively, of our total revenues was derived from our operations outside the United States, of which 18%, 17% and 18% of overall revenues, respectively, was derived from Europe. No single country outside of the United States accounted for 10% or more of our revenues in any of such years. For more segment and geographic information, including total long-lived assets for each of the last two fiscal years, see our consolidated financial statements included elsewhere in this annual report on Form 10-K, including Note 19 thereto.

Customers

Our customer base is centered on enterprises. As of December 31, 2008, our customers included many of the world's leading corporations, including Adobe, Apple, Audi, Best Buy, Burger King, EMC, Hitachi, L'Oreal, Microsoft, MTV Networks, MySpace, the National Basketball Association, Nintendo, SAP and Victoria's Secret. We also actively sell to government agencies. As of December 31, 2008, our public sector customers included the Federal Emergency Management Agency, the National Center for Missing and Exploited Children, the U.S. Air Force, the U.S. Department of Defense, the U.S. Food and Drug Administration and the U.S. Department of Labor. No customer accounted for 10% or more of total revenues for the years ended December 31, 2008, 2007 or 2006. Less than 10% of our total revenues in each of the years ended December 31, 2008, 2007 and 2006 was derived from contracts or subcontracts terminable at the election of the federal government, and we do not expect such contracts to account for more than 10% of our total revenues in 2009.

Sales, Service and Marketing

Our sales and service professionals are located in 20 offices in the United States, Europe and Asia. We market and sell our services and solutions domestically and internationally through our direct sales and services organization and through more than 100 active channel partners including Electronic Data Systems Corporation, IBM Corporation, Verizon and Telefonica Group. In addition to entering into agreements with resellers, we have several other types of sales- and marketing-focused alliances with entities such as system integrators, application service providers, sales agents and referral partners. By aligning with these companies, we believe we are better able to market our services and encourage increased adoption of our technology throughout the industry.

Our sales and service organization includes employees in direct and channel sales, professional services, account management and technical consulting. As of December 31, 2008, we had approximately 720 employees in our sales and support organization, including 142 direct sales representatives whose performance is measured on the basis of achievement of quota objectives. Our ability to achieve revenue growth in the future will depend in large part on whether we successfully recruit, train and retain sufficient global sales, technical and services personnel, and how well we establish and maintain our reseller and strategic alliances. We believe that the complexity of our services will continue to require a number of highly trained global sales and services personnel.

To support our sales efforts and promote the Akamai brand, we conduct comprehensive marketing programs. Our marketing strategies include an active public relations campaign, print advertisements, online advertisements, participation at trade shows, strategic alliances and on-going customer communication programs. As of December 31, 2008, we had 50 employees in our global marketing organization, which is a component of our sales and support organization.

Research and Development

Our research and development personnel are continuously undertaking efforts to enhance and improve our existing services, strengthen our network and create new services in response to our customers' needs and market demand. As of December 31, 2008, we had approximately 390 research and development engineers, many of whom hold advanced degrees in their fields. Our research and development expenses were $39.2 million, $44.1 million and $33.1 million for the years ended December 31, 2008, 2007 and 2006, respectively. In addition, for each of the years ended December 31, 2008, 2007 and 2006, we capitalized $23.9 million, $17.8 million and $11.7 million, respectively, net of impairments, of external consulting and payroll and payroll-related costs related to the development of internal-use software used by us to deliver our services and operate our network. Additionally, during the years ended December 31, 2008, 2007 and 2006, we capitalized $7.4 million, $6.4 million and $4.3 million, respectively, of stock-based compensation attributable to our research and development personnel.

Competition

The market for our services is intensely competitive and characterized by rapidly changing technology, evolving industry standards and frequent new product and service installations. We expect competition for our services to increase both from existing competitors and new market entrants. We compete primarily on the basis of:

- performance of services;
- return on investment in terms of cost savings and new revenue opportunities for our customers;
- reduced infrastructure complexity;
- sophistication and functionality of our offerings;
- scalability;
- ease of implementation and use of service;
- customer support; and
- price.

We compete primarily with companies offering products and services that address Internet performance problems, including companies that provide Internet content delivery and hosting services, streaming content delivery services and equipment-based solutions to Internet performance problems, such as load balancers and

server switches. Some of our competitors also resell our services. Other companies have recently emerged that offer online distribution of digital media assets through advertising-based billing or revenue-sharing models that may represent an alternative method for charging for the delivery of content and applications over the Internet. In addition, potential customers may decide to purchase or develop their own hardware, software and other technology solutions rather than rely on an externally-managed services provider like Akamai.

With respect to our new ADS offerings, we compete with a range of other companies that provide targeted advertising solutions. At the same time, some of the companies that offer competitive solutions have entered into strategic agreements with us that we believe are mutually beneficial. We compete on the basis of our technology, the availability of our data co-operative, our predictive analytics capabilities, the ability to leverage existing business relationships and price.

We believe that we compete favorably with other companies in our industry, as well as alternative approaches to content and application delivery over the Internet, on the basis of the quality of our offerings, our customer service and price.

Proprietary Rights and Licensing

Our success and ability to compete are dependent on our ability to develop and maintain the proprietary aspects of our technology and operate without infringing on the proprietary rights of others. We rely on a combination of patent, trademark, trade secret and copyright laws and contractual restrictions to protect the proprietary aspects of our technology. We currently have numerous issued United States and foreign-country patents covering our content and application delivery technology, and we have numerous additional patent applications pending. Our issued patents extend to various dates between approximately 2015 and 2020. In October 1998, we entered into a license agreement with the Massachusetts Institute of Technology, or MIT, under which we were granted a royalty-free, worldwide right to use and sublicense the intellectual property rights of MIT under various patent applications and copyrights relating to Internet content delivery technology. We seek to limit disclosure of our intellectual property by requiring employees and consultants with access to our proprietary information to execute confidentiality agreements with us and by restricting access to our source code.

Employees

As of December 31, 2008, we had a total of approximately 1,500 full-time and part-time employees. Our future success will depend in part on our ability to attract, retain and motivate highly qualified technical and management personnel for whom competition is intense. Our employees are not represented by any collective bargaining unit. We believe our relations with our employees are good.

Item 1A. *Risk Factors*

The following are certain of the important factors that could cause our actual operating results to differ materially from those indicated or suggested by forward-looking statements made in this annual report on Form 10-K or presented elsewhere by management from time to time.

The markets in which we operate are highly competitive, and we may be unable to compete successfully against new entrants with innovative approaches and established companies with greater resources.

We compete in markets that are intensely competitive, highly fragmented and rapidly changing. We have experienced and expect to continue to experience increased competition. Many of our current competitors, as well as a number of our potential competitors, have longer operating histories, greater name recognition, broader customer relationships and industry alliances and substantially greater financial, technical and marketing resources than we do. Some of our existing resellers are competitors. If one or more other resellers that generate substantial revenues for us were to terminate our relationship or become a competitor or a reseller for a competitor, our business could be adversely affected. Other competitors may attract customers by offering less-sophisticated versions of services than we provide at lower prices than those we charge. Given the relative ease with which some customers can potentially switch to another content delivery network provider, any

differentiated offerings or lower pricing by competitors could lead to a rapid loss of customers. Our competitors may be able to respond more quickly than we can to new or emerging technologies and changes in customer requirements. Some of our current or potential competitors may bundle their offerings with other services, software or hardware in a manner that may discourage website owners from purchasing any service we offer. Increased competition could result in price and revenue reductions, loss of customers and loss of market share, which could materially and adversely affect our business, financial condition and results of operations.

In addition, potential customers may decide to purchase or develop their own hardware, software and other technology solutions rather than rely on an external provider like Akamai. As a result, our competitors include hardware manufacturers, software companies and other entities that offer Internet-related solutions that are not service-based. It is an important component of our growth strategy to educate enterprises and government agencies about our services and convince them to entrust their content and applications to an external service provider, and Akamai in particular. If we are unsuccessful in such efforts, our business, financial condition and results of operations could suffer.

Prices we have been charging for some of our services have declined in recent years. This decline may continue in the future as a result of, among other things, existing and new competition in the markets we serve.

In recent quarters, we have lowered the prices we charge many of our customers for our content delivery services in order to remain competitive. This has been particularly true for the digital media services. Consequently, our historical revenue rates may not be indicative of future revenues based on comparable traffic volumes. In addition, our operating expenses have increased on an absolute basis in each of 2006, 2007 and 2008. If we are unable to sell our services at acceptable prices relative to our costs or if we are unsuccessful with our strategy of selling additional services and features to new or existing content delivery customers, our revenues and gross margins will decrease, and our business and financial results will suffer.

Failure to increase our revenues and keep our expenses consistent with revenues could prevent us from maintaining profitability at recent levels or at all.

We believe our revenue growth rate will decline in 2009 as a result of a number of factors including increasing competition, the inevitable decline in growth rates as our revenues increase to higher levels and macroeconomic factors affecting certain aspects of our business. We also believe our operating margins will decrease because we have large fixed expenses and expect to continue to incur significant bandwidth, sales and marketing, product development, administrative and other expenses. As a result, we may not be able to continue to maintain our current level of profitability in 2009 or on a quarterly or annual basis thereafter. We announced a restructuring in November 2008 that included termination of the employment of approximately seven percent of our global workforce, which resulted in a charge of approximately $2.5 million in 2008. There is no guarantee that the restructuring will be sufficient to improve the alignment of our expenses with revenues or that future restructurings will not be required. Therefore, we will need to generate higher revenues to maintain profitability at recent levels or at all.

There are numerous factors that could, alone or in combination with other factors, impede our ability to increase revenues and/or moderate expenses, including:

- market pressure to decrease our prices;
- significant increases in bandwidth costs or other operating expenses;
- failure to increase sales of our core services;
- any failure of our current and planned services and software to operate as expected;

- loss of any significant customers or loss of existing customers at a rate greater than we increase our number of, and sales to, new customers or our sales to existing customers;
- unauthorized use of or access to content delivered over our network or network failures;
- failure of a significant number of customers to pay our fees on a timely basis or at all or failure to continue to purchase our services in accordance with their contractual commitments; and
- inability to attract high-quality customers to purchase and implement our current and planned services.

General global market and economic conditions may have an adverse impact on our operating performance and results of operations.

Our business has been and could continue to be affected by general global economic and market conditions. Weakness in the United States and/or worldwide economy has had and could continue to have a negative effect on our operating results, including decreases in revenues and operating cash flows. In particular, weakness in the online advertising market has affected and could continue to affect the success of our ADS initiatives and could have a negative impact on our media and other customers. To the extent customers are unable to profitably monetize the content we deliver on their behalf, they may reduce or eliminate the traffic we deliver on their behalf. Such reductions in traffic would lead to a reduction in our revenues. Additionally, in a down-cycle economic environment, we may experience the negative effects of increased competitive pricing pressure, customer loss and failures by customers to pay amounts owed to us on a timely basis or at all. Suppliers on which we rely for servers, bandwidth, co-location and other services could also be negatively impacted by economic conditions which, in turn, could have a negative impact on our operations or expenses. There can be no assurance, therefore, that current economic conditions or worsening economic conditions or a prolonged or recurring recession will not have a significant adverse impact on our operating results.

Our failure to manage growth, diversification and changes to our business could harm us.

We have continued to grow, diversify and evolve our business both in the United States and internationally. It is unclear, however, whether such growth will continue. In the event of a slowing in our rate of growth, we must also address the challenges of establishing an appropriate organizational size while maintaining the quality of our services. As a result of the diversification of our business, personnel growth, acquisitions and international expansion in recent years, many of our employees are now based outside of our Cambridge, Massachusetts headquarters. If we are unable to effectively manage a large and geographically dispersed group of employees or to anticipate our future personnel needs, our business may be adversely affected.

As our business evolves, we must also expand and adapt our operational infrastructure. Our business relies on our data systems, billing systems, and other operational and financial reporting and control systems. All of these systems have become increasingly complex in the recent past due to the diversification and complexity of our business, acquisitions of new businesses with different systems and increased regulation over controls and procedures. To effectively manage our technical support infrastructure, we will need to continue to upgrade and improve our data systems, billing systems and other operational and financial systems, procedures and controls. These upgrades and improvements will require a dedication of resources and in some cases are likely to be complex. If we are unable to adapt our systems and organization in a timely and cost-effective manner to accommodate changing circumstances, our business may be adversely affected.

Any unplanned interruption in the functioning of our network or services could lead to significant costs and disruptions that could reduce our revenues and harm our business, financial results and reputation.

Our business is dependent on providing our customers with fast, efficient and reliable distribution of applications and content over the Internet. For our core services, we currently provide a standard guarantee that

our networks will deliver Internet content 24 hours a day, 7 days a week, 365 days a year. If we do not meet this standard, affected customers will be entitled to credits. Our network or services could be disrupted by numerous events, including natural disasters, unauthorized access to our servers, failure or refusal of our third-party network providers to provide the necessary capacity, power losses and intentional disruptions of our services, such as disruptions caused by software viruses or attacks by unauthorized users. Although we have taken steps to prevent such disruptions, there can be no assurance that attacks by unauthorized users will not be attempted in the future, that our security measures will be effective, or that a successful attack would not be damaging. Any widespread interruption of the functioning of our network or services would reduce our revenues and could harm our business, financial results and reputation.

We may have insufficient transmission and server capacity, which could result in interruptions in our services and loss of revenues.

Our operations are dependent in part upon transmission capacity provided by third-party telecommunications network providers. In addition, our distributed network must be sufficiently robust to handle all of our customers' traffic. We believe that, absent extraordinary circumstances, we have access to adequate capacity to provide our services; however, there can be no assurance that we are adequately prepared for unexpected increases in bandwidth demands by our customers. In addition, the bandwidth we have contracted to purchase may become unavailable for a variety of reasons, including payment disputes or network providers going out of business. Any failure of these network providers to provide the capacity we require, due to financial or other reasons, may result in a reduction in, or interruption of, service to our customers. If we do not have access to third-party transmission capacity, we could lose customers. If we are unable to obtain transmission capacity on terms commercially acceptable to us or at all, our business and financial results could suffer. We may not be able to deploy on a timely basis enough servers to meet the needs of our customer base or effectively manage the functioning of those servers. In addition, damage or destruction of, or other denial of access to, a facility where our servers are housed could result in a reduction in, or interruption of, service to our customers.

Because our services are complex and are deployed in complex environments, they may have errors or defects that could seriously harm our business.

Our services are highly complex and are designed to be deployed in and across numerous large and complex networks that we do not control. From time to time, we have needed to correct errors and defects in our software. In the future, there may be additional errors and defects in our software that may adversely affect our services. We may not have in place adequate quality assurance procedures to ensure that we detect errors in our software in a timely manner. If we are unable to efficiently and cost-effectively fix errors or other problems that may be identified, or if there are unidentified errors that allow persons to improperly access our services, we could experience loss of revenues and market share, damage to our reputation, increased expenses and legal actions by our customers.

As part of our business strategy, we have entered into and may enter into or seek to enter into business combinations and acquisitions that may be difficult to integrate, disrupt our business, dilute stockholder value and divert management attention.

In late 2006 and early 2007, we acquired Nine Systems Corporation, or Nine Systems, Netli and Red Swoosh. Additionally, we completed the acquisition of acerno in November 2008. If attractive acquisition opportunities arise in the future, we may seek to enter into additional business combinations or purchases. Acquisitions are accompanied by a number of risks, including the difficulty of integrating the operations and personnel of the acquired companies, the potential disruption of our ongoing business, the potential distraction of management, expenses related to the acquisition and potential unknown liabilities associated with acquired businesses. Any inability to integrate completed acquisitions in an efficient and timely manner could have an adverse impact on our results of operations. In addition, we may not be able to recognize any expected synergies

or benefits in connection with a future acquisition. If we are not successful in completing acquisitions that we may pursue in the future, we may incur substantial expenses and devote significant management time and resources without a successful result. In addition, future acquisitions could require use of substantial portions of our available cash, as in the acerno acquisition, or, as in the Nine Systems, Netli and Red Swoosh acquisitions, dilutive issuances of securities.

Our stock price has been volatile.

The market price of our common stock has been volatile. Trading prices may continue to fluctuate in response to a number of events and factors, including the following:

- quarterly variations in operating results and announcements of innovations;
- introduction of new products, services and strategic developments by us or our competitors;
- business combinations and investments by us or our competitors;
- variations in our revenue, expenses or profitability;
- changes in financial estimates and recommendations by securities analysts;
- failure to meet the expectations of public market analysts;
- unfavorable media coverage;
- macro-economic factors;
- our customers' inability to access equity and credit markets;
- performance by other companies in our industry; and
- geopolitical conditions such as acts of terrorism or military conflicts.

Any of these events may cause the price of our common stock to fall. In addition, the stock market in general, and the market prices for technology companies in particular, have experienced significant volatility that often has been unrelated to the operating performance of such companies. These broad market and industry fluctuations may adversely affect the market price of our common stock, regardless of our operating performance.

If we are unable to continue to innovate and respond to emerging technological trends and customers' changing needs, our operating results may suffer.

The market for our services is characterized by rapidly changing technology, evolving industry standards and new product and service introductions. Our ability to provide new and innovative solutions is important to our future growth; other companies are also looking to offering Internet-related solutions, such as cloud computing, to generate growth. These other companies may develop technological or business model innovations in the markets we seek to address that are, or are perceived to be, equivalent or superior to our services. In addition, our customers' business models may change in ways that we do not anticipate and these changes could reduce or eliminate our customers' needs for our services. Our operating results depend on our ability to adapt to market changes and develop and introduce new services into existing and emerging markets. The process of developing new technologies is complex and uncertain; we must commit significant resources to developing new services or enhancements to our existing services before knowing whether our investments will result in services the market will accept. Furthermore, we may not execute successfully our technology initiatives because of errors in planning or timing, technical hurdles that we fail to overcome in a timely fashion, misunderstandings about market demand or a lack of appropriate resources. Failures in execution or market acceptance of new services we introduce could result in competitors providing those solutions before we do and, consequently, loss by us of market share, revenues and earnings.

If the accounting estimates we make, and the assumptions on which we rely, in preparing our financial statements prove inaccurate, our actual results may be adversely affected.

Our financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make estimates and judgments about, among other things, taxes, revenue recognition, stock-based compensation costs, capitalization of internal-use software, investments, contingent obligations, allowance for doubtful accounts, intangible assets and restructuring charges. These estimates and judgments affect the reported amounts of our assets, liabilities, revenues and expenses, the amounts of charges accrued by us, such as those made in connection with our restructuring charges, and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances and at the time they are made. If our estimates or the assumptions underlying them are not correct, actual results may differ materially from our estimates and we may need to, among other things, accrue additional charges that could adversely affect our results of operations, which in turn could adversely affect our stock price.

Future changes in financial accounting standards may adversely affect our reported results of operations.

A change in accounting standards can have a significant effect on our reported results. New accounting pronouncements and interpretations of accounting pronouncements have occurred and may occur in the future. These new accounting pronouncements may adversely affect our reported financial results.

A substantial portion of our marketable securities are invested in auction rate securities. Continued failures in the auctions for these securities may affect our liquidity.

We held $287.1 million in par value of auction rate securities, or ARS, as of December 31, 2008, which represented approximately 47% of our total short- and long-term marketable securities of $615.6 million as of that date. ARS are securities that are structured to allow for short-term interest rate resets but with contractual maturities that can be well in excess of ten years. At the end of each reset period, which typically occurs every seven to 35 days, investors can sell or continue to hold the securities at par. Beginning in February 2008, the majority of ARS in the marketplace, including the ARS that we hold in our portfolio, failed auction due to sell orders exceeding buy orders. Such failures resulted in the interest rate on these ARS resetting to predetermined rates in accordance with the underlying loan agreement, which might be lower than the current market rate of interest. In the event we need to liquidate our investments in these types of securities including for purposes of funding our operations, we will not be able to do so until a future auction on these investments in which demand equals or exceeds the supply of such securities being offered, the issuer redeems the outstanding securities, a buyer is found outside the auction process, the securities mature or there is a default requiring immediate payment from the issuer. These alternative liquidation measures may require that we sell our ARS at a substantial discount to par value. In the future, should the ARS we hold be subject to prolonged auction failures and we determine that the decline in value of ARS is other-than-temporary, we would recognize a loss in our consolidated statement of operations, which could be material. In addition, any future failed auctions may adversely impact the liquidity of our investments and our ability to fund our operations. Furthermore, if one or more of the issuers of the ARS held in our portfolio are unable to successfully close future auctions and their credit ratings deteriorate, we may be required to adjust the carrying value of these investments through additional impairment charges, which could be material.

If we are unable to retain our key employees and hire qualified sales and technical personnel, our ability to compete could be harmed.

Our future success depends upon the continued services of our executive officers and other key technology, sales, marketing and support personnel who have critical industry experience and relationships. There is increasing competition for talented individuals in the regions in which our primary offices are located. This

affects both our ability to retain key employees and hire new ones. None of our officers or key employees is bound by an employment agreement for any specific term. We compensate our officers and employees in part through equity incentives, including stock options. A significant portion of these stock options held by our officers and employees have exercise prices in excess of the current market price of our common stock, which has diminished the retentive value of such options. The loss of the services of any of our key employees could hinder or delay the implementation of our business model and the development and introduction of, and negatively impact our ability to sell, our services.

We may need to defend our intellectual property and processes against patent or copyright infringement claims, which would cause us to incur substantial costs.

Other companies or individuals, including our competitors, may hold or obtain patents or other proprietary rights that would prevent, limit or interfere with our ability to make, use or sell our services or develop new services, which could make it more difficult for us to increase revenues and improve or maintain profitability. Companies holding Internet-related patents or other intellectual property rights are increasingly bringing suits alleging infringement of such rights against both technology providers and customers that use such technology.

We have agreed to indemnify our customers if our services infringe specified intellectual property rights; therefore, we could become involved in litigation brought against customers if our services and technology are implicated. Any litigation or claims, whether or not valid, brought against us or pursuant to which we indemnify our customers could result in substantial costs and diversion of resources and require us to do one or more of the following:

- cease selling, incorporating or using products or services that incorporate the challenged intellectual property;
- pay substantial damages and incur significant litigation expenses;
- obtain a license from the holder of the infringed intellectual property right, which license may not be available on reasonable terms or at all; or
- redesign products or services.

If we are forced to take any of these actions, our business may be seriously harmed. In the event of a successful claim of infringement against us and our failure or inability to obtain a license to the infringed technology, our business and operating results could be materially adversely affected.

Our business will be adversely affected if we are unable to protect our intellectual property rights from unauthorized use or infringement by third parties.

We rely on a combination of patent, copyright, trademark and trade secret laws and restrictions on disclosure to protect our intellectual property rights. These legal protections afford only limited protection. We have previously brought lawsuits against entities that we believe are infringing our intellectual property rights. Such lawsuits can be expensive and require a significant amount of attention of our management and technical personnel, and the outcomes are unpredictable. Monitoring unauthorized use of our services is difficult, and we cannot be certain that the steps we have taken will prevent unauthorized use of our technology, particularly in foreign countries where the laws may not protect our proprietary rights as fully as in the United States. Although we have licensed from other parties proprietary technology covered by patents, we cannot be certain that any such patents will not be challenged, invalidated or circumvented. Such licenses may also be non-exclusive, meaning our competition may also be able to access such technology. Furthermore, we cannot be certain that any pending or future patent applications will be granted, that any future patent will not be challenged, invalidated or circumvented, or that rights granted under any patent that may be issued will provide competitive advantages to us.

If our license agreement with MIT terminates, our business could be adversely affected.

We have licensed from MIT technology that is covered by various patents, patent applications and copyrights relating to Internet content delivery technology. Some of our core technology is based in part on the technology covered by these patents, patent applications and copyrights. Our license is effective for the life of the patents and patent applications; however, under limited circumstances, such as a cessation of our operations due to our insolvency or our material breach of the terms of the license agreement, MIT has the right to terminate our license. A termination of our license agreement with MIT could have a material adverse effect on our business.

We face risks associated with international operations that could harm our business.

We have operations in numerous foreign countries and may continue to expand our sales and support organizations internationally. Such expansion could require us to make significant expenditures. We are increasingly subject to a number of risks associated with international business activities that may increase our costs, lengthen our sales cycle and require significant management attention. These risks include:

- increased expenses associated with marketing services in foreign countries;
- currency exchange rate fluctuations;
- unexpected changes in regulatory requirements resulting in unanticipated costs and delays;
- interpretations of laws or regulations that would subject us to regulatory supervision or, in the alternative, require us to exit a country, which could have a negative impact on the quality of our services or our results of operations;
- uncertainty regarding liability for content or services;
- adjusting to different employee/employer relationships and different regulations governing such relationships;
- longer accounts receivable payment cycles and difficulties in collecting accounts receivable; and
- potentially adverse tax consequences.

Any failure to meet our debt obligations would damage our business.

We have long-term debt. As of December 31, 2008, our total long-term debt was $199.9 million. If we are unable to remain profitable or if we use more cash than we generate in the future, our level of indebtedness could adversely affect our future operations by increasing our vulnerability to adverse changes in general economic and industry conditions and by limiting or prohibiting our ability to obtain additional financing for future capital expenditures, acquisitions and general corporate and other purposes. In addition, if we are unable to make interest or principal payments when due, we would be in default under the terms of our long-term debt obligations, which would result in all principal and interest becoming due and payable which, in turn, would seriously harm our business.

Changes in regulations or user concerns regarding privacy and protection of user data could adversely affect our business.

Federal, state, foreign and international laws and regulations may govern the collection, use, retention, sharing and security of data that we receive from our customers, visitors to their websites and others. In addition, we have and post on our website our own privacy policy concerning the collection, use and disclosure of user data. Any failure, or perceived failure, by us to comply with our posted privacy policies or with any privacy- related laws, government regulations or directives, or industry self-regulatory principles could result in damage to our reputation or proceedings or actions against us by governmental entities or others, which could potentially have an adverse effect on our business.

A large number of legislative proposals pending before the United States Congress, various state legislative bodies and foreign governments concern data privacy and retention issues related to our business, particularly the advertising-related services we have begun to offer. It is not possible to predict whether, when, or the extent to which such legislation may be adopted. In addition, the interpretation and application of user data protection laws are currently unsettled. These laws may be interpreted and applied inconsistently from jurisdiction to jurisdiction and inconsistently with our current data protection policies and practices. Complying with these varying international requirements could cause us to incur substantial costs or require us to change our business practices in a manner adverse to our business.

Internet-related and other laws could adversely affect our business.

Laws and regulations that apply to communications and commerce over the Internet are becoming more prevalent. In particular, the growth and development of the market for online commerce has prompted calls for more stringent tax, consumer protection and privacy laws, both in the United States and abroad, that may impose additional burdens on companies conducting business online or providing Internet-related services such as ours. The adoption of an of these measures could negatively affect both our business directly as well as the businesses of our customers, which could reduce their demand for our services. Local tax laws that might apply to our servers, which are located in many different jurisdictions, could require us to pay additional taxes in those jurisdictions, which could adversely affect our continued profitability. We have recorded certain tax reserves to address potential exposures involving our sales and use and franchise tax positions. These potential tax liabilities result from the varying application of statutes, rules, regulations and interpretations by different jurisdictions. Our reserves, however, may not be adequate to reflect our total actual liability. Congress has been contemplating net neutrality legislation. The adoption of laws regulating the operation of the Internet could affect our business. As a government contractor, we are also subject to numerous laws and regulations. If we fail to comply with applicable requirements, then we could face penalties, contract terminations and damage to our reputation. We also may be required to devote substantial resources to the development and improvement of procedures to ensure compliance with applicable regulations.

If our ability to deliver media files in popular proprietary content formats were to become restricted or cost-prohibitive, demand for our content delivery services could decline, we could lose customers and our financial results could suffer.

Our business depends on our ability to deliver media content in all major formats. If our legal right or technical ability to store and deliver content in one or more popular proprietary content formats, such as Adobe® Flash® or Windows® Media®, was limited, our ability to serve our customers in these formats would be impaired and the demand for our content delivery services would decline by customers using these formats. Owners of propriety content formats may be able to block, restrict or impose fees or other costs on our use of such formats, which could lead to additional expenses for us and for our customers, or which could prevent our delivery of this type of content altogether. Such interference could result in a loss of existing customers, increased costs and impairment of our ability to attract new customers, which would harm our revenue, operating results and growth.

Provisions of our charter documents, our stockholder rights plan and Delaware law may have anti-takeover effects that could prevent a change in control even if the change in control would be beneficial to our stockholders.

Provisions of our amended and restated certificate of incorporation, amended and restated by-laws and Delaware law could make it more difficult for a third party to acquire us, even if doing so would be beneficial to our stockholders. In addition, our Board of Directors has adopted a stockholder rights plan the provisions of which could make it more difficult for a potential acquirer of Akamai to consummate an acquisition transaction without the approval of our Board of Directors.

If we are required to seek additional funding, such funding may not be available on acceptable terms or at all.

If we seek to acquire significant businesses or technologies or require more cash to fund our future plans, we may need to obtain funding from outside sources. The current economic environment makes it difficult for companies to obtain financing, particularly raising debt financing or implementing credit facilities. Therefore, we may not be able to raise additional capital, which could limit future actions we may want to take. Even if we were to find outside funding sources, we might be required to issue securities with greater rights than the securities we have outstanding today or issue debt that places restrictions on our future activities. We might also be required to take other actions that could lessen the value of our common stock, including borrowing money on terms that are not favorable to us.

A class action lawsuit has been filed against us and an adverse resolution of such action could have a material adverse effect on our financial condition and results of operations in the period in which the lawsuit is resolved.

We are named as a defendant in a purported class action lawsuit filed in 2001 alleging that the underwriters of our initial public offering received undisclosed compensation in connection with our initial public offering of common stock in violation of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended. See Note 11 to the financial statements included elsewhere in this annual report on Form 10-K for more information. Any conclusion of these matters in a manner adverse to us could have a material adverse affect on our financial position and results of operations.

We may become involved in other litigation that may adversely affect us.

In the ordinary course of business, we are or may become involved in litigation, administrative proceedings and governmental proceedings. Such matters can be time-consuming, divert management's attention and resources and cause us to incur significant expenses. Furthermore, there can be no assurance that the results of any of these actions will not have a material adverse effect on our business, results of operations or financial condition.

Item 1B. *Unresolved Staff Comments*

None.

Item 2. *Properties*

Our headquarters are located in approximately 175,000 square feet of leased office space in Cambridge, Massachusetts; the leases for such space are scheduled to expire in December 2019. Of this space, we have subleased approximately 12,000 square feet to another company. Our primary west coast office is located in approximately 67,000 square feet of leased office space in San Mateo, California; the lease for such space is scheduled to expire in October 2015. We maintain offices in several other locations in the United States, including in or near each of Los Angeles and San Diego, California; Denver, Colorado; Atlanta, Georgia; Chicago, Illinois; New York, New York; Dallas, Texas; Reston, Virginia and Seattle, Washington. We also maintain offices in Europe and Asia in or near the following cities: Bangalore, India; Beijing, China; Munich, Germany; Paris, France; London, England; Tokyo, Japan; Singapore; Madrid, Spain; Sydney, Australia; Milan, Italy; Stockholm, Sweden; and Seoul, South Korea. All of our facilities are leased. The square footage amounts above are as of December 31, 2008. We believe our facilities are sufficient to meet our needs for the foreseeable future and, if needed, additional space will be available at a reasonable cost.

Item 3. ***Legal Proceedings***

We are subject to legal proceedings, claims and litigation arising in the ordinary course of business. We do not expect the ultimate costs to resolve these matters to have a material adverse effect on our consolidated financial position, results of operations or cash flows. In addition to ordinary-course litigation, we are a party to the litigation described below.

Between July 2, 2001 and November 7, 2001, purported class action lawsuits seeking monetary damages were filed in the United States District Court for the Southern District of New York against us as well as against the underwriters of our October 28, 1999 initial public offering of common stock. The complaints were filed allegedly on behalf of persons who purchased our common stock during different time periods, all beginning on October 28, 1999 and ending on various dates. The complaints are similar and allege violations of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, primarily based on the allegation that the underwriters received undisclosed compensation in connection with our initial public offering. On April 19, 2002, a single consolidated amended complaint was filed, reiterating in one pleading the allegations contained in the previously filed separate actions. The consolidated amended complaint defines the alleged class period as October 28, 1999 through December 6, 2000. A Special Litigation Committee of our Board of Directors authorized management to negotiate a settlement of the pending claims substantially consistent with a Memorandum of Understanding that was negotiated among class plaintiffs, all issuer defendants and their insurers. The parties negotiated a settlement that was subject to approval by the Court. On February 15, 2005, the Court issued an Opinion and Order preliminarily approving the settlement, provided that the defendants and plaintiffs agree to a modification narrowing the scope of the bar order set forth in the original settlement agreement. The parties agreed to a modification narrowing the scope of the bar order, and on August 31, 2005, the Court issued an order preliminarily approving the settlement. On December 5, 2006, the United States Court of Appeals for the Second Circuit overturned the District Court's certification of the class of plaintiffs who are pursuing the claims that would be settled in the settlement against the underwriter defendants. Thereafter, the District Court ordered a stay of all proceedings in all of the lawsuits pending the outcome of plaintiffs' petition to the Second Circuit for rehearing en banc and resolution of the class certification issue. On April 6, 2007, the Second Circuit denied plaintiffs' rehearing petition, but clarified that the plaintiffs may seek to certify a more limited class in the District Court. On June 25, 2007, the District Court signed an order terminating the settlement. We believe that we have meritorious defenses to the claims made in the complaint, and we intend to contest the lawsuit vigorously. An adverse resolution of this action could have a material adverse effect on our financial condition and results of operations in the period in which the lawsuit is resolved. We are not presently able to estimate potential losses, if any, related to this lawsuit.

In addition, on or about October 3, 2007, Vanessa Simmonds, a purported Akamai shareholder, filed a complaint in the United States District Court for the Western District of Washington, against the underwriters involved in our 1999 initial public offering of common stock, alleging violations of Section 16(b) of the Exchange Act. The complaint alleges that the combined number of shares of our common stock beneficially owned by the lead underwriters and certain unnamed officers, directors, and principal shareholders exceeded ten percent of our outstanding common stock from the date of our initial public offering on October 29, 1999, through at least October 28, 2000. The complaint further alleges that those entities and individuals were thus subject to the reporting requirements of Section 16(a) and the short-swing trading prohibition of Section 16(b) and failed to comply with those provisions. The complaint seeks to recover from the lead underwriters any "short-swing profits" obtained by them in violation of Section 16(b). Akamai was named as a nominal defendant in the action, but has no liability for the asserted claims. None of our directors or officers serving in such capacities at the time of our initial public offering are currently named as defendants in this action, but there can be no guarantee that the complaint will not be amended or a new complaint or suit filed to name such directors or officers as defendants in this action or another action alleging a violation of the same provisions of the Securities Exchange Act of 1934, as amended. We do not expect the results of this action to have a material adverse effect on our business, results of operations or financial condition.

Item 4. ***Submission of Matters to a Vote of Security Holders***

None.

PART II

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

Our common stock, par value $0.01 per share, trades under the symbol "AKAM" on The NASDAQ Global Select Market. The following table sets forth, for the periods indicated, the high and low sale price per share of the common stock on The NASDAQ Global Select Market:

	High	Low
Fiscal 2007:		
First Quarter	$ 59.69	$ 46.60
Second Quarter	$ 56.25	$ 41.02
Third Quarter	$ 50.98	$ 27.75
Fourth Quarter	$ 41.45	$ 28.26
Fiscal 2008:		
First Quarter	$ 36.00	$ 25.06
Second Quarter	$ 40.90	$ 29.02
Third Quarter	$ 35.72	$ 14.60
Fourth Quarter	$ 17.95	$ 9.25

As of February 25, 2009, there were 698 holders of record of our common stock.

We have never paid or declared any cash dividends on shares of our common stock or other securities and do not anticipate paying any cash dividends in the foreseeable future. We currently intend to retain all future earnings, if any, for use in the operation of our business. We did not repurchase any equity securities in 2008.

Item 6. ***Selected Consolidated Financial Data***

The following selected consolidated financial data should be read in conjunction with our consolidated financial statements and related notes, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and other financial data included elsewhere in this annual report on Form 10-K. The consolidated statement of operations and balance sheet data for all periods presented is derived from the audited consolidated financial statements included elsewhere in this annual report on Form 10-K or in annual reports on Form 10-K for prior years on file with the Commission.

Statements of operations data for the years ended December 31, 2005 and 2004 included a loss on early extinguishment of debt of $1.4 million and $6.8 million, respectively, as a result of our repurchase of $56.6 million and $169.4 million in aggregate principal amount of our 5 1/2% convertible subordinated notes, respectively, in those years.

In 2005, we acquired Speedera Networks, Inc., or Speedera, which was accounted for under the purchase method of accounting, for a purchase price of $142.2 million, comprised primarily of our common stock. We allocated $137.4 million of the cost of this acquisition to goodwill and other intangible assets. Net income from operations for the years ended December 31, 2005, 2006, 2007 and 2008 included $5.1 million, $8.3 million, $7.4 million and $6.1 million, respectively, for the amortization of other intangible assets related to this acquisition.

In 2005, we released nearly all of our United States and foreign deferred tax asset valuation allowance. Based upon our cumulative operating results and an assessment of our expected future results, we determined at that time that it was more likely than not that our deferred tax assets would be realized. During 2005, the total valuation allowance release recorded as an income tax benefit in the statement of operations was $285.8 million.

In December 2003 and January 2004, we issued $200.0 million in aggregate principal amount of our 1% senior convertible notes due December 15, 2033, which we refer to as our 1% senior convertible notes, for proceeds of $194.1 million net of offering expenses. Additionally, in 2005, we completed an equity offering of 12.0 million shares of our common stock at a price of $16.855 per share for proceeds of $202.1 million, net of offering expenses.

On January 1, 2006, we adopted, on a modified prospective basis, the provisions of Statement of Financial Accounting Standards, or SFAS, No. 123R, "Share-Based Payment," or SFAS No. 123R, which requires us to record compensation expense for employee stock awards at fair value at the time of grant. As a result, our stock-based compensation expense increased significantly in 2006 as compared to prior years, causing our net income to decrease significantly as well. For the year ended December 31, 2006, our pre-tax stock-based compensation expense was $49.6 million.

In 2006, we acquired Nine Systems for a purchase price of $157.5 million, comprised primarily of our common stock. This acquisition was accounted for under the purchase method of accounting. We allocated $168.4 million of the cost of this acquisition to goodwill and other intangible assets. Net income from operations for the years ended December 31, 2006, 2007 and 2008 included $0.1 million, $3.3 million and $4.1 million, respectively, for the amortization of other intangible assets related to this acquisition.

In March 2007, we acquired Netli for a purchase price of $154.4 million, comprised primarily of our common stock. This acquisition was accounted for under the purchase method of accounting. We allocated $148.4 million of the cost of this acquisition to goodwill and other intangible assets. Net income from operations for the years ended December 31, 2007 and 2008 included $0.7 million and $3.1 million, respectively, for the amortization of other intangible assets related to this acquisition.

In April 2007, we acquired Red Swoosh for a purchase price of $18.7 million, comprised primarily of our common stock. This acquisition was accounted for under the purchase method of accounting. We allocated $16.9 million of the cost of this acquisition to goodwill and other intangible assets. Net income from operations for the year ended December 31, 2008 included $0.1 million for the amortization of other intangible assets related to this acquisition.

In November 2008, we acquired acerno for a purchase price of $90.7 million in cash, of which $5.8 million was subsequently paid in the first quarter of 2009. This acquisition was accounted for under the purchase method of accounting. We allocated $99.7 million of the cost of this acquisition to goodwill and other intangible assets. Net income from operations for the year ended December 31, 2008 included $0.5 million for the amortization of other intangible assets related to this acquisition.

	For the Years Ended December 31,				
	2008	2007	2006	2005	2004
	(In thousands, except per share data)				
Consolidated Statements of Operations Data:					
Revenues	$ 790,924	$ 636,406	$ 428,672	$ 283,115	$ 210,015
Total costs and operating expenses	578,660	491,478	345,566	209,740	161,048
Operating income	212,264	144,928	83,106	73,375	48,967
Net income	145,138	100,967	57,401	327,998	34,364
Net income per weighted average share:					
Basic	$ 0.87	$ 0.62	$ 0.37	$ 2.41	$ 0.28
Diluted	$ 0.79	$ 0.56	$ 0.34	$ 2.11	$ 0.25
Weighted average shares used in per share calculation:					
Basic	167,673	162,959	155,366	136,167	124,407
Diluted	186,685	185,094	176,767	156,944	146,595

	As of December 31,				
	2008	2007	2006	2005	2004
	(In thousands)				
Consolidated Balance Sheet Data:					
Cash, cash equivalents and unrestricted marketable securities	$ 768,014	$ 629,895	$ 430,247	$ 309,574	$ 103,763
Restricted marketable securities	3,613	3,613	4,207	4,555	4,654
Working capital	401,453	606,667	285,409	293,122	61,903
Total assets	1,880,951	1,656,047	1,247,932	891,499	182,743
Other long-term liabilities	11,870	9,265	3,657	3,565	3,035
1% convertible senior notes	199,855	199,855	200,000	200,000	200,000
5 1/2% convertible subordinated notes	—	—	—	—	56,614
Total stockholders' equity (deficit)	$ 1,568,770	$ 1,358,552	$ 954,693	$ 624,214	$ (125,931)

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

Overview

We provide services for accelerating and improving the delivery of content and applications over the Internet. We primarily derive income from the sale of services to customers executing contracts with terms of one year or longer, which we refer to as recurring revenue contracts or long-term contracts. These contracts generally commit the customer to a minimum monthly level of usage with additional charges applicable for actual usage above the monthly minimum. In recent years, however, we have entered into increasing numbers of customer contracts that have minimum usage commitments that are based on quarterly, twelve-month or longer periods. Our goal of having a consistent and predictable base level of income is important to our financial success. Accordingly, to be successful, we must maintain our base of recurring revenue contracts by eliminating or reducing lost monthly or annual recurring revenue due to customer cancellations or terminations and build on that base by adding new customers and increasing the number of services, features and functions that our existing customers purchase. At the same time, we must ensure that our expenses do not increase faster than, or at the same rate as, our revenues. Accomplishing these goals requires that we compete effectively in the marketplace on the basis of quality, price and the attractiveness of our services and technology.

This Management's Discussion and Analysis of Financial Condition and Results of Operations, or MD&A, should be read in conjunction with our consolidated financial statements and notes thereto which appear elsewhere in this annual report on Form 10-K. See "Risk Factors" elsewhere in this annual report on Form 10-K for a discussion of certain risks associated with our business. The following discussion contains forward-looking statements. The forward-looking statements do not include the potential impact of any mergers, acquisitions, or divestitures of business combinations that may be announced after the date hereof.

Our increase in net income in 2008 as compared to 2007 and 2006 reflects the success of our efforts to increase our monthly and annual recurring revenues while limiting the expenses needed to support such growth. The following sets forth, as a percentage of revenues, consolidated statements of operations data for the years indicated:

	2008	2007	2006
Revenues	100%	100%	100%
Cost of revenues	28	26	22
Research and development	5	7	8
Sales and marketing	21	23	28
General and administrative	17	19	21
Amortization of other intangible assets	2	2	2
Restructuring charge (benefit)	—	—	—
Total costs and operating expenses	73	77	81
Income from operations	27	23	19
Interest income	3	4	4
Interest expense	—	—	(1)
Other income (expense), net	—	—	—
Gain (loss) on investments, net	—	—	—
Loss on early extinguishment of debt	—	—	—
Income before provision for income taxes	30	27	22
Provision for income taxes	11	11	9
Net income	19%	16%	13%

We were profitable for fiscal years 2008, 2007 and 2006; however, we cannot guarantee continued profitability or profitability at the levels we have recently experienced for any period in the future. We have observed the following trends and events that are likely to have an impact on our financial condition and results of operations in the foreseeable future:

- During each quarter of 2008, the dollar volume of new recurring revenue contracts that we booked exceeded the dollar volume of the contracts we lost through cancellations, terminations and non-payment. A continuation of this trend would lead to increased revenues.
- During each quarter of 2008, unit prices offered to some new and existing customers declined, including contracts signed with certain customers at higher committed service levels that reflected volume discounts. Additionally, increased competition from new entrants into the market that are willing to use low unit prices as a method of differentiation contributed to these price declines. If we continue to experience decreases in unit prices for new and existing customers, our operating profit percentage could decrease.
- During each quarter of 2008, we reduced our network bandwidth costs per unit by entering into new supplier contracts with lower pricing and amending existing contracts to take advantage of price reductions offered by our existing suppliers. Additionally, we continue to invest in internal-use software development to improve the performance and efficiency of our network. Due to increased traffic delivered over our network, however, our total bandwidth costs increased during these quarters. We believe that our overall bandwidth costs will continue to increase as a result of expected higher traffic levels, but we anticipate continued reductions in bandwidth costs per unit. If we do not experience lower per unit bandwidth pricing or we are unsuccessful at effectively routing traffic over our network through lower cost providers, total network bandwidth costs could increase in excess of our expectations in 2009.
- During each quarter of 2008, no customer accounted for 10% or more of our total revenues. We expect that customer concentration levels will continue to decline compared to those in prior years if our customer base continues to grow.
- During the year ended December 31, 2008, revenues derived from customers outside the United States accounted for 25% of our total revenues. We expect revenues from such customers as a percentage of our total revenues to be between 25% and 30% in 2009.
- As of January 1, 2006, we adopted SFAS No. 123R, which requires us to record compensation expense for employee stock awards at fair value at the time of grant. For the years ended December 31, 2008, 2007 and 2006, our stock-based compensation expense was $57.9 million, $66.6 million and $49.6 million, respectively. We expect that stock-based compensation expense will continue at the current level, because we have a significant number of unvested employee awards outstanding that we expect will be offset by grants of stock-based compensation awards in the future at lower fair values than those previously granted. As of December 31, 2008, our total unrecognized compensation costs for stock-based awards were $75.9 million, which we expect to recognize as expense over a weighted average period of 1.2 years. This expense is expected to be recognized through 2012.
- Depreciation and amortization expense related to our network equipment and internal-use software development costs increased by $18.1 million during 2008 as compared to 2007. Due to expected future purchases of network equipment during 2009, we believe that depreciation expense related to our network equipment will continue to increase in 2009. We expect to continue to enhance and add functionality to our service offerings and capitalize stock-based compensation expense attributable to employees working on such projects, which would increase the amount of capitalized internal-use software costs. As a result, we believe that the amortization of internal-use software development costs, which we include in cost of revenues, will increase in 2009 as compared to 2008.

- As of December 31, 2008, we have recorded a pre-tax cumulative unrealized loss in stockholders' equity of $38.1 million related to the temporary impairment of our marketable security investments and $12.9 million of realized loss in our statement of operations related to the other-than-temporary impairment of our investments in auction rate securities, or ARS. We also recorded a realized gain of $12.5 million related to an agreement we entered into with one of our investment advisors. Under the terms of the agreement, the investment advisor agreed to repurchase, in June 2010, the ARS it previously sold to us. The gain represented by the put option incorporated into this agreement was included in gain (loss) on investments, net in our statement of operations. Based upon our cash, cash equivalents and marketable securities balance of $771.6 million and expected operating cash flows, we do not anticipate that the lack of liquidity associated with our ARS will adversely affect our ability to conduct business during 2009. We believe we have the ability to hold these ARS until a recovery of the auction process, a buyer is found outside the auction process, the securities are called or refinanced by the issuer, or until maturity.
- During the year ended December 31, 2008, our effective income tax rate was 38.1%. While we expect our annual effective income tax rate to remain relatively consistent during 2009, we do not expect to make significant cash tax payments due to the continued utilization of our deferred tax assets.

In November 2008, we announced a workforce reduction affecting 110 employees across all functional areas. We recorded $2.0 million as a restructuring charge for the amount of one-time benefits provided to affected employees. Included in these costs is a net reduction in non-cash stock-based compensation of $0.8 million, reflecting a modification to certain stock-based awards previously granted to affected employees. Additionally, in December 2008, in connection with excess and vacated facilities under long-term non-cancelable leases, we recorded $0.5 million as a restructuring charge for the estimated future lease payments, less estimated sublease income, for these vacated facilities. We expect that $1.7 million of these liabilities will be paid in 2009.

Based on our analysis of, among other things, the aforementioned trends and events, as of the date of this annual report on Form 10-K, we expect to continue to generate net income on a quarterly and annual basis during 2009; however, our future results are likely to be affected by many factors identified in the section captioned "Risk Factors" and elsewhere in this annual report on Form 10-K, including our ability to:

- increase our revenue by adding customers through long-term contracts and limiting customer cancellations and terminations;
- offset unit price declines for our services with higher volumes of traffic delivered on our network as well as increased sales of our value-added solutions;
- prevent disruptions to our services and network due to accidents or intentional attacks; and
- maintain our network bandwidth costs and other operating expenses consistent with our revenues.

As a result, there is no assurance that we will achieve our expected financial objectives, including generating positive net income, in any future period.

Application of Critical Accounting Policies and Estimates

Overview

Our MD&A is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. These principles require us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, cash flow and related disclosure of contingent assets and liabilities. Our estimates include those related to revenue recognition, accounts receivable and related reserves, valuation and impairment of investments and marketable securities, capitalized internal-use software costs, goodwill and other intangible assets, tax reserves, impairment

and useful lives of long-lived assets, loss contingencies and stock-based compensation. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances at the time such estimates are made. Actual results may differ from these estimates. For a complete description of our significant accounting policies, see Note 2 to our consolidated financial statements included elsewhere in this annual report on Form 10-K.

Definitions

We define our "critical accounting policies" as those accounting principles generally accepted in the United States of America that require us to make subjective estimates and judgments about matters that are uncertain and are likely to have a material impact on our financial condition and results of operations as well as the specific manner in which we apply those principles. Our estimates are based upon assumptions and judgments about matters that are highly uncertain at the time the accounting estimate is made and applied and require us to assess a range of potential outcomes.

Review of Critical Accounting Policies and Estimates

Revenue Recognition:

We recognize service revenue in accordance with the Commission's Staff Accounting Bulletin No. 104, "Revenue Recognition," and the Financial Accounting Standards Board, or FASB, Emerging Issues Task Force, or EITF, Issue No. 00-21, "Revenue Arrangements with Multiple Deliverables." Revenue is recognized only when the price is fixed or determinable, persuasive evidence of an arrangement exists, the service is performed and collectability of the resulting receivable is reasonably assured.

We primarily derive revenues from the sale of services to customers executing contracts with terms of one year or longer. These contracts generally commit the customer to a minimum monthly, quarterly or annual level of usage and specify the rate at which the customer must pay for actual usage above the monthly, quarterly or annual minimum. For these services, we recognize the monthly minimum as revenue each month provided that an enforceable contract has been signed by both parties, the service has been delivered to the customer, the fee for the service is fixed or determinable and collection is reasonably assured. Should a customer's usage of our service exceed the monthly minimum, we recognize revenue for such excess usage in the period of the usage. For annual or other non-monthly period revenue commitments, we recognize revenue monthly based upon the customer's actual usage each month of the commitment period and only recognize any remaining committed amount for the applicable period in the last month thereof.

We typically charge customers an installation fee when the services are first activated. The installation fees are recorded as deferred revenue and recognized as revenue ratably over the estimated life of the customer arrangement. We also derive income from services sold as discrete, non-recurring events or based solely on usage. For these services, we recognize revenue when the event or usage has occurred.

When more than one element is contained in a single arrangement, we allocate revenue between the elements based on each element's relative fair value, provided that each element meets the criteria as a separate unit of accounting. An item is considered a separate unit of accounting if it has value to the customer on a standalone basis and there is objective and verifiable evidence of the fair value of the separate elements. Fair value is generally determined based upon the price charged when the element is sold separately. If the fair value of each element cannot be objectively determined, the total value of the arrangement is recognized ratably over the entire service period commencing when all services have begun to be provided. For most multi-element service arrangements we have entered into to date, the fair value of each element has not been objectively determinable. Therefore, all revenue under these arrangements has been recognized ratably over the related service period commencing when we have begun to provide all services ordered.

At the inception of a customer contract for service, we make an estimate as to that customer's ability to pay for the services provided. We base our estimate on a combination of factors, including the successful completion of a credit check or financial review, our collection experience with the customer and other forms of payment assurance. Upon the completion of these steps, we recognize revenue monthly in accordance with our revenue recognition policy. If we subsequently determine that collection from the customer is not reasonably assured, we record an allowance for doubtful accounts and bad debt expense for all of that customer's unpaid invoices and cease recognizing revenue for continued services provided until cash is received. Changes in our estimates and judgments about whether collection is reasonably assured would change the timing of revenue or amount of bad debt expense that we recognize.

We also sell our services through a reseller channel. Assuming all other revenue recognition criteria are met, we recognize revenue from reseller arrangements based on the reseller's contracted non-refundable minimum purchase commitments over the term of the contract, plus amounts sold by the reseller to its customers in excess of the minimum commitments. These excess commitments are recognized as revenue in the period in which the service is provided.

From time to time, we enter into contracts to sell our services or license our technology to unrelated companies at or about the same time we enter into contracts to purchase products or services from the same companies. If we conclude that these contracts were negotiated concurrently, we record as revenue only the net cash received from the vendor, unless the product or service received has a separate and identifiable benefit and the fair value to us of the vendor's product or service can be objectively established.

We may from time to time resell licenses or services of third parties. We record revenue for these transactions on a gross basis when we have risk of loss related to the amounts purchased from the third party and we add value to the license or service, such as by providing maintenance or support for such license or service. If these conditions are present, we recognize revenue when all other revenue recognition criteria are satisfied.

Deferred revenue represents amounts billed to customers for which revenue has not been recognized. Deferred revenue primarily consists of the unearned portion of monthly billed service fees; prepayments made by customers for future periods; deferred installation and activation set-up fees; and amounts billed under customer arrangements with extended payment terms.

Accounts Receivable and Related Reserves:

Trade accounts receivable are recorded at the invoiced amounts and do not bear interest. In addition to trade accounts receivable, our accounts receivable balance includes unbilled accounts that represent revenue recorded for customers that is typically billed within one month. We record reserves against our accounts receivable balance. These reserves consist of allowances for doubtful accounts and revenue from certain customers on a cash basis. Increases and decreases in the allowance for doubtful accounts are included as a component of general and administrative expenses. Increases in the reserve for cash basis customers are recorded as reduction of revenue. The reserve for cash basis customers increases as services are provided to customers for which collection is no longer assured. The reserve decreases and revenue is recognized when and if cash payments are received.

Estimates are used in determining these reserves and are based upon our review of outstanding balances on a customer-specific, account-by-account basis. The allowance for doubtful accounts is based upon a review of customer receivables from prior sales with collection issues where we no longer believe that the customer has the ability to pay for prior services provided. We perform on-going credit evaluations of our customers. If such an evaluation indicates that payment is no longer reasonably assured for services provided, any future services provided to that customer will result in creation of a cash basis reserve until we receive consistent payments.

Valuation and Impairment of Investments and Marketable Securities:

Effective January 1, 2008, we implemented SFAS No. 157, "Fair Value Measurement," or SFAS No. 157, for our financial assets and liabilities that are re-measured and reported at fair value at each reporting period, and non-financial assets and liabilities that are re-measured and reported at fair value at least annually. SFAS No. 157 defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. We have certain financial assets and liabilities recorded at fair value (principally cash equivalents and short- and long-term marketable securities) that have been classified as Level 1, 2 or 3 within the fair value hierarchy as described in SFAS No. 157. Fair values determined by Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical assets or liabilities that we have the ability to access. Fair values determined by Level 2 inputs utilize data points that are observable such as quoted prices, interest rates and yield curves. Fair values determined by Level 3 inputs utilize unobservable data points for the asset or liability.

Investments and marketable securities are considered to be impaired when a decline in fair value below cost basis is determined to be other-than-temporary. We periodically evaluate whether a decline in fair value below cost basis is other-than-temporary by considering available evidence regarding these investments including, among other factors, the duration of the period that, and extent to which, the fair value is less than cost basis; the financial health of and business outlook for the issuer, including industry and sector performance and operational and financing cash flow factors; overall market conditions and trends; and our intent and ability to retain our investment in the security for a period of time sufficient to allow for an anticipated recovery in market value. Once a decline in fair value is determined to be other-than-temporary, a write-down is recorded and a new cost basis in the security is established. Assessing the above factors involves inherent uncertainty. Write-downs, if recorded, could be materially different from the actual market performance of investments and marketable securities in our portfolio, if, among other things, relevant information related to our investments and marketable securities was not publicly available or other factors not considered by us would have been relevant to the determination of impairment.

Included in our short- and long-term marketable securities at December 31, 2008 and 2007 are ARS that are primarily AAA-rated bonds, most of which are collateralized by federally guaranteed student loans. ARS are long-term variable rate bonds tied to short-term interest rates that may reset through a "Dutch auction" process that is designed to occur every seven to 35 days. Historically, the carrying value (par value) of ARS approximated fair market value due to the resetting of variable interest rates. Beginning in mid-February 2008 and continuing throughout the period ended December 31, 2008, however, the auctions for ARS then held by us were unsuccessful. As a result, the interest rates on ARS reset to the maximum rate per the applicable investment offering statements. We will not be able to liquidate affected ARS until a future auction on these investments is successful, a buyer is found outside the auction process, the securities are called or refinanced by the issuer, or the securities mature. Due to the long-term nature of the underlying student loan bonds and the failure of the auction process to provide a current market, we classified these investments as long-term on our consolidated balance sheet as of December 31, 2008.

In light of these liquidity issues, we performed a discounted cash flow analysis to determine the estimated fair value of these ARS investments. The discounted cash flow analysis we performed considered the timing of expected future successful auctions, the impact of extended periods of maximum interest rates, collateralization of underlying security investments and the creditworthiness of the issuer. The discounted cash flow analysis performed as of December 31, 2008 assumes a weighted average discount rate of 6.275% and expected term of five years. The discount rate was determined using a proxy based upon the current market rates for similar debt offerings within the AAA-rated ARS market. The expected term was based on management's estimate of future liquidity. As a result, as of December 31, 2008, we have estimated an aggregate loss of $50.1 million, of which $37.2 million was related to the impairment of ARS deemed to be temporary and included in accumulated other comprehensive income (loss) within stockholders' equity and of which $12.9 million was related to the

impairment of ARS deemed other-than-temporary and included in gain (loss) on investments, net in the consolidated statement of operations.

Despite the failed auctions, we continue to receive cash flows in the form of specified interest payments from the issuers of ARS. In addition, except for ARS with respect to which we have entered into an agreement allowing us to sell such ARS in June 2010, we have the intent and ability to hold our ARS until a recovery of the impairment because we believe we have sufficient cash and other marketable securities on-hand and from projected cash flows from operations such that we do not anticipate a need to sell our ARS prior to a recovery to par value. See “Liquidity and Capital Resources” below.

Impairment and Useful Lives of Long-Lived Assets:

We review our long-lived assets, such as fixed assets and intangible assets, for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. Events that would trigger an impairment review include a change in the use of the asset or forecasted negative cash flows related to the asset. When such events occur, we compare the carrying amount of the asset to the undiscounted expected future cash flows related to the asset. If this comparison indicates that impairment is present, the amount of the impairment is calculated as the difference between the carrying amount and the fair value of the asset. If a readily determinable market price does not exist, fair value is estimated using discounted expected cash flows attributable to the asset. The estimates required to apply this accounting policy include forecasted usage of the long-lived assets, the useful lives of these assets and expected future cash flows. Changes in these estimates could materially impact results from operations.

Goodwill and Other Intangible Assets:

We test goodwill for impairments on an annual basis or more frequently if events or changes in circumstances indicate that the asset might be impaired. We concluded that we had one reporting unit and assigned the entire balance of goodwill to this reporting unit as of December 31, 2008 and 2007. The fair value of the reporting unit was determined using our market capitalization as of December 31, 2008 and 2007. We performed an impairment test of goodwill as of each of December 31, 2008 and December 31, 2007. These tests did not result in an impairment of goodwill. Other intangible assets consist of completed technologies, customer relationships, trademarks and non-compete agreements arising from acquisitions of businesses and acquired license rights. Purchased intangible assets, other than goodwill, are amortized over their estimated useful lives based upon the economic value derived from the related intangible assets. Goodwill is carried at its historical cost.

Loss Contingencies:

We define a loss contingency as a condition involving uncertainty as to a possible loss related to a previous event that will not be resolved until one or more future events occur or fail to occur. Our primary loss contingencies relate to pending or threatened litigation. We record a liability for a loss contingency when we believe that it is probable that a loss has been incurred and the amount of the loss can be reasonably estimated. When we believe the likelihood of a loss is less than probable and more than remote, we do not record a liability. Material loss contingencies are disclosed in the notes to our consolidated financial statements.

Tax Reserves:

Our provision for income taxes is comprised of a current and a deferred portion. The current income tax provision is calculated as the estimated taxes payable or refundable on tax returns for the current year. The deferred income tax provision is calculated for the estimated future tax effects attributable to temporary differences and carryforwards using expected tax rates in effect in the years during which the differences are expected to reverse or the carryforwards are expected to be realized.

We currently have significant deferred tax assets, comprised of net operating loss, or NOL, carryforwards, tax credit carryforwards and deductible temporary differences. Our management periodically weighs the positive and negative evidence to determine if it is more likely than not that some or all of the deferred tax assets will not be realized.

We have recorded certain tax reserves to address potential exposures involving our income tax and sales and use tax positions. These potential tax liabilities result from the varying application of statutes, rules, regulations and interpretations by different taxing jurisdictions. Our estimate of the value of our tax reserves contains assumptions based on past experiences and judgments about the interpretation of statutes, rules and regulations by taxing jurisdictions. It is possible that the costs of the ultimate tax liability or benefit from these matters may be materially more or less than the amount that we estimated.

In June 2006, the FASB issued FASB Interpretation, or FIN, No. 48, "Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109." FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109, "Accounting for Income Taxes." FIN 48 prescribes a two-step process to determine the amount of tax benefit to be recognized. First, the tax position must be evaluated to determine the likelihood that it will be sustained upon external examination. If the tax position is deemed more-likely-than-not to be sustained, the tax position is then assessed to determine the amount of benefit to recognize in the financial statements. The amount of the benefit that may be recognized is the largest amount that has a greater than 50 percent likelihood of being realized upon ultimate settlement. We adopted the provisions of FIN 48 on January 1, 2007. As of the date of adoption, we had unrecognized tax benefits of $2.1 million, including accrued interest and penalties, and did not record any cumulative effect adjustment to retained earnings as a result of adopting FIN 48. As of December 31, 2008, we had unrecognized tax benefits of $6.1 million, including accrued interest and penalties.

Accounting for Stock-Based Compensation:

We account for stock-based compensation in accordance with SFAS No. 123R. Under the fair value recognition provisions of SFAS No. 123R, stock-based compensation cost is measured at the grant date based on the fair value of the award and is recognized as expense over the vesting period. We have selected the Black-Scholes option pricing model to determine fair value of stock option awards. Determining the fair value of stock-based awards at the grant date requires judgment, including estimating the expected life of the stock awards and the volatility of the underlying common stock. Our assumptions may differ from those used in prior periods because of adjustments to the calculation of such assumptions based upon the guidance of SFAS No. 123R and Staff Accounting Bulletin No. 107, "Share-Based Payment." Changes to the assumptions may have a significant impact on the fair value of stock options, which could have a material impact on our financial statements. In addition, judgment is also required in estimating the amount of stock-based awards that are expected to be forfeited. Should our actual forfeiture rates differ significantly from our estimates, our stock-based compensation expense and results of operations could be materially impacted.

For stock options, restricted stock, restricted stock units and deferred stock units, we recognize compensation cost on a straight-line basis over the awards' vesting periods for those awards that contain only a service vesting feature. For awards with a performance condition vesting feature, we recognize compensation cost on a graded-vesting basis over the awards' expected vesting periods.

Capitalized Internal-Use Software Costs:

We capitalize the salaries and payroll-related costs of employees and consultants who devote time to the development of internal-use software projects. If a project constitutes an enhancement to previously developed software, we assess whether the enhancement is significant and creates additional functionality to the software, thus qualifying the work incurred for capitalization. Once the project is complete, we estimate the useful life of the internal-use software, and we periodically assess whether the software is impaired. Changes in our estimates related to internal-use software would increase or decrease operating expenses or amortization recorded during the period.

Results of Operations

Revenues. Total revenues increased 24%, or $154.5 million, to $790.9 million for the year ended December 31, 2008 as compared to $636.4 million for the year ended December 31, 2007. Total revenues increased 48%, or $207.7 million, to $636.4 million for the year ended December 31, 2007 as compared to $428.7 million for the year ended December 31, 2006. The increases in revenue during the years presented were primarily attributable to an increase in the number of customers under recurring revenue contracts, as well as increases in traffic and additional services sold to new and existing customers. Increased sales to existing customers contributed to increases in the average revenue per customer during each year, partially offset by reduced unit prices offered to new and renewing customers. We believe that the continued growth in use of the Internet by businesses and consumers was the principal factor driving increased purchases of our services. We expect this trend to continue in 2009 but at lower rates of growth due to general economic conditions and a leveling off of the rate of increased growth in use of the Internet. Also contributing to the increase in revenues for the years ended December 31, 2008 and 2007 were revenues generated through our acquisitions of acerno, which added $6.9 million of revenue during the fourth quarter of 2008, Netli, Nine Systems and Red Swoosh. As of December 31, 2008, we had 2,858 customers under recurring revenue contracts as compared to 2,645 at December 31, 2007 and 2,347 at December 31, 2006.

For 2008 and 2007, 25% and 23%, respectively, of our total revenues was derived from our operations located outside of the United States, of which 18% and 17% of total revenues, respectively, was derived from operations in Europe. For 2006, 22% of our total revenues was derived from our operations located outside of the United States, of which 18% of total revenues was derived from operations in Europe. Other than the United States, no single country accounted for 10% or more of our total revenues during these periods. We expect international sales to increase slightly as a percentage of our total sales in 2009 as compared to prior years. Resellers accounted for 16% of revenues in 2008, 18% in 2007 and 20% in 2006. For 2008, 2007 and 2006, no single customer accounted for 10% or more of total revenues.

Cost of Revenues. Cost of revenues includes fees paid to network providers for bandwidth and co-location of our network equipment. Cost of revenues also includes payroll and related costs and stock-based compensation expense for network operations personnel, cost of software licenses, depreciation of network equipment used to deliver our services and amortization of internal-use software.

Cost of revenues was comprised of the following (in millions):

	For the Years Ended December 31,		
	2008	2007	2006
Bandwidth, co-location and storage fees	$ 136.8	$ 103.2	$ 59.2
Payroll and related costs of network operations personnel	10.8	8.8	5.8
Stock-based compensation	2.4	3.3	2.0
Depreciation and impairment of network equipment	55.2	41.1	19.4
Amortization of internal-use software	17.4	11.0	7.7
Total cost of revenues	$ 222.6	$ 167.4	$ 94.1

Cost of revenues increased 33%, or $55.2 million, to $222.6 million for the year ended December 31, 2008 as compared to $167.4 million for the year ended December 31, 2007. Cost of revenues increased 78%, or $73.3 million, to $167.4 million for the year ended December 31, 2007 as compared to $94.1 million for the year ended December 31, 2006. These increases were primarily due to an increase in the amounts paid to network providers due to higher traffic levels, partially offset by reduced bandwidth costs per unit, and increases in depreciation expense of network equipment and amortization of internal-use software as we continued to invest in our infrastructure. Additionally, in 2008, 2007 and 2006, cost of revenues included stock-based compensation expense; such expense decreased by $0.9 million in 2008 as compared to 2007 and increased by $1.4 million in 2007 as compared to 2006. Cost of revenues during 2008, 2007 and 2006 also included credits received of approximately $3.3 million, $3.4 million and $1.5 million, respectively, from settlements and renegotiations entered into in connection with billing disputes related to bandwidth contracts. Credits of this nature may occur in the future; however, the timing and amount of future credits, if any, will vary.

We have long-term purchase commitments for bandwidth usage and co-location with various networks and Internet service providers. For the years ending December 31, 2009 and 2010, the minimum commitments related to bandwidth usage and co-location services are approximately $42.4 million and $8.0 million, respectively.

We believe cost of revenues will increase in 2009. We expect to deliver more traffic on our network, which would result in higher expenses associated with the increased traffic; however, such costs are likely to be partially offset by lower bandwidth costs per unit. Additionally, for 2009, we anticipate increases in depreciation expense related to our network equipment and amortization of internal-use software development costs, along with increased payroll and related costs, as we continue to make investments in our network with the expectation that our customer base will continue to expand.

Research and Development. Research and development expenses consist primarily of payroll and related costs and stock-based compensation expense for research and development personnel who design, develop, test, deploy and enhance our services and our network. Research and development costs are expensed as incurred, except for certain internal-use software development costs eligible for capitalization. During the years ended December 31, 2008, 2007 and 2006, we capitalized software development costs of $23.9 million, $17.8 million and $11.7 million, respectively, net of impairments. These development costs consisted of external consulting, payroll and payroll-related costs for personnel involved in the development of internal-use software used to deliver our services and operate our network. Additionally, for the years ended December 31, 2008, 2007 and 2006, we capitalized as internal-use software $7.4 million, $6.4 million and $4.3 million, respectively, of non-cash stock-based compensation. These capitalized internal-use software costs are amortized to cost of revenues over their estimated useful lives of two years.

Research and development expenses decreased 11%, or $4.9 million, to $39.2 million for the year ended December 31, 2008 as compared to $44.1 million for the year ended December 31, 2007. Research and development expenses increased 33%, or $11.0 million, to $44.1 million for the year ended December 31, 2007, as compared to $33.1 million for the year ended December 31, 2006. The research and development expense decrease in 2008 as compared to 2007 was due to decreases in stock-based compensation expense and travel costs as well as an increase in amount of costs capitalized as internal-use software, partially offset by an increase in payroll and related costs resulting from higher headcount. The research and development expense increase in 2007 as compared to the prior year was due to increases in payroll and related costs resulting from higher headcount, as well as additional stock-based compensation expense.

The following table quantifies the net changes in the various components of our research and development expenses for the periods presented (in millions):

	Increase (Decrease) in Research and Development Expenses	
	2008 to 2007	2007 to 2006
Payroll and related costs	$ 6.2	$ 12.5
Stock-based compensation	(4.6)	4.2
Capitalized salaries and other	(6.5)	(5.7)
Total net (decrease) increase	$ (4.9)	$ 11.0

We believe that research and development expenses will increase in 2009 because we expect to continue to hire additional development personnel in order to make improvements in our core technology, develop new services and make refinements to our other service offerings.

Sales and Marketing. Sales and marketing expenses consist primarily of payroll and related costs, stock-based compensation expense and commissions for personnel engaged in marketing, sales and support functions, as well as advertising and promotional expenses.

Sales and marketing expenses increased 11%, or $16.8 million, to $164.4 million for the year ended December 31, 2008 as compared to $147.6 million for the year ended December 31, 2007. Sales and marketing expenses increased 23%, or $27.9 million, to $147.6 million for the year ended December 31, 2007 as compared to $119.7 million for the year ended December 31, 2006. The increase in sales and marketing expenses during these periods was primarily due to higher payroll and related costs, particularly commissions for sales and marketing personnel, attributable to revenue growth and as a result of higher marketing-related costs, particularly for the year ended December 31, 2008, as compared to the year ended December 31, 2007.

The following table quantifies the net increase in the various components of our sales and marketing expenses for the periods presented (in millions):

	Increase (Decrease) in Sales and Marketing Expenses	
	2008 to 2007	2007 to 2006
Payroll and related costs	$ 8.8	$ 12.6
Stock-based compensation	—	7.8
Marketing and related costs	4.5	2.9
Other expense	3.5	4.6
Total net increase	$ 16.8	$ 27.9

We expect that sales and marketing expenses will increase in 2009 due to an expected increase in commissions on higher forecasted sales of our services, offset by a reduction in payroll and related costs due to a decrease in our sales and marketing personnel and other marketing costs such as advertising.

General and Administrative. General and administrative expenses consist primarily of the following components:

- payroll, stock-based compensation expense and other related costs, including expenses for executive, finance, business applications, network management, human resources and other administrative personnel;
- depreciation of property and equipment we use internally;
- fees for professional services;
- rent and other facility-related expenditures for leased properties;
- the provision for doubtful accounts;
- insurance costs; and
- non-income related taxes.

General and administrative expenses increased 12%, or $14.9 million, to $136.0 million for the year ended December 31, 2008 as compared to $121.1 million for the year ended December 31, 2007. General and administrative expenses increased 34% or $30.9 million, to $121.1 million for the year ended December 31, 2007 as compared to $90.2 million for the year ended December 31, 2006. The increase in general and administrative expenses during both periods was primarily due to an increase in payroll and related costs as a result of headcount growth. Additionally, facilities-related costs increased due to office expansions, and we incurred increased expenditures for professional services, particularly legal and consulting fees. This increase was offset by a decrease in stock-based compensation expense during 2008 in comparison to 2007.

The following table quantifies the net increase in various components of our general and administrative expenses for the periods presented (in millions):

	Increase (Decrease) in General and Administrative Expenses	
	2008 to 2007	2007 to 2006
Payroll and related costs	$ 4.7	$ 7.8
Stock-based compensation	(3.2)	3.5
Non-income taxes	2.0	(0.5)
Facilities-related costs	3.6	5.2
Depreciation and amortization	3.2	3.4
Provision for doubtful accounts	(0.1)	1.2
Legal fees	0.4	6.9
Consulting and advisory services	1.1	0.8
Other expenses	3.2	2.6
Total net increase	$ 14.9	$ 30.9

We expect general and administrative expenses to increase in 2009 due to increased payroll and related costs attributable to increased hiring and an increase in rent and facilities costs, offset by an expected reduction in litigation-related expenses.

Amortization of Other Intangible Assets. Amortization of other intangible assets consists of the amortization of intangible assets acquired in business combinations and amortization of acquired license rights. Amortization of other intangible assets increased 22%, or $2.5 million, to $13.9 million for the year ended December 31, 2008 as compared to $11.4 million for the year ended December 31, 2007. Amortization of other intangible assets for the year ended December 31, 2007 increased by $2.9 million, or 35%, over amortization of other intangible assets in the year ended December 31, 2006 of $8.5 million. The increase in amortization of other intangible assets in 2008 as compared to 2007 was due to the amortization of intangible assets from the acquisitions of acerno in November 2008 and a full year of amortization of intangible assets from the Red Swoosh acquisition in April 2007. The increase in amortization of intangible assets in 2007 as compared to 2006 was due to the amortization of intangible assets from the acquisition of Netli in March 2007 and a full year of amortization of intangible assets from the Nine Systems acquisition in December 2006. Based on our currently-owned intangible assets, we expect amortization of other intangible assets to be approximately $16.7 million, $16.4 million, $16.4 million, $15.4 million and $12.6 million for the years ending December 31, 2009, 2010, 2011, 2012 and 2013, respectively.

Interest Income. Interest income includes interest earned on invested cash balances and marketable securities. Interest income decreased 4%, or $1.0 million, to $24.8 million for the year ended December 31, 2008 as compared to $25.8 million for the year ended December 31, 2007. Interest income increased 46%, or $8.1 million, to $25.8 million for the year ended December 31, 2007 as compared to $17.7 million for the year ended December 31, 2006. The decrease in 2008 as compared to 2007 was primarily due to a decrease in the interest rates, offsetting higher cash and marketable securities balances driven by an increase in our cash from operations. The increase in 2007 as compared to 2006 was primarily due to an increase in our total invested marketable securities as a result of an increase in our cash from operations.

Interest Expense. Interest expense includes interest paid on our debt obligations as well as amortization of deferred financing costs. Interest expense decreased 8%, or $0.3 million, to $2.8 million for the year ended December 31, 2008 compared to $3.1 million for the year ended December 31, 2007. Interest expense decreased 3%, or $85,000, to $3.1 million for the year ended December 31, 2007 compared to $3.2 million for the year

ended December 31, 2006. Interest expense during these periods was primarily attributable to interest payable on the outstanding amount of our 1% convertible senior notes. Based upon our outstanding indebtedness at December 31, 2008, we believe that interest expense on our debt obligations, including deferred financing amortization, will not exceed $3.1 million in 2009.

Other Income (Expense), net. Other income (expense), net primarily represents net foreign exchange gains and losses incurred during the periods presented as well as gains on legal settlements. Other income, net decreased 13%, or $66,000, to other income, net of $0.5 million for the year ended December 31, 2008 as compared to other income, net of $0.5 million for the year ended December 31, 2007. Other income, net was $0.6 million for the year ended December 31, 2006. Other income, net for the year ended December 31, 2008 consisted of $0.5 million of foreign exchange gains and $4,000 of net gains on legal settlements. Other income, net of $0.5 million for the year ended December 31, 2007 consisted of approximately $35,000 of foreign exchange gains and $0.5 million of net gains on legal settlements. For the year ended December 31, 2006, other income, net of $0.6 million consisted of approximately $90,000 of foreign exchange losses, offset by $0.5 million of net gains on legal settlements. Other income (expense), net may fluctuate in the future based upon movements in foreign exchange rates, the outcome of legal proceedings and other events.

Gain (Loss) on Investments, net. During the year ended December 31, 2008, we recorded a net loss on investments of $0.2 million, which reflects a loss of $12.9 million due to other-than-temporary impairments on marketable securities; a gain of $12.5 million realized on a put option received from one of our investment advisors in November 2008; and a gain of $0.2 million on the sale of marketable securities. During the years ended December 31, 2007 and 2006, we recorded a net gain on investments of $24,000 and $0.3 million, respectively, from the sale of marketable securities. We do not expect significant gains or losses on investments in 2009.

Loss on Early Extinguishment of Debt. During 2007, we recorded a loss on early extinguishment of debt in the amount of $3,000, as a result of conversions to common stock of $0.1 million in principal amount of our 1% convertible notes in August 2007 and $40,000 in principal amount of such notes in January 2007. We did not record any loss on the early extinguishment of debt in the 2006 or 2008.

Provision for Income Taxes. For the year ended December 31, 2008, our effective tax rate of 38.1% was higher than the 35% statutory federal income tax rate applicable to corporations due primarily to state income taxes and the effect of non-deductible stock-based compensation, partially offset by the benefit recorded for research and development tax credits. For the years ended December 31, 2007 and December 31, 2006, our effective tax rates of 40.0% and 41.5% respectively, were higher than the 35% statutory federal income tax rate due primarily to state income taxes and the effect of non-deductible stock-based compensation, partially offset by the benefit recorded for research and development tax credits.

Provision for income taxes increased by 33%, or $22.2 million, to $89.4 million for the year ended December 31, 2008 as compared to $67.2 million during the year ended December 31, 2007. Provision for income taxes increased by 64%, or $26.2 million, to $67.2 million for the year ended December 31, 2007 as compared to $41.1 million during the year ended December 31, 2006. These increases were primarily due to increases in our operating income.

While we expect our consolidated annualized effective tax rate in 2009 to remain relatively consistent with 2008, this expectation does not take into consideration the effect of discrete items recorded as a result of our compliance with SFAS No. 123R or any potential tax planning strategies. Our effective tax rate could be materially different depending on the nature and timing of the disposition of incentive and other employee stock options. Further, our effective tax rate may fluctuate within a fiscal year and from quarter to quarter, due to items arising from discrete events, including settlements of tax audits and assessments, the resolution or identification of tax position uncertainties and acquisitions of other companies.

Because of the availability of NOLs, a significant portion of our future provision for income taxes is expected to be a non-cash expense; consequently, the amount of cash paid with respect to income taxes is expected to be a relatively small portion of the total annualized tax expense during periods in which the NOLs are utilized. In determining our net deferred tax assets and valuation allowances, annualized effective tax rates, and cash paid for income taxes, management is required to make judgments and estimates about domestic and foreign profitability, the timing and extent of the utilization of NOL carryforwards, applicable tax rates, transfer pricing methodologies and tax planning strategies. Judgments and estimates related to our projections and assumptions are inherently uncertain; therefore, actual results could differ materially from our projections.

We have recorded certain tax reserves to address potential exposures involving our income tax and sales and use tax positions. These potential tax liabilities result from the varying application of statutes, rules, regulations and interpretations by different taxing jurisdictions. Our estimate of the value of these tax reserves reflects assumptions based on past experiences and judgments about the interpretation of statutes, rules and regulations by taxing jurisdictions. It is possible that the ultimate tax liability or benefit from of these matters may be materially greater or less than the amount that we have estimated.

Liquidity and Capital Resources

To date, we have financed our operations primarily through the following transactions:

- private sales of capital stock and subordinated notes, which notes were repaid in 1999;
- an initial public offering of our common stock in October 1999, which generated net proceeds of $217.6 million;
- the sale in June 2000 of an aggregate of $300 million in principal amount of our 5 1/2% convertible subordinated notes, which generated net proceeds of $290.2 million and were repaid or redeemed in full between December 2003 and September 2005;
- the sale in December 2003 and January 2004 of an aggregate of $200 million in principal amount of our 1% convertible senior notes, which generated net proceeds of $194.1 million;
- the public offering of 12.0 million shares of our common stock in November 2005, which generated net proceeds of $202.1 million;
- proceeds from the exercise of stock awards; and
- cash generated by operations.

As of December 31, 2008, our cash, cash equivalents and marketable securities, which consisted of corporate debt securities, U.S. treasury and government agency securities, commercial paper, corporate debt securities and student loan-backed ARS, totaled $771.6 million. We place our cash investments in instruments that meet high credit quality standards, as specified in our investment policy. Our investment policy also limits the amount of our credit exposure to any one issue or issuer and seeks to manage these assets to achieve our goals of preserving principal, maintaining adequate liquidity at all times, and maximizing returns subject to our investment policy.

We held approximately $287.1 million and $280.0 million in par value of ARS at December 31, 2008 and 2007, respectively. The ARS are primarily AAA-rated bonds, most of which are guaranteed by the U.S. government as part of the Federal Family Education Loan Program through the U.S. Department of Education. None of the auction rate securities in our portfolio are mortgage-backed or collateralized debt obligations. In mid-February 2008, all of our ARS experienced failed auctions, which failures continued throughout the rest of 2008. As a result, we have been unable to liquidate most of our holdings of ARS. Based on our ability to access our cash and other short-term investments, our expected operating cash flows, and our other sources of cash, we do not anticipate the current lack of liquidity on these investments to have a material impact on our financial

condition or results of operations in 2009. In November 2008, we entered into an agreement with one of our investment advisors that provides for the repurchase in June 2010 of $76.5 million of the ARS we hold if we have been unable to achieve liquidity with respect to such securities before that time.

Net cash provided by operating activities increased $106.5 million to $343.5 million for the year ended December 31, 2008 compared to $237.0 million for the year ended December 31, 2007. Cash provided by operating activities increased $104.2 million to $237.0 million for the year ended December 31, 2007 compared to $132.7 million for the year ended December 31, 2006. We expect that cash provided by operating activities will continue to increase as a result of an expected increase in cash collections related to higher revenues, partially offset by an expected increase in operating expenses that require cash outlays such as salaries and higher commissions. Current economic conditions could negatively impact our cash provided by operating activities if we are unable to manage our days sales outstanding or our business otherwise deteriorates.

Net cash used in investing activities was $364.4 million for the year ended December 31, 2008, compared to $226.7 million for the year ended December 31, 2007. Net cash used in investing activities was $205.6 million for the year ended December 31, 2006. Cash used in investing activities for 2008 reflects the purchase of acerno in November 2008 for $83.7 million, net purchases of short- and long-term marketable securities of $533.1 million and purchases of property and equipment of $115.4 million, including the capitalization of internal-use software development costs. Amounts attributable to these purchases and investments were offset, in part, by the proceeds from the sales and maturities of short- and long-term marketable securities of $367.7 million. Net cash used in investing activities for 2007 reflects net purchases of short- and long-term marketable securities of $550.6 million and purchases of property and equipment of $100.5 million, including the capitalization of internal-use software development costs. Amounts attributable to these purchases and investments were offset, in part, by the proceeds from the sales and maturities of short- and long-term marketable securities of $415.8 million and $7.9 million of net cash acquired through our acquisitions of Netli in March 2007 and Red Swoosh in April 2007. Additionally, net cash used in investing activities during 2007 included a decrease of $0.7 million in restricted investments previously held for security deposits. Net cash used in investing activities for 2006 reflects net purchases of short- and long-term investments of $395.9 million and purchases of property and equipment of $69.3 million, including the capitalization of internal-use software development costs. In addition, approximately $5.1 million of cash, including transaction costs, was used to acquire Nine Systems in December 2006. These purchases and investments were offset by the proceeds from the sales and maturities of short- and long-term securities of $264.3 million and a decrease of $0.4 million in restricted investments previously held for security deposits. For 2009, we expect total capital expenditures, a component of cash used in investing activities, to be approximately 15% of total revenue for the year. We expect to fund such capital expenditures through cash generated from operations.

Cash provided by financing activities was $33.1 million for the year ended December 31, 2008, compared to $52.5 million for the year ended December 31, 2007. Cash provided by financing activities was $60.4 million for the year ended December 31, 2006. Cash provided by financing activities for the year ended December 31, 2008 included proceeds of $22.0 million from the issuance of common stock upon the exercise of stock options and the sale of shares under our employee stock purchase plan. Cash provided by financing activities for the year ended December 31, 2008 also included $11.2 million related to excess tax benefits resulting from the exercise of stock options. Cash provided by financing activities was $52.5 million for the year ended December 31, 2007, compared to $60.4 million for the year ended December 31, 2006. Cash provided by financing activities for the year ended December 31, 2007 included proceeds of $31.6 million from the issuance of common stock upon the exercise of stock options and the sale of shares under our employee stock purchase plan. Cash provided by financing activities for the year ended December 31, 2007 also included $20.9 million related to excess tax benefits resulting from the exercise of stock options. Cash provided by financing activities for the year ended December 31, 2006 included proceeds of $27.9 million from the issuance of common stock upon the exercise of stock options and the sale of shares under our employee stock purchase plan. Cash provided by financing activities for the year ended December 31, 2006 also included $32.5 million related to excess tax benefits resulting from the exercise of stock options.

Changes in cash, cash equivalents and marketable securities are dependent upon changes in, among other things, working capital items such as deferred revenue, accounts payable, accounts receivable and various accrued expenses, as well as changes in our capital and financial structure, including debt repurchases and issuances, stock option exercises, sales of equity investments and similar events.

The following table represents the net inflows and outflows of cash, cash equivalents and marketable securities for the periods presented (in millions):

	For the Years Ended December 31,		
	2008	2007	2006
Cash, cash equivalents and marketable securities balance as of December 31, 2007, 2006 and 2005, respectively	$ 633.5	$ 434.5	$ 314.1
Changes in cash, cash equivalents and marketable securities:			
Receipts from customers	786.6	627.8	412.3
Payments to vendors	(366.4)	(319.0)	(197.5)
Payments for employee payroll	(184.2)	(179.6)	(134.6)
Realized loss on investments and other investment-related assets	(0.2)	—	—
Debt interest and premium payments	(2.0)	(2.0)	(2.0)
Stock option exercises and employee stock purchase plan issuances	22.0	31.6	27.9
Cash (used) acquired in business acquisitions	(83.7)	8.8	(4.5)
Unrealized loss on marketable securities, net of unrealized gains	(38.1)	—	—
Interest income	24.8	25.8	17.7
Taxes paid	(11.9)	(3.1)	(3.5)
Other	(8.8)	8.7	4.6
Net increase	138.1	199.0	120.4
Cash, cash equivalents and marketable securities balance as of December 31, 2008, 2007 and 2006, respectively	$ 771.6	$ 633.5	$ 434.5

As part of an agreement entered into with one of our investment advisors under which it agreed to repurchase $76.5 million of our ARS in June 2010, we were also offered the ability to enter into a line of credit that would be collateralized by the underlying ARS investments. In January 2009, the line of credit for $76.5 million was approved by the investment advisor. We have not yet used the line of credit.

We believe, based on our present business plan, that our cash, cash equivalents and marketable securities and forecasted cash flows from operations will be sufficient to meet our cash needs for working capital and capital expenditures for at least the next 24 months. If the assumptions underlying our business plan regarding future revenue and expenses change or if unexpected opportunities or needs arise, we may seek to raise additional cash by selling equity or debt securities. We may not, however, be able to sell equity or debt securities on terms we consider reasonable or at all. If additional funds are raised through the issuance of equity or debt securities, these securities could have rights, preferences and privileges senior to those accruing to holders of common stock, and the terms of such debt could impose restrictions on our operations. The sale of additional equity or convertible debt securities would also result in additional dilution to our existing stockholders. See “Risk Factors” elsewhere in this annual report on Form 10-K for a discussion of additional factors that could affect our liquidity.

Contractual Obligations, Contingent Liabilities and Commercial Commitments

The following table presents our contractual obligations and commercial commitments, as of December 31, 2008, for the next five years and thereafter (in millions):

	Payments Due by Period				
Contractual Obligations	Total	Less than 12 Months	12 to 36 Months	36 to 60 Months	More than 60 Months
1% convertible senior notes assuming no early redemption or repurchases	$199.9	$ —	$ —	$ —	$ 199.9
Interest on convertible notes outstanding assuming no early redemption or repurchases	50.0	2.0	4.0	4.0	40.0
Real estate operating leases	167.8	18.1	38.8	31.0	79.9
Bandwidth and co-location agreements	50.4	42.4	8.0	—	—
Open vendor purchase orders	15.0	15.0	—	—	—
Total contractual obligations	$483.1	$ 77.5	$ 50.8	$ 35.0	$ 319.8

In accordance with FIN No. 48, as of December 31, 2008, we had unrecognized tax benefits of $6.1 million, which included approximately $1.3 million of accrued interest and penalties. We do not expect to recognize any of these tax benefits in 2009. We are not, however, able to provide a reasonably reliable estimate of the timing of future payments relating to these obligations.

Letters of Credit

As of December 31, 2008, we had outstanding $8.6 million in irrevocable letters of credit issued by us in favor of third-party beneficiaries, primarily related to facility leases. Approximately $3.6 million of these letters of credit are collateralized by restricted marketable securities, of which $3.4 million are classified as short-term marketable securities and $0.2 million are classified as long-term marketable securities on our consolidated balance sheet at December 31, 2008. The restrictions on these marketable securities lapse as we fulfill our obligations or as such obligations expire under the terms of the letters of credit. These restrictions are expected to lapse at various times through May 2011. The remaining $5.0 million of irrevocable letters of credit are unsecured and are expected to remain in effect until December 2019.

Off-Balance Sheet Arrangements

We have entered into various indemnification arrangements with third parties, including vendors, customers, landlords, our officers and directors, shareholders of acquired companies, joint venture partners and third party licensees of our technology. Generally, these indemnification agreements require us to reimburse losses suffered by third parties due to various events, such as lawsuits arising from patent or copyright infringement or our negligence. These indemnification obligations are considered off-balance sheet arrangements in accordance with FASB Interpretation 45, “Guarantor’s Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others.” To date, we have not encountered material costs as a result of such obligations and have not accrued any significant liabilities related to such indemnification obligations in our financial statements. See Note 11 to our consolidated financial statements included elsewhere in this annual report on Form 10-K for further discussion of these indemnification agreements.

The conversion features of our 1% convertible senior notes due December 15, 2033 are equity-linked derivatives. As such, we recognize these instruments as off-balance sheet arrangements. The conversion features associated with these notes would be accounted for as derivative instruments, except that they are indexed to our common stock and classified in stockholders’ equity. Therefore, these instruments meet the scope exception of paragraph 11(a) of SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities,” and are

accordingly not accounted for as derivatives for purposes of SFAS No. 133. See Note 12 to our consolidated financial statements included elsewhere in this annual report on Form 10-K for more information.

Litigation

We are party to litigation that we consider routine and incidental to our business. Management does not currently expect the results of any of these litigation matters to have a material adverse effect on our business, results of operations or financial condition. See "Legal Proceedings" elsewhere in this annual report on Form 10-K for further discussion on litigation.

Recent Accounting Pronouncements

We adopted SFAS No. 157 on January 1, 2008. SFAS No. 157 defines fair value, establishes a methodology for measuring fair value and expands the required disclosure for fair value measurements. During 2008, the FASB issued the following amendments to SFAS No. 157:

- FASB Staff Position No. 157-1, "Application of FASB Statement No. 157 to FASB Statement No. 13 and Other Accounting Pronouncements That Address Fair Value Measurements for Purposes of Lease Classification or Measurement under Statement 13," or FSP FAS No. 157-1, which amends SFAS No. 157 to remove certain leasing transactions from its scope. The adoption of FSP FAS No. 157-1 did not have a material impact on our financial position or results of operations in 2008.
- FASB Staff Position No. FAS 157-2, "Effective Date of FASB Statement No. 157," which delays the effective date of SFAS No. 157 from 2008 to 2009 for non-financial assets and non-financial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). We are currently evaluating the potential impact of SFAS No. 157 for non-financial assets and non-financial liabilities on our financial position and results of operations.
- FASB Staff Position No. 157-3, "Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active," or FSP FAS No. 157-3, which clarifies the application of SFAS No. 157 in a market that is not active and provides an example to illustrate key considerations in determining the fair value of a financial asset when the market for that financial asset is not active. FSP FAS No. 157-3 became effective in October 2008. The adoption of FSP FAS No. 157-3 did not have a material impact on our financial position or results of operations in 2008.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), "Business Combinations," or SFAS No. 141R. SFAS No. 141R establishes principles and requirements for how the acquirer in a business combination (i) recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any non-controlling interest in the acquiree, (ii) recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase and (iii) determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS No. 141R became effective for us on January 1, 2009. The impact of the standard on our financial position and results of operations will be dependent upon the number of and magnitude of the acquisitions that are consummated once the standard is effective.

In December 2007, the FASB released SFAS No. 160, "Non-controlling Interests in Consolidated Financial Statements—an amendment of ARB No. 51." This statement will change the accounting and reporting for minority interests, which will be re-characterized as non-controlling interests and classified as a component of equity. This new consolidation method will significantly change the accounting for transactions with minority interest holders. This statement is effective for us on January 1, 2009. As of December 31, 2008, we did not have any minority interests.

In April 2008, the FASB issued an FASB Staff Position on SFAS No. 142-3, "Determination of the Useful Life of Intangible Assets," or FSP FAS No. 142-3. FSP FAS No. 142-3 amends the factors that should be

considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, “Goodwill and Other Intangible Assets,” or SFAS No. 142. FSP FAS No. 142-3 is intended to improve the consistency between the useful life of a recognized intangible asset under SFAS No. 142 and the period of expected cash flows used to measure the fair value of the asset under SFAS No. 141R and other generally accepted accounting principles in the United States of America. FSP FAS No. 142-3 is effective for financial statements issued for fiscal years beginning after December 15, 2008. We do not expect FSP FAS No. 142-3 will have a material impact on our financial position or results of operations.

In June 2008, the FASB issued FASB Staff Position, or FSP, EITF 03-6-1, “Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities.” This FSP provides that unvested share-based payment awards that contain non-forfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating securities and shall be included in the computation of earnings per share pursuant to the two-class method. Upon adoption, we are required to retrospectively adjust our earnings per share data (including any amounts related to interim periods, summaries of earnings and selected financial data) to conform with the provisions in this FSP. This FSP became effective for us on January 1, 2009. We have not yet determined the impact, if any, of this FSP on our consolidated financial statements.

Item 7A. ***Quantitative and Qualitative Disclosures About Market Risk***

Our exposure to market risk for changes in interest rates relates primarily to our debt and investment portfolio. In our investment portfolio, we do not use derivative financial instruments. We place our investments with high quality issuers and, by policy, limit the amount of risk by investing primarily in money market funds, United States Treasury obligations, high-quality corporate and municipal obligations and certificates of deposit. Our investment policy also limits the amount of our credit exposure to any one issue or issuer and seeks to manage these assets to achieve our goals of preserving principal, maintaining adequate liquidity at all times and maximizing returns subject to our investment policy.

At December 31, 2008, we held $287.1 million in par value of ARS that have experienced failed auctions, which has prevented us from liquidating those investments. As a result, we have classified these investments as long-term marketable securities on our consolidated balance sheet as of December 31, 2008. Due to these liquidity issues, we performed a discounted cash flow analysis to determine the estimated fair value of these ARS investments. The discounted cash flow analysis we performed considered the timing of expected future successful auctions, the impact of extended periods of maximum interest rates, collateralization of underlying security investments and the creditworthiness of the issuer. The discounted cash flow analysis performed as of December 31, 2008 assumes a weighted average discount rate of 6.275% and expected term of five years. The discount rate was determined using a proxy based upon the current market rates for similar debt offerings within the AAA-rated ARS market. The expected term was based on management's estimate of future liquidity. As a result, as of December 31, 2008, we have estimated an aggregate loss of $50.1 million, of which $37.2 million was related to the impairment of ARS deemed to be temporary and included in accumulated other comprehensive income (loss) within stockholders' equity and of which $12.9 million was related to the impairment of ARS deemed other-than-temporary and included in gain (loss) on investments, net in the consolidated statement of operations. Based on our ability to access our cash and short-term investments and our expected cash flows, we do not anticipate the current lack of liquidity on these ARS will have a material impact on our financial condition or results of operations during 2009 or our ability to operate our business in 2009.

Our valuation of the ARS is sensitive to market conditions and management's judgment and could change significantly based on the assumptions used. If we had used a term of three years or seven years and discount rate of 6.275%, the gross unrealized loss on the $210.6 million in par value of ARS classified as available-for-sale would have been $23.7 million or $49.1 million, respectively. If we had used a term of five years and discount rate of 5.275% or 7.275%, the gross unrealized loss on the $210.6 million in par value of ARS classified as available-for-sale would have been $28.8 million or $45.1 million, respectively.

During November 2008, we entered into an agreement with one of our investment advisors providing for it to repurchase the ARS held through such advisor at par value beginning on June 30, 2010. The ARS covered by this agreement had a par value of $76.5 million at December 31, 2008. We expect to continue to hold these long-term debt instruments until the earlier of the settlement date or the date on which the market for active trading of ARS at par value is re-established. At any time during the period up until the June 2010, our investment advisor can call the ARS at par value. We elected to apply the fair value option under SFAS No. 159 to the put option incorporated in this repurchase agreement. The $12.5 million fair value of such put option is grouped with other long-term marketable securities on our consolidated balance sheet with the resultant gain offsetting $12.9 million of the related ARS impairment included in other income, net. The fair value of the put option is determined by comparing the fair value of the related ARS, as described above, to their par values and also considers the credit risk associated with our investment advisor. This put option will be adjusted on each balance sheet date based on its then fair value.

The valuation of our $76.5 million in par value of ARS subject to the put option is also sensitive to market conditions and management's judgment and could change significantly based on assumptions used, resulting in a change in the realized loss on investments recorded in our consolidated statement of operations. Any change in the realized loss on the ARS would, however, be offset by a corresponding change in the realized gain on the valuation of the put option related to these ARS recorded in our consolidated statement of operations. Any net gain (loss) from future changes in market conditions is not expected to be material because the changes in valuations of the ARS and related put option will generally offset each other.

Our 1% convertible senior notes are subject to changes in market value. Under certain conditions, the holders of our 1% convertible senior notes may require us to redeem the notes on or after December 15, 2010. As of December 31, 2008, the aggregate outstanding principal amount and the fair value of the 1% convertible senior notes were $199.9 million and $221.0 million, respectively.

We have operations in Europe, Asia, Australia and India. As a result, we are exposed to fluctuations in foreign exchange rates. Additionally, we may continue to expand our operations globally and sell to customers in foreign locations, which may increase our exposure to foreign exchange fluctuations. We do not have any foreign currency hedge contracts.

Item 8. ***Financial Statements and Supplementary Data***

AKAMAI TECHNOLOGIES, INC.

Index to Consolidated Financial Statements and Schedule

Note: All other financial statement schedules are omitted because they are not applicable or the required information is included in the consolidated financial statements or notes thereto.

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of Akamai Technologies, Inc.:

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Akamai Technologies, Inc. and its subsidiaries at December 31, 2008 and 2007, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2008 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the accompanying index presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements and financial statement schedule, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on these financial statements, on the financial statement schedule, and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

As discussed in Note 18 to the consolidated financial statements, the Company changed the manner in which it accounts for uncertain tax positions in 2007.

As discussed in Note 2 to the consolidated financial statements, the Company adopted Statement of Financial Accounting Standards No. 159 in 2008 and elected to measure certain financial assets at fair value, with unrealized gains and losses being reported in earnings at each subsequent reporting period.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers LLP

Boston, Massachusetts
March 2, 2009

AKAMAI TECHNOLOGIES, INC.

CONSOLIDATED BALANCE SHEETS

	December 31, 2008	December 31, 2007
	(in thousands, except share data)	
ASSETS		
Current assets:		
Cash and cash equivalents	$ 156,074	$ 145,078
Marketable securities (including restricted securities of $3,460 and $511 at December 31, 2008 and 2007, respectively)	174,557	401,091
Accounts receivable, net of reserves of $11,270 and $10,391 at December 31, 2008 and 2007, respectively	139,612	118,944
Prepaid expenses and other current assets	27,124	23,782
Deferred income tax assets	4,542	6,147
Total current assets	501,909	695,042
Property and equipment, net	174,483	134,546
Marketable securities (including restricted securities of $153 and $3,102 at December 31, 2008 and 2007, respectively)	440,996	87,339
Goodwill	441,258	361,637
Other intangible assets, net	92,995	87,500
Deferred income tax assets	223,718	285,463
Other assets	5,592	4,520
Total assets	$ 1,880,951	$ 1,656,047
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 21,165	$ 18,540
Accrued expenses and other current liabilities	66,132	56,233
Deferred revenue	11,506	12,995
Accrued restructuring	1,653	607
Total current liabilities	100,456	88,375
Deferred revenue	1,251	1,453
Other liabilities	10,619	7,812
1% convertible senior notes	199,855	199,855
Total liabilities	312,181	297,495
Commitments, contingencies and guarantees (Note 11)		
Stockholders' equity:		
Preferred stock, $0.01 par value; 5,000,000 shares authorized; 700,000 shares designated as Series A Junior Participating Preferred Stock; no shares issued or outstanding	—	—
Common stock, $0.01 par value; 700,000,000 shares authorized; 169,371,675 and 166,212,638 shares issued and outstanding at December 31, 2008 and 2007, respectively	1,694	1,662
Additional paid-in capital	4,539,154	4,446,703
Accumulated other comprehensive income (loss)	(24,350)	3,053
Accumulated deficit	(2,947,728)	(3,092,866)
Total stockholders' equity	1,568,770	1,358,552
Total liabilities and stockholders' equity	$ 1,880,951	$ 1,656,047

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

AKAMAI TECHNOLOGIES, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

	For the Years Ended December 31,		
	2008	2007	2006
	(in thousands, except per share amounts)		
Revenues	$ 790,924	$ 636,406	$ 428,672
Cost and operating expenses:			
Cost of revenues	222,610	167,444	94,100
Research and development	39,243	44,141	33,102
Sales and marketing	164,365	147,556	119,689
General and administrative	136,028	121,101	90,191
Amortization of other intangible assets	13,905	11,414	8,484
Restructuring charge (benefit)	2,509	(178)	—
Total cost and operating expenses	578,660	491,478	345,566
Income from operations	212,264	144,928	83,106
Interest income	24,792	25,815	17,703
Interest expense	(2,825)	(3,086)	(3,171)
Other income (expense), net	461	527	570
Gain (loss) on investments, net	(157)	24	261
Loss on early extinguishment of debt	—	(3)	—
Income before provision for income taxes	234,535	168,205	98,469
Provision for income taxes	89,397	67,238	41,068
Net income	$ 145,138	$ 100,967	$ 57,401
Net income per weighted average share:			
Basic	$ 0.87	$ 0.62	$ 0.37
Diluted	$ 0.79	$ 0.56	$ 0.34
Shares used in per share calculations:			
Basic	167,673	162,959	155,366
Diluted	186,685	185,094	176,767

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

AKAMAI TECHNOLOGIES, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

	For the Years Ended December 31,		
	2008	2007	2006
		(in thousands)	
Cash flows from operating activities:			
Net income	$ 145,138	$ 100,967	$ 57,401
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	98,080	71,895	40,585
Amortization of deferred financing costs	840	840	841
Stock-based compensation	57,899	66,555	49,556
Provision for deferred income taxes, net	81,698	65,272	38,510
Provision for doubtful accounts	2,575	2,901	830
Excess tax benefit from stock-based compensation	(11,176)	(20,862)	(32,511)
Non-cash portion of loss on early extinguishment of debt	—	3	—
Non-cash portion of restructuring charge (benefit)	(842)	(178)	—
Losses (gains) on investments and disposal of property and equipment, net	242	23	(228)
Changes in operating assets and liabilities, net of effects of acquisitions:			
Accounts receivable	(21,474)	(31,937)	(28,020)
Prepaid expenses and other current assets	(5,471)	(12,009)	(8,062)
Accounts payable, accrued expenses and other current liabilities	(4,181)	(12,965)	15,382
Deferred revenue	(1,492)	5,297	343
Accrued restructuring	1,216	(2,722)	(1,970)
Other non-current assets and liabilities	442	3,874	66
Net cash provided by operating activities	343,494	236,954	132,723
Cash flows from investing activities:			
Cash paid for acquisitions, net of cash acquired	(83,719)	7,875	(5,127)
Purchases of property and equipment	(90,369)	(81,405)	(56,752)
Capitalization of internal-use software costs	(25,017)	(19,057)	(12,576)
Purchases of short- and long-term marketable securities	(533,069)	(550,614)	(395,871)
Proceeds from sales and maturities of short- and long-term marketable securities	367,652	415,771	264,308
Proceeds from sale of property and equipment	82	—	—
Decrease in restricted investments held for security deposits	—	723	400
Net cash used in investing activities	(364,440)	(226,707)	(205,618)
Cash flows from financing activities:			
Proceeds from the issuance of common stock under stock option and employee stock purchase plans	21,966	31,621	27,918
Excess tax benefits from stock-based compensation	11,176	20,862	32,511
Payments on capital leases	—	(23)	—
Net cash provided by financing activities	33,142	52,460	60,429
Effect of exchange rate changes on cash and cash equivalents	(1,200)	1,776	1,269
Net increase (decrease) in cash and cash equivalents	10,996	64,483	(11,197)
Cash and cash equivalents at beginning of year	145,078	80,595	91,792
Cash and cash equivalents at end of year	$ 156,074	$ 145,078	$ 80,595
Supplemental disclosure of cash flow information:			
Cash paid for interest	$ 1,999	$ 2,005	$ 2,005
Cash paid for income taxes	11,870	3,147	3,455
Non-cash financing and investing activities:			
Capitalization of stock-based compensation, net of impairments	$ 7,436	$ 6,353	$ 4,262
Common stock and vested stock options issued in connection with acquisitions of businesses	—	171,957	152,560
Common stock issued upon conversion of 1% convertible senior notes	—	145	—
Common stock returned upon settlement of escrow claims related to prior business acquisitions	(3,126)	(177)	—

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

AKAMAI TECHNOLOGIES, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

For the Years Ended December 31, 2008, 2007 and 2006
(in thousands, except share data)

	Common Stock							
	Shares	Amount	Additional Paid-in Capital	Deferred Compensation	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity	Comprehensive Income
Balance at December 31, 2005	152,922,092	1,529	3,880,985	(7,537)	471	(3,251,234)	624,214	
Comprehensive income:								
Net income						57,401	57,401	$ 57,401
Foreign currency translation adjustment					756		756	756
Change in unrealized gain (loss) on available-for-sale marketable securities					69		69	69
Comprehensive income								$ 58,226
Issuance of common stock upon the exercise of stock options and vesting of deferred stock units	4,182,931	42	21,383				21,425	
Issuance of common stock under employee stock purchase plan	295,113	3	6,490				6,493	
Stock-based compensation			53,338				53,338	
Issuance of common stock for acquisition of a business	2,664,650	27	133,463				133,490	
Stock options issued in acquisition of a business			19,070				19,070	
Other	234,136	2	(2)				—	
Reclassification of deferred compensation to additional paid-in capital upon adoption of SFAS No. 123R			(7,537)	7,537			—	
Tax benefits from the exercise of stock options and vesting of restricted common stock			37,944				37,944	
Stock-based compensation from awards issued to non-employees for services rendered			493				493	
Balance at December 31, 2006	160,298,922	1,603	4,145,627	—	1,296	(3,193,833)	954,693	
Comprehensive income:								
Net income						100,967	100,967	$ 100,967
Foreign currency translation adjustment					1,343		1,343	1,343
Change in unrealized gain (loss) on available-for-sale marketable securities					414		414	414
Comprehensive income								$ 102,724
Issuance of common stock upon the exercise of stock options and vesting of deferred stock units	2,803,496	28	21,930				21,958	
Issuance of common stock under employee stock purchase plan	279,356	3	9,667				9,670	
Stock-based compensation			72,770				72,770	
Common stock returned upon settlement of escrow claims related to prior business acquisitions	(3,525)	—	(177)				(177)	
Issuance of common stock for acquisitions of businesses	2,825,010	28	157,808				157,836	
Stock options issued in acquisitions of businesses			14,121				14,121	
Issuance of common stock upon conversion of 1% convertible senior notes	9,379	—	145				145	
Tax benefits from the exercise of stock options and vesting of restricted common stock			24,672				24,672	
Stock-based compensation from awards issued to non-employees for services rendered			140				140	
Balance at December 31, 2007	166,212,638	1,662	4,446,703	—	3,053	(3,092,866)	1,358,552	

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

AKAMAI TECHNOLOGIES, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY—(Continued)

For the Years Ended December 31, 2008, 2007 and 2006
(in thousands, except share data)

	Common Stock		Additional Paid-in Capital	Deferred Compensation	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity	Comprehensive Income
	Shares	Amount						
Balance at December 31, 2007	166,212,638	1,662	4,446,703	—	3,053	(3,092,866)	1,358,552	
Comprehensive income:								
Net income						145,138	145,138	$ 145,138
Foreign currency translation adjustment					(4,038)		(4,038)	(4,038)
Change in unrealized gain (loss) on available-for-sale marketable securities					(23,365)		(23,365)	(23,365)
Comprehensive income								$ 117,735
Issuance of common stock upon the exercise of stock options and vesting of deferred stock units	2,920,692	29	14,734				14,763	
Issuance of common stock under employee stock purchase plan	348,584	4	7,199				7,203	
Stock-based compensation			64,513				64,513	
Common stock returned upon settlement of escrow claims related to prior business acquisitions	(110,239)	(1)	(3,125)				(3,126)	
Tax benefits from the exercise of stock options and vesting of restricted common stock			9,133				9,133	
Stock-based compensation from awards issued to non-employees for services rendered			(3)				(3)	
Balance at December 31, 2008	169,371,675	$ 1,694	$4,539,154	$ —	$ (24,350)	$(2,947,728)	$1,568,770	

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

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Nature of Business and Basis of Presentation:

Akamai Technologies, Inc. ("Akamai" or the "Company") provides services for accelerating and improving the delivery of content and applications over the Internet. Akamai's globally distributed platform comprises thousands of servers in hundreds of networks in approximately 70 countries. The Company was incorporated in Delaware in 1998 and is headquartered in Cambridge, Massachusetts. Akamai currently operates in one industry segment: providing services for accelerating and improving the delivery of content and applications over the Internet.

The accompanying consolidated financial statements include the accounts of Akamai and its wholly-owned subsidiaries. All intercompany transactions and balances have been eliminated in the accompanying financial statements.

2. Summary of Significant Accounting Policies:

Use of Estimates

The Company prepares its consolidated financial statements in conformity with accounting principles generally accepted in the United States of America. These principles require management to make estimates, judgments and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and the amounts disclosed in the related notes to the consolidated financial statements. Actual results and outcomes may differ materially from management's estimates, judgments and assumptions. Significant estimates, judgments and assumptions used in these financial statements include, but are not limited to, those related to revenues, accounts receivable and related reserves, valuation and impairment of investments and marketable securities, loss contingencies, useful lives and realizability of long-lived assets and goodwill, capitalized internal-use software costs, income and other tax reserves, and accounting for stock-based compensation. Estimates are periodically reviewed in light of changes in circumstances, facts and experience. The effects of material revisions in estimates are reflected in the consolidated financial statements prospectively from the date of the change in estimate.

Revenue Recognition

The Company recognizes service revenues in accordance with the Securities and Exchange Commission's (the "Commission") Staff Accounting Bulletin No. 104, "Revenue Recognition," and the Financial Accounting Standards Board's ("FASB") Emerging Issues Task Force Issue No. 00-21, "Revenue Arrangements with Multiple Deliverables." Revenue is recognized only when the price is fixed or determinable, persuasive evidence of an arrangement exists, the service is performed and collectability of the resulting receivable is reasonably assured.

Akamai primarily derives revenues from the sale of services to customers executing contracts having terms of one year or longer. These contracts generally commit the customer to a minimum monthly, quarterly or annual level of usage and specify the rate at which the customer must pay for actual usage above the monthly, quarterly or annual minimum. For these services, Akamai recognizes the monthly minimum as revenue each month provided that an enforceable contract has been signed by both parties, the service has been delivered to the customer, the fee for the service is fixed or determinable and collection is reasonably assured. Should a customer's usage of Akamai services exceed the monthly, quarterly or annual minimum, Akamai recognizes revenue for such excess in the period of the usage. For annual or other non-monthly period revenue commitments, the Company recognizes revenue monthly based upon the customer's actual usage each month of the commitment period and only recognizes any remaining committed amount for the applicable period in the last month thereof.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company typically charges its customers an installation fee when the services are first activated. The installation fees are recorded as deferred revenue and recognized as revenue ratably over the estimated life of the customer arrangement. The Company also derives revenue from services sold as discrete, non-recurring events or based solely on usage. For these services, the Company recognizes revenue when the event or usage has occurred.

When more than one element is contained in a single arrangement, the Company allocates revenue between the elements based on each element's relative fair value, provided that each element meets the criteria as a separate unit of accounting. An item is considered a separate unit of accounting if it has value to the customer on a standalone basis and there is objective and verifiable evidence of the fair value of the separate element. Fair value is generally determined based upon the price charged when the element is sold separately. If the fair value of each element cannot be objectively determined, the total value of the arrangement is recognized ratably over the entire service period commencing when all services have begun to be provided at the outset of the period. For most multi-element service arrangements to date, the fair value of each element has not been objectively determinable. Therefore, all revenue under these arrangements has been recognized ratably over the applicable service period commencing when the Company had begun providing all services ordered.

At the inception of a customer contract for service, the Company makes an assessment as to that customer's ability to pay for the services provided. The Company bases its assessment on a combination of factors, including the successful completion of a credit check or financial review, its collection experience with the customer and other forms of payment assurance. Upon the completion of these steps, the Company recognizes revenue monthly in accordance with its revenue recognition policy. If the Company subsequently determines that collection from the customer is not reasonably assured, the Company records an allowance for doubtful accounts and bad debt expense for all of that customer's unpaid invoices and ceases recognizing revenue for continued services provided until cash is received from the customer. Changes in the Company's estimates and judgments about whether collection is reasonably assured would change the timing of revenue or amount of bad debt expense that the Company recognizes.

The Company also sells its services through a reseller channel. Assuming all other revenue recognition criteria are met, the Company recognizes revenue from reseller arrangements based on the reseller's contracted non-refundable minimum purchase commitments over the term of the contract, plus amounts sold by the reseller to its customers in excess of the minimum commitments. Amounts attributable to this excess usage are recognized as revenue in the period in which the service is provided.

From time to time, the Company enters into contracts to sell its services or license its technology to unrelated enterprises at or about the same time that it enters into contracts to purchase products or services from the same enterprise. If the Company concludes that these contracts were negotiated concurrently, the Company records as revenue only the net cash received from the vendor, unless the product or service received has a separate identifiable benefit and the fair value of the vendor's product or service can be established objectively.

The Company may from time to time resell licenses or services of third parties. The Company records revenue for these transactions on a gross basis when the Company has risk of loss related to the amounts purchased from the third party and the Company adds value to the license or service, such as by providing maintenance or support for such license or service. If these conditions are present, the Company recognizes revenue when all other revenue recognition criteria are satisfied.

Deferred revenue represents amounts billed to customers for which revenue has not been recognized. Deferred revenue primarily consists of the unearned portion of monthly billed service fees; prepayments made by customers for future periods; deferred installation and activation set-up fees; and amounts billed under customer arrangements with extended payment terms.

Cost of Revenues

Cost of revenues consists primarily of fees paid to network providers for bandwidth and for housing servers in third-party network data centers, also known as co-location costs. Cost of revenues also includes network operation employee costs, network storage costs, cost of software licenses, depreciation of network equipment used to deliver the Company's services, amortization of network-related internal-use software and costs for the production of live events. The Company enters into contracts for bandwidth with third-party network providers with terms typically ranging from several months to two years. These contracts generally commit Akamai to pay minimum monthly fees plus additional fees for bandwidth usage above the committed level. In some circumstances, Internet service providers ("ISPs") make available to Akamai rack space for the Company's servers and access to their bandwidth at discounted or no cost. In exchange, the ISP and its customers benefit by receiving content through a local Akamai server resulting in better content delivery. The Company does not consider these relationships to represent the culmination of an earnings process. Accordingly, the Company does not recognize as revenue the value to the ISPs associated with the use of Akamai's servers, nor does the Company recognize as expense the value of the rack space and bandwidth received at discounted or no cost.

Accounting for Stock-Based Compensation

The Company accounts for stock-based compensation in accordance with Statement of Financial Accounting Standard ("SFAS") No. 123R, "Share-Based Payment" ("SFAS No. 123R"). SFAS No. 123R requires recognizing compensation costs for all share-based payment awards made to employees and directors based upon the awards' grant-date fair value. The standard covers employee stock options, restricted stock, restricted stock units, deferred stock units and employee stock purchases related to the Company's employee stock purchase plan. The Company adopted SFAS No. 123R as of January 1, 2006 using the modified prospective transition method.

Under the modified prospective transition method, SFAS No. 123R applies to new equity awards and to equity awards modified, repurchased or canceled after the adoption date of January 1, 2006. Additionally, compensation costs for the portion of awards granted prior to the adoption date for which the requisite service was not rendered as of the adoption date are recognized as the requisite service is rendered. Compensation costs for that portion of awards are based on the grant-date fair value of those awards as calculated in the prior period pro forma disclosures under SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS No. 123"). Changes to the grant-date fair value of equity awards granted before the effective date are precluded. The compensation cost for those earlier awards is attributed to periods beginning on or after the adoption date using the attribution method that was used under SFAS No. 123, which was the straight-line method. The Company estimates an expected forfeiture rate, which is factored into the determination of the Company's quarterly expense. Deferred compensation related to those earlier awards was eliminated against additional paid-in capital in fiscal 2006. SFAS No. 123R also changes the reporting of tax-related amounts within the statement of cash flows. The excess amount of windfall tax benefits resulting from stock-based compensation is reported as financing inflows.

For stock options, the Company has selected the Black-Scholes option-pricing model to determine the fair value of stock option awards. For stock options, restricted stock, restricted stock units and deferred stock units,

the Company recognizes compensation cost on a straight-line basis over the awards' vesting periods for those awards that contain only a service vesting feature. For awards with a performance condition vesting feature, the Company recognizes compensation cost on a graded-vesting basis over the awards' expected vesting periods, commencing when achievement of the performance condition is deemed probable.

Research and Development Costs and Capitalized Internal-Use Software

Research and development costs consist primarily of payroll and related personnel costs for the design, development, deployment, testing, operation and enhancement of the Company's services and network. Costs incurred in the development of the Company's services are expensed as incurred, except certain software development costs eligible for capitalization. Costs incurred during the application development stage of internal-use software projects, such as those used in the Company's network operations, are capitalized in accordance with SOP 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use." Capitalized costs include external consulting fees and payroll and payroll-related costs for employees in the Company's development and information technology groups who are directly associated with, and who devote time to, the Company's internal-use software projects during the application development stage. Capitalization begins when the planning stage is complete and the Company commits resources to the software project. Capitalization ceases when the software has been tested and is ready for its intended use. Amortization of the asset commences when the software is complete and placed in service. The Company amortizes completed internal-use software to cost of revenues over an estimated life of two years. Costs incurred during the planning, training and post-implementation stages of the software development life-cycle are expensed as incurred. Costs related to upgrades and enhancements of existing internal-use software that increase the functionality of the software are also capitalized.

Concentrations of Credit Risk and Fair Value of Financial Measurements

Effective January 1, 2008, the Company implemented SFAS No. 157, "Fair Value Measurements" ("SFAS No. 157"), for its financial assets and liabilities that are re-measured and reported at fair value at each reporting period and non-financial assets and liabilities that are re-measured and reported at fair value at least annually (see Note 6). In accordance with the provisions of FASB Staff Position ("FSP") No. FAS 157-2, "Effective Date of FASB Statement No. 157," the Company elected to defer until January 1, 2009 the implementation of SFAS No. 157 as it relates to its non-financial assets and non-financial liabilities that are recognized and disclosed at fair value in the financial statements on a nonrecurring basis.

SFAS No. 157 defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The Company has certain financial assets and liabilities recorded at fair value (principally cash equivalents and short- and long-term marketable securities) that have been classified as Level 1, 2 or 3 within the fair value hierarchy as described in SFAS No. 157. Fair values determined by Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access. Fair values determined by Level 2 inputs utilize data points that are observable, such as quoted prices, interest rates and yield curves. Fair values determined by Level 3 inputs utilize unobservable data points for the asset or liability.

The amounts reflected in the consolidated balance sheets for accounts receivable, other current assets, accounts payable, accrued liabilities and other current liabilities approximate their fair values due to their short-term maturities. The fair value and the carrying amount of the Company's 1% convertible senior notes were

$221.0 million and $199.9 million, respectively, as of December 31, 2008. The fair value is based upon the trading price of the debt. The Company maintains the majority of its cash, cash equivalents and marketable securities balances principally with domestic financial institutions that the Company believes to be of high credit standing. The Company believes that, as of December 31, 2008, its concentration of credit risk related to cash equivalents and marketable securities was not significant, except as described below with respect to its investments in auction rate securities. Concentrations of credit risk with respect to accounts receivable are primarily limited to certain customers to which the Company makes substantial sales. The Company's customer base consists of a large number of geographically dispersed customers diversified across several industries. To reduce risk, the Company routinely assesses the financial strength of its customers. Based on such assessments, the Company believes that its accounts receivable credit risk exposure is limited. For the years ended December 31, 2008, 2007 and 2006, no customer accounted for more than 10% of total revenues. As of December 31, 2008 and 2007, no customer had an account receivable balance greater than 10% of total accounts receivable. The Company believes that, as of December 31, 2008, its concentration of credit risk related to accounts receivable was not significant.

Taxes

The Company's provision for income taxes is comprised of a current and a deferred portion. The current income tax provision is calculated as the estimated taxes payable or refundable on tax returns for the current year. The deferred income tax provision is calculated for the estimated future tax effects attributable to temporary differences and carryforwards using expected tax rates in effect in the years during which the differences are expected to reverse or the carryforwards are expected to be realized.

The Company currently has significant deferred tax assets consisting of net operating loss ("NOL") carryforwards, tax credit carryforwards and deductible temporary differences. Management periodically weighs the positive and negative evidence to determine if it is more likely than not that some or all of the deferred tax assets will not be realized.

The Company has recorded certain tax reserves to address potential exposures involving its income tax and sales and use tax positions. These potential tax liabilities result from the varying application of statutes, rules, regulations and interpretations by different taxing jurisdictions. The Company's estimate of the value of its tax reserves contains assumptions based on past experiences and judgments about the interpretation of statutes, rules and regulations by taxing jurisdictions. It is possible that the costs of the ultimate tax liability or benefit from these matters may be materially more or less than the amount that the Company estimated.

In June 2006, the FASB issued FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109" ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109, "Accounting for Income Taxes." FIN 48 prescribes a two-step process to determine the amount of tax benefit to be recognized. First, the tax position must be evaluated to determine the likelihood that it will be sustained upon external examination. If the tax position is deemed more-likely-than-not to be sustained, the tax position is then assessed to determine the amount of benefit to recognize in the financial statements. The amount of the benefit that may be recognized is the largest amount that has a greater than 50 percent likelihood of being realized upon ultimate settlement. The Company adopted the provisions of FIN 48 on January 1, 2007. As of the date of adoption, the Company had unrecognized tax benefits of $2.1 million, including accrued interest and penalties, and did not record any cumulative effect adjustment to retained earnings as a result of adopting FIN 48. As of December 31, 2008, the Company had unrecognized tax benefits of $6.1 million, including accrued interest and penalties (see Note 18).

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

In November 2005, the FASB issued FASB Staff Position SFAS 123R-3, "Transition Election to Accounting for the Tax Effect of Share-Based Payment Awards." The Company elected to adopt the modified prospective transition method for calculating the tax effects of stock-based compensation pursuant to SFAS No. 123R. Under the modified prospective transition method, no adjustment is made to the deferred tax balances associated with stock-based payments that continue to be classified as equity awards. Additionally, the Company elected to use the "long-form method," as provided in paragraph 81 of SFAS No. 123R to determine the pool of windfall tax benefits upon adoption of SFAS 123R. The long-form method required the Company to analyze the book and tax compensation for each award separately as if it had been issued following the recognition provisions of SFAS No. 123, subject to adjustments for NOL carryforwards.

Foreign Currency Translation

Akamai has determined that the functional currency of its foreign subsidiaries is each respective subsidiary's local currency. The assets and liabilities of these subsidiaries are translated at the applicable exchange rate as of the balance sheet date and revenues and expenses are translated at an average rate over the period. Resulting currency translation adjustments are recorded as a component of accumulated other comprehensive income (loss), a separate component of stockholders' equity. Gains and losses on inter-company transactions are recorded in other income (expense), net. For the years ended December 31, 2008, 2007 and 2006, the Company recorded foreign currency gains of approximately $457,000, $35,000 and $90,000, respectively, in the consolidated statements of operations.

Cash, Cash Equivalents and Marketable Securities

Cash and cash equivalents consist of cash held in bank deposit accounts and short-term, highly liquid investments with remaining maturities of three months or less at the date of purchase. Total cash, cash equivalents and marketable securities were $771.6 million and $633.5 million at December 31, 2008 and 2007, respectively.

Short-term marketable securities consist of corporate, government and other securities with remaining maturities of more than three months at the date of purchase and less than one year from the date of the balance sheet. Long-term marketable securities consist of corporate, government and other securities with maturities of more than one year from the date of the balance sheet. Short-term and long-term marketable securities include investments that are restricted as to use. As of December 31, 2008 and 2007, the Company had $3.6 million of restricted marketable securities, generally representing security for irrevocable letters of credit related to facility leases.

The Company classifies most debt securities and equity securities with readily determinable market values as "available for sale" in accordance with SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities." These investments are classified as marketable securities on the consolidated balance sheet and are carried at fair market value, with unrealized gains and losses considered to be temporary in nature reported as accumulated other comprehensive income (loss), a separate component of stockholders' equity. The Company reviews all investments for reductions in fair value that are other-than-temporary. When such reductions occur, the cost of the investment is adjusted to fair value through recording a loss on investments in the consolidated statement of operations. Gains and losses on investments are calculated on the basis of specific identification.

Investments and marketable securities are considered to be impaired when a decline in fair value below cost basis is determined to be other-than-temporary. The Company periodically evaluates whether a decline in fair

value below cost basis is other-than-temporary by considering available evidence regarding these investments including, among other factors: the duration of the period that, and extent to which, the fair value is less than cost basis; the financial health of and business outlook for the issuer, including industry and sector performance and operational and financing cash flow factors; overall market conditions and trends; and Akamai's intent and ability to retain its investment in the security for a period of time sufficient to allow for an anticipated recovery in market value. Once a decline in fair value is determined to be other-than-temporary, a write-down is recorded and a new cost basis in the security is established. Assessing the above factors involves inherent uncertainty. Write-downs, if recorded, could be materially different from the actual market performance of investments and marketable securities in the Company's portfolio, if, among other things, relevant information related to its investments and marketable securities was not publicly available or other factors not considered by the Company would have been relevant to the determination of impairment.

Included in the Company's short- and long-term marketable securities at December 31, 2008 and 2007 are auction rate securities ("ARS") that are primarily AAA-rated bonds, most of which are collateralized by federally guaranteed student loans. ARS are long-term variable rate bonds tied to short-term interest rates that may reset through a "Dutch auction" process that is designed to occur every seven to 35 days. Historically, the carrying value (par value) of ARS approximated fair market value due to the resetting of variable interest rates. Beginning in mid-February 2008 and continuing throughout the period ended December 31, 2008, however, the auctions for ARS then held by the Company were unsuccessful. As a result, the interest rates on ARS reset to the maximum rate per the applicable investment offering statements. The Company will not be able to liquidate affected ARS until a future auction on these investments is successful, a buyer is found outside the auction process, the securities are called or refinanced by the issuer, or the securities mature. Due to the long-term nature of the underlying student loan bonds and the failure of the auction process to provide a current market, the Company classified these investments as long-term on its consolidated balance sheet as of December 31, 2008.

In November 2008, the Company entered into an agreement with one of its investment advisors to repurchase the ARS it holds through such investment advisor at par value beginning on June 30, 2010. Until that time, the Company expects to continue to hold these long-term debt instruments until the earlier of the settlement date or the market for active trading in ARS at par value has been re-established. At any time during the period up until the June 2010, the Company's investment advisor can call these ARS at par value. The agreement entered into between the parties creates a separate financial instrument that the Company has elected to measure and report at fair value per the guidance of SFAS No. 159. The underlying ARS are carried at fair value and classified as trading securities as of December 31, 2008. Previously, these securities were classified as available-for-sale. Prior to entering into such agreement, the Company's intent was to hold the ARS until the earlier of the date on which the market recovered or payment date of the underlying security. The unrealized loss on these investments, previously was included in accumulated other comprehensive income, net of tax. Management's decision to enter into this agreement resulted in classifying the unrealized loss on these investments as other-than-temporary. As a result, the Company recognized a loss on investments for the amount of the unrealized loss not previously recognized in earnings (see Note 6).

On January 1, 2008, the Company adopted SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115" ("SFAS No. 159"). SFAS No. 159 permits companies to choose to measure certain financial assets and liabilities at fair value (the "fair value option"). If the fair value option is elected, any upfront costs and fees related to the item must be recognized in earnings and cannot be deferred. The fair value election is irrevocable and may generally be made on an instrument-by-instrument basis, even if a company has similar instruments that it elects not to fair value. At the adoption date, unrealized gains and losses on existing items for which fair value has been elected are reported as a cumulative adjustment to beginning retained earnings. The Company chose not to elect the fair value option for

its financial assets and liabilities existing on January 1, 2008, and did not elect the fair value option for any financial assets and liabilities transacted during the year ended December 31, 2008, except for the put option related to the Company's ARS.

Accounts Receivable and Related Reserves

The Company's accounts receivable balance includes unbilled amounts that represent revenues recorded for customers that are typically billed monthly in arrears. The Company records reserves against its accounts receivable balance. These reserves consist of allowances for doubtful accounts and reserves for cash-basis customers. Increases and decreases in the allowance for doubtful accounts are included as a component of general and administrative expenses. The Company's reserve for cash-basis customers increases as services are provided to customers where collection is no longer assured. Increases to the reserve for cash-basis customers are recorded as reductions of revenues. The reserve decreases and revenue is recognized when and if cash payments are received.

Estimates are used in determining these reserves and are based upon the Company's review of outstanding balances on a customer-specific, account-by-account basis. The allowance for doubtful accounts is based upon a review of customer receivables from prior sales with collection issues where the Company no longer believes that the customer has the ability to pay for services previously provided. The Company also performs ongoing credit evaluations of its customers. If such an evaluation indicates that payment is no longer reasonably assured for services provided, any future services provided to that customer will result in the creation of a cash-basis reserve until the Company receives consistent payments. The Company does not have any off-balance sheet credit exposure related to its customers.

For presentation on the balance sheet, the Company reduces customer accounts receivable balances and deferred revenue by the amount of any deferred revenue recorded for each customer that has a balance receivable. The reductions as of December 31, 2008 and 2007 totaled $22.2 million and $18.8 million, respectively.

Property and Equipment

Property and equipment are recorded at cost, net of accumulated depreciation and amortization. Property and equipment generally includes purchases of items with a per unit value greater than $1,000 and a useful life greater than one year. Depreciation and amortization are computed on a straight-line basis over the estimated useful lives of the assets.

Leasehold improvements are amortized over the shorter of related lease terms or their estimated useful lives. Property and equipment acquired under capital leases are depreciated over the shorter of the related lease terms or the estimated useful lives of the assets. The Company periodically reviews the estimated useful lives of property and equipment. Changes to the estimated useful lives are recorded prospectively from the date of the change. Upon retirement or sale, the cost of the assets disposed of and the related accumulated depreciation are removed from the accounts and any resulting gain or loss is included in income from operations. Repairs and maintenance costs are expensed as incurred.

Goodwill and Other Intangible Assets

The Company tests goodwill for impairment on an annual basis or more frequently if events or changes in circumstances indicate that the asset might be impaired. The Company performed an impairment test of goodwill

as of December 31, 2008 and 2007. These tests did not result in an impairment to goodwill. Other intangible assets consist of completed technologies, customer relationships, trademarks, non-compete agreements arising from acquisitions of businesses and acquired license rights. Purchased intangible assets, other than goodwill, are amortized over their estimated useful lives based upon the economic value derived from the related intangible asset (see Note 3). Goodwill is carried at its historical cost.

Valuation of Other Long-Lived Assets

Long-lived assets are reviewed for impairment under the guidance of SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS No. 144"). Under SFAS No. 144, long-lived assets are reviewed for impairment whenever events or changes in circumstances, such as service discontinuance, technological obsolescence, a significant decrease in the Company's market capitalization, facility closure or work-force reductions indicate that the carrying amount of the long-lived asset may not be recoverable. When such events occur, the Company compares the carrying amount of the asset to the undiscounted expected future cash flows related to the asset. If this comparison indicates that an impairment is present, the amount of the impairment is calculated as the difference between the carrying amount and the fair value of the asset. The Company did not have any indications of impairment for the years ended December 31, 2008, 2007 and 2006.

Restructuring Charges

A restructuring liability related to employee terminations is recorded by the Company when a one-time benefit arrangement is communicated to an employee who is involuntarily terminated as part of a reorganization and the amount of the termination benefit is known, provided that the employee is not required to render future services in order to receive the termination benefit.

In accordance with SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities," the Company records restructuring liabilities, discounted at the appropriate rate, for facility leases only when the space is both vacated and all actions needed to make the space readily available for sublease have been completed. The Company records restructuring liabilities for estimated costs to terminate a facility lease before the end of its contractual term or for estimated costs that will continue to be incurred under the lease for its remaining term where there is no economic benefit to the Company, net of an estimate of sublease income.

Litigation

The Company is currently involved in certain legal proceedings. The Company estimates the range of liability related to pending litigation where the amount and range of loss can be estimated. The Company records its best estimate of a loss when the loss is considered probable. Where a liability is probable and there is a range of estimated loss with no best estimate in the range, the Company records the minimum estimated liability related to the claim. As additional information becomes available, the Company reassesses the potential liability related to the Company's pending litigation and revises its estimate.

Advertising Expense

The Company recognizes advertising expense as incurred. The Company recognized total advertising expense of $1.1 million for the year ended December 31, 2008 and $0.5 million for each of the years ended December 31, 2007 and 2006.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Recent Accounting Pronouncements

The Company adopted SFAS No. 157 on January 1, 2008. SFAS No. 157 defines fair value, establishes a methodology for measuring fair value and expands the required disclosure for fair value measurements (see Note 6). During 2008, the FASB issued the following amendments to SFAS No. 157:

- FASB Staff Position No. 157-1, "Application of FASB Statement No. 157 to FASB Statement No. 13 and Other Accounting Pronouncements That Address Fair Value Measurements for Purposes of Lease Classification or Measurement under Statement 13" ("FSP FAS No. 157-1"), which amends SFAS No. 157 to remove certain leasing transactions from its scope. The adoption of FSP FAS No. 157-1 did not have a material impact on the Company's financial position or results of operations in 2008.
- FASB Staff Position No. FAS 157-2, "Effective Date of FASB Statement No. 157", which delays the effective date of SFAS No. 157 from 2008 to 2009 for non-financial assets and non-financial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The Company is currently evaluating the potential impact of SFAS No. 157 for non-financial assets and non-financial liabilities on the Company's financial position and results of operations.
- FASB Staff Position No. 157-3, "Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active" ("FSP FAS No. 157-3"), which clarifies the application of SFAS No. 157 in a market that is not active and provides an example to illustrate key considerations in determining the fair value of a financial asset when the market for that financial asset is not active. FSP FAS No. 157-3 became effective October 2008. The adoption of FSP FAS No. 157-3 did not have a material impact on the Company's financial position or results of operations in 2008.

In December 2007, the FASB issued SFAS No. 141(R) (revised 2007), "Business Combinations" ("SFAS No. 141R"). SFAS No. 141R establishes principles and requirements for how the acquirer in a business combination (i) recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any non-controlling interest in the acquiree, (ii) recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase, and (iii) determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS No. 141R became effective for the Company on January 1, 2009. The impact of the standard on the Company's financial position and results of operations will be dependent upon the number of and magnitude of the acquisitions that are consummated once the standard is effective.

In December 2007, the FASB released SFAS No. 160, "Non-controlling Interests in Consolidated Financial Statements—an amendment of ARB No. 51." This statement will change the accounting and reporting for minority interests, which will be re-characterized as non-controlling interests and classified as a component of equity. This new consolidation method will significantly change the accounting for transactions with minority interest holders. This statement became effective for the Company on January 1, 2009. As of December 31, 2008, the Company did not have any minority interests.

In April 2008, the FASB issued FASB Staff Position ("FSP") on SFAS No. 142-3, "Determination of the Useful Life of Intangible Assets" ("FSP FAS No. 142-3"). FSP FAS No. 142-3 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, "Goodwill and Other Intangible Assets" ("SFAS No. 142"). FSP FAS No. 142-3 is intended to improve the consistency between the useful life of a recognized intangible asset under SFAS No. 142 and the period of expected cash flows used to measure the fair value of the asset under SFAS

No. 141R and other generally accepted accounting principles in the United States of America. FSP FAS No. 142-3 is effective for financial statements issued for fiscal years beginning after December 15, 2008. The Company does not expect FSP FAS No. 142-3 will have a material impact on the Company's financial position or results of operations.

In June 2008, the FASB issued FSP EITF 03-6-1, "Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities." This FSP provides that unvested share-based payment awards that contain non-forfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating securities and shall be included in the computation of earnings per share pursuant to the two-class method. Upon adoption, a company is required to retrospectively adjust its earnings per share data (including any amounts related to interim periods, summaries of earnings and selected financial data) to conform with the provisions in this FSP. This FSP became effective for the Company on January 1, 2009. The Company has not yet determined the impact, if any, of this FSP on its consolidated financial statements.

3. Business Acquisitions:

In December 2006, March 2007, April 2007 and November 2008, the Company acquired Nine Systems Corporation ("Nine Systems"), Netli, Inc. ("Netli"), Red Swoosh, Inc. ("Red Swoosh"), and aCerno, Inc. ("acerno"), respectively. The consolidated financial statements include the operating results of each business from the date of acquisition. Pro forma results of operations for these acquisitions have not been presented because the effects of the acquisitions, individually and in the aggregate, were not material to the Company's consolidated financial results.

aCerno

On November 3, 2008, the Company acquired all of the outstanding common and preferred stock of the parent entity of acerno, including vested stock options, in exchange for approximately $90.7 million in cash. The purchase of acerno was intended to augment Akamai's Advertising Decision Solutions ("ADS") that enable customers to more effectively advertise online by helping them improve ad results by accessing the audiences they want. The aggregate purchase price of $90.7 million consisted of $89.5 million in cash and $1.2 million of transaction costs, which primarily consisted of fees for legal and financial advisory services.

The acquisition of acerno was accounted for using the purchase method of accounting. The results of operations of the acquired business have been included in the consolidated financial statements of the Company since November 3, 2008, the date of acquisition. The total purchase consideration was allocated to the assets acquired and liabilities assumed based on their estimated fair values as of the date of acquisition, as determined by management and, with respect to identifiable intangible assets, by management with the assistance of an appraisal provided by a third-party valuation firm. The purchase price allocation is preliminary pending the Company's review of additional pre-acquisition assumed liabilities, which is expected to be completed during the first quarter of 2009. The excess of the purchase price over the amounts allocated to assets acquired and liabilities assumed was recorded as goodwill. The value of the goodwill from this acquisition can be attributed to a number of business factors including, but not limited to, potential sales opportunities to provide Akamai services to acerno customers; a trained technical workforce in place in the United States; an existing sales pipeline and a trained sales force. In accordance with current accounting standards, goodwill associated with the acerno acquisition will not be amortized and will be tested for impairment at least annually as required by SFAS No. 142 (see Note 9).

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table presents the preliminary allocation of the purchase price for acerno:

	(In thousands)
Total consideration:	
Cash paid as of December 31, 2008	$ 83,719
Cash to be paid during the first quarter ending March 31, 2009	5,801
Transaction costs	1,229
Total purchase consideration	$ 90,749
Allocation of the purchase consideration:	
Current assets	$ 5,249
Property and equipment	1,828
Identifiable intangible assets	19,400
Goodwill	80,285
Deferred tax liabilities	(7,516)
Other liabilities assumed	(8,497)
	$ 90,749

The following were the identified intangible assets acquired and the respective estimated periods over which such assets will be amortized:

	Amount (In thousands)	Weighted Average useful life (In years)
Completed technologies	$ 9,200	2.5
Customer relationships	4,300	4.1
Non-compete agreements	5,600	2.5
Trade names	300	1.5
Total	$ 19,400	

In determining the purchase price allocation, the Company considered, among other factors, its intention to use the acquired assets and the historical and estimated future demand for acerno services. The fair value of intangible assets was based upon the income approach. In applying this approach, the values of the intangible assets acquired were determined using projections of revenues and expenses specifically attributed to the intangible assets. The income streams were then discounted to present value using estimated risk adjusted discount rates. The rate used to discount the expected future net cash flows from the intangible assets to their present values was based upon a weighted average cost of capital of 15%. The discount rate was determined after consideration of market rates of return on debt and equity capital, the weighted average return on invested capital and the risk associated with achieving forecasted sales related to the technology and assets acquired from acerno.

The customer relationships were valued using the excess earnings method of income approach. The key assumptions used in valuing the customer relationships were as follows: discount rate of 15%, tax rate of 35% and estimated average economic life of seven years.

The relief-from-royalty method was used to value the completed technologies acquired from acerno. The relief-from-royalty method estimates the cost savings that accrue to the owner of an intangible asset that would

otherwise be required to pay royalties or license fees on revenues earned through the use of the asset. The royalty rate used is based on an analysis of empirical, market-derived royalty rates for guideline intangible assets. Typically, revenue is projected over the expected remaining useful life of the completed technology. The market-derived royalty rate is then applied to estimate the royalty savings. The key assumptions used in valuing the completed technologies are as follows: royalty rate of 10%, discount rate of 15%, tax rate of 35% and estimated average economic life of five years.

The lost-profits method was used to value the non-compete agreements Akamai entered into with certain members of acerno's management team. The lost-profits method recognizes that the current value of an asset may be premised upon the expected receipt of future economic benefits protected by clauses within an agreement. These benefits are generally considered to be higher income resulting from the avoidance of a loss in revenue that would likely occur without an agreement. The key assumptions used in valuing the non-compete agreements were as follows: discount rate of 15%, tax rate of 35% and estimated average economic life of five years.

The relief-from-royalty method was used to value trade names. The relief-from-royalty method recognizes that the current value of an asset may be premised upon the expected receipt of future economic benefit in the use of trade names. These benefits are generally considered to be higher income resulting from the avoidance of a loss in revenue that would likely occur without the specific trade names. The key assumptions used in valuing trade names were as follows: royalty rate of 1%, discount rate of 15%, tax rate of 35% and estimated average economic life of three years.

The total weighted average amortization period for the intangible assets acquired from acerno is 2.8 years. The intangible assets are being amortized based upon the pattern in which the economic benefits of the intangible assets are being utilized, which in general reflects the cash flows generated from such assets. None of the goodwill or identifiable intangible assets resulting from the acerno acquisition is deductible for income tax purposes.

Red Swoosh

On April 12, 2007, the Company acquired all of the outstanding common and preferred stock of Red Swoosh, including vested stock options, in exchange for approximately 350,000 shares of Akamai common stock. The purchase of Red Swoosh was intended to augment Akamai's distributed Internet presence by combining client-side file management and distribution software with the Company's existing network of edge servers. The aggregate purchase price was $18.7 million, which consisted of $18.4 million in shares of Akamai common stock, $4,000 in fair value of Akamai stock options issued, and transaction costs of $0.2 million, which primarily consisted of fees for legal services. In accordance with the FASB's Emerging Issues Task Force Issue No. 99-12, "Determination of the Measurement Date for the Market Price of Acquirer Securities Issued in a Purchase Business Combination" ("EITF No. 99-12"), the value of the common stock issued in the transaction was calculated using the average closing price of the Company's common stock for the five-day period beginning two days before and ending two days after the date on which all material aspects of the transaction were agreed to by all parties and the acquisition was announced.

The acquisition of Red Swoosh was accounted for using the purchase method of accounting. The results of operations of the acquired business have been included in the consolidated financial statements of the Company since April 12, 2007, the date of acquisition. The total purchase consideration was allocated to the assets acquired and liabilities assumed based on their estimated fair values as of the date of acquisition, as determined by management. The excess of the purchase price over the amounts allocated to assets acquired and liabilities

assumed was recorded as goodwill. The value of the goodwill from this acquisition can be attributed to a number of business factors including, but not limited to, cost synergies expected to be realized and a trained technical workforce. In accordance with current accounting standards, goodwill associated with the Red Swoosh acquisition will not be amortized and will be tested for impairment at least annually as required by SFAS No. 142 (see Note 9).

The following table presents the allocation of the purchase price for Red Swoosh:

	(In thousands)
Total consideration:	
Value of common stock issued	$ 18,449
Fair value of stock options issued	4
Transaction costs	237
Total purchase consideration	$ 18,690
Allocation of the purchase consideration:	
Current assets, including cash and cash equivalents of $2,677	$ 3,236
Long-term assets	14
Identifiable intangible assets	3,731
Deferred tax assets	1,355
Goodwill	13,188
Deferred tax liabilities	(1,458)
Other liabilities assumed	(1,376)
	$ 18,690

In determining the purchase price allocation, the Company considered, among other factors, its intention to use the acquired assets and the estimated future demand for the acquired technology. The fair value of identifiable intangible assets was based upon both the cost avoidance and opportunity cost savings approaches. The rate used to discount the expected future net cash flows from the intangible assets to their present values was based upon a weighted average cost of capital of 20%, with a tax rate of 40%. The discount rate was determined after consideration of market rates of return on debt and equity capital, the weighted average return on invested capital and the risk associated with achieving forecasted sales and cost savings related to the technology and assets acquired.

The Company has valued the acquired completed technologies at $3.7 million with a weighted average useful life of 4.4 years. The intangible assets are being amortized based upon the pattern in which the economic benefits of the intangible assets are being utilized, which in general reflects the cash flow savings from such assets. None of the goodwill or identifiable intangible assets resulting from the Red Swoosh acquisition is deductible for income tax purposes.

Netli

On March 13, 2007, the Company acquired all of the outstanding common and preferred stock, including vested and unvested stock options, of Netli in exchange for approximately 2.8 million shares of Akamai common stock and options to purchase approximately 400,000 shares of Akamai common stock. Akamai acquired Netli with a goal of expanding the Company’s application acceleration technology, as well as broadening its customer base.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The aggregate purchase price was $154.4 million, consisting of $139.4 million in shares of Akamai common stock, $14.1 million in fair value of Akamai stock options issued, and transaction costs of $0.8 million, which primarily consisted of fees for financial advisory and legal services. In accordance with EITF No. 99-12, the value of the common stock issued in the transaction was calculated using the average closing price of the Company's common stock for the five-day period beginning two days before and ending two days after the date on which all material aspects of the transaction were agreed to by all parties and the acquisition was announced.

The fair value of the Company's stock options issued to Netli employees was estimated using the Black-Scholes option pricing model with the following weighted-average assumptions:

Expected life (years)	2.1
Risk-free interest rate	4.5%
Expected volatility	60.1%
Dividend yield	—

The acquisition of Netli was accounted for using the purchase method of accounting. The results of operations of the acquired business have been included in the consolidated financial statements of the Company since March 13, 2007, the date of acquisition. The total purchase consideration was allocated to the assets acquired and liabilities assumed based on their estimated fair values as of the date of acquisition, as determined by management and, with respect to identifiable intangible assets, by management with the assistance of an appraisal provided by a third-party valuation firm. The excess of the purchase price over the amounts allocated to assets acquired and liabilities assumed was recorded as goodwill. The value of the goodwill from this acquisition can be attributed to a number of business factors including, but not limited to, potential sales opportunities to provide Akamai services to Netli customers; a trained technical workforce in place in the United States; an existing sales pipeline and a trained sales force; and cost synergies expected to be realized. In accordance with current accounting standards, goodwill associated with Netli will not be amortized and will be tested for impairment at least annually as required by SFAS No. 142 (see Note 9).

The following table presents the allocation of the purchase price for Netli:

	(In thousands)
Total consideration:	
Value of common stock issued	$ 139,387
Fair value of stock options issued	14,117
Transaction costs	847
Total purchase consideration	$ 154,351
Allocation of the purchase consideration:	
Current assets, including cash and cash equivalents of $6,160	$ 7,835
Property and equipment	1,989
Deferred tax assets	15,241
Identifiable intangible assets	36,500
Goodwill	111,913
Deferred tax liabilities	(13,302)
Other liabilities assumed, including deferred revenue of $1,037	(5,825)
	$ 154,351

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following were the identified intangible assets acquired and the respective estimated periods over which such assets will be amortized:

	Amount (In thousands)	Weighted Average useful life (In years)
Completed technologies	$ 17,700	4.4
Customer relationships	18,500	5.9
Non-compete agreements	300	2.5
Total	$ 36,500	

In determining the purchase price allocation, the Company considered, among other factors, its intention to use the acquired assets and the historical and estimated future demand for Netli services. The fair value of intangible assets was based upon the income approach. In applying this approach, the values of the intangible assets acquired were determined using projections of revenues and expenses specifically attributed to the intangible assets. The income streams were then discounted to present value using estimated risk adjusted discount rates. The rate used to discount the expected future net cash flows from the intangible assets to their present values was based upon a weighted average cost of capital of 16%. The discount rate was determined after consideration of market rates of return on debt and equity capital, the weighted average return on invested capital and the risk associated with achieving forecasted sales related to the technology and assets acquired from Netli.

The customer relationships were valued using the discounted cash flow method of income approach. The key assumptions used in valuing the customer relationships were as follows: discount rate of 16%, tax rate of 40% and estimated average economic life of 11 years.

The relief-from-royalty method was used to value the completed technologies acquired from Netli. The relief-from-royalty method estimates the cost savings that accrue to the owner of an intangible asset that would otherwise be required to pay royalties or license fees on revenues earned through the use of the asset. The royalty rate used is based on an analysis of empirical, market-derived royalty rates for guideline intangible assets. Typically, revenue is projected over the expected remaining useful life of the completed technology. The market-derived royalty rate is then applied to estimate the royalty savings. The key assumptions used in valuing the completed technologies are as follows: royalty rate of 15%, discount rate of 16%, tax rate of 40% and estimated average economic life of eight years.

The lost-profits method was used to value the non-compete agreements Akamai entered into with certain members of Netli’s management team. The lost-profits method recognizes that the current value of an asset may be premised upon the expected receipt of future economic benefits protected by clauses within an agreement. These benefits are generally considered to be higher income resulting from the avoidance of a loss in revenue that would likely occur without an agreement. The key assumptions used in valuing the non-compete agreements were as follows: discount rate of 16%, tax rate of 40% and estimated average economic life of three years.

The total weighted average amortization period for the intangible assets acquired from Netli is 5.1 years. The intangible assets are being amortized based upon the pattern in which the economic benefits of the intangible assets are being utilized, which in general reflects the cash flows generated from such assets. None of the goodwill or identifiable intangible assets resulting from the Netli acquisition is deductible for income tax purposes.

In connection with the acquisition of Netli, the Company promptly commenced integration activities, which resulted in recognizing, as part of the purchase price allocation, approximately $0.8 million in liabilities for employee termination benefits, most of which was paid in 2008.

Nine Systems

On December 13, 2006, the Company acquired all of the outstanding common and preferred stock, including vested and unvested stock options, of Nine Systems in exchange for approximately 2.7 million shares of Akamai common stock, approximately $4.5 million in cash and options to purchase approximately 400,000 shares of Akamai common stock. The purchase of Nine Systems was intended to increase the quantity and types of rich media management tools sold by the Company.

The aggregate purchase price, net of cash received, was approximately $157.5 million, which consisted of $133.3 million in shares of Akamai common stock, $19.1 million in fair value of Akamai's stock options issued, $4.5 million in cash and $0.6 million of transaction costs, which primarily consisted of fees for financial advisory and legal services. In accordance with EITF No. 99-12, the value of the common stock issued in the transaction was calculated using the average closing price of the Company's common stock for the five-day period beginning two days before and ending two days after the date on which all material aspects of the transaction were agreed to by all parties and the acquisition was announced.

The fair value of the Company's stock options issued to Nine Systems employees was estimated using the Black-Scholes option pricing model with the following weighted-average assumptions:

Expected life (years)	—
Risk-free interest rate	5.2%
Expected volatility	67.4%
Dividend yield	—

The acquisition was accounted for using the purchase method of accounting. The total purchase consideration was allocated to the assets acquired and liabilities assumed based on their estimated fair values as of the date of acquisition, as determined by management and, with respect to identifiable intangible assets, by management with the assistance of an appraisal provided by a third-party valuation firm. The excess of the purchase price over the amounts allocated to assets acquired and liabilities assumed was recorded as goodwill. The value of the goodwill from this acquisition can be attributed to a number of business factors including, but not limited to, potential sales opportunities of providing Akamai services to Nine Systems customers; a trained technical workforce in place in the United States; an existing sales pipeline and a trained sales force; and cost synergies expected to be realized. In accordance with current accounting standards, goodwill associated with Nine Systems will not be amortized and will be tested for impairment at least annually as required by SFAS No. 142 (see Note 9).

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table presents the allocation of the purchase price for Nine Systems:

	(In thousands)
Total consideration:	
Value of common stock issued	$ 133,313
Cash paid	4,462
Fair value of stock options	19,070
Transaction costs	634
Total purchase consideration	$ 157,479
Allocation of the purchase consideration:	
Current assets	$ 4,553
Property and equipment	912
Deferred tax assets	5,732
Identifiable intangible assets	28,900
Goodwill	139,475
Deferred tax liabilities	(10,463)
Other liabilities assumed, including deferred revenue of $830	(11,630)
	$ 157,479

The following were the identified intangible assets acquired and the respective estimated periods over which the assets will be amortized:

	Amount (In thousands)	Weighted Average Useful Life (In years)
Completed technologies	$ 3,400	1.7
Customer relationships	25,000	4.5
Trademarks	500	2.1
Total	$ 28,900	

In determining the purchase price allocation, the Company considered, among other factors, the Company's intention to use the acquired assets and historical and estimated future demand for Nine Systems services. The fair value of intangible assets was based upon the income approach. The rate used to discount the net cash flows to their present values was based upon a weighted average cost of capital of 18%. The discount rate was determined after consideration of market rates of return on debt and equity capital, the weighted average return on invested capital, and the risk associated with achieving forecasted sales related to the technology and assets acquired from Nine Systems.

The customer relationships were valued using the income approach. The key assumptions used in valuing the customer relationships were as follows: discount rate of 18%, tax rate of 40% and estimated average economic life of nine years.

The relief-from-royalty method was used to value the completed technologies acquired from Nine Systems. The relief-from-royalty method estimates the cost savings that accrue to the owner of an intangible asset that would otherwise be required to pay royalties or license fees on revenues earned through the use of the asset. The

royalty rate used is based on an analysis of empirical, market-derived royalty rates for guideline intangible assets. Typically, revenue is projected over the expected remaining useful life of the completed technology. The market-derived royalty rate is then applied to estimate the royalty savings. The key assumptions used in valuing the completed technologies were as follows: royalty rate of 10.5%, discount rate of 18%, tax rate of 40% and estimated average economic life of four years.

The relief-from-royalty method was used to value trademarks. The relief-from-royalty method recognizes that the current value of an asset may be premised upon the expected receipt of future economic benefit in the use of trademarks and domain names. These benefits are generally considered to be higher income resulting from the avoidance of a loss in revenue that would likely occur without the specific trademarks and domain names. The key assumptions used in valuing trademarks were as follows: royalty rate of 1%, discount rate of 18%, tax rate of 40% and estimated average economic life of five years.

The total weighted average amortization period for the intangible assets is 4.1 years. The intangible assets are being amortized based upon the pattern in which the economic benefit of the intangible assets is being utilized, which in general reflects the cash flows generated from such assets. None of the goodwill or identifiable intangible assets is deductible for income tax purposes.

In connection with the acquisition of Nine Systems, the Company commenced integration activities, which resulted in recognizing approximately $0.6 million in liabilities for employee termination benefits, most of which was paid during 2007.

4. Net Income per Share:

Basic net income per weighted average share is computed using the weighted average number of common shares outstanding during the applicable period. Diluted net income per weighted average share is computed using the weighted average number of common shares outstanding during the period, plus the dilutive effect of potential common stock. Potential common stock consists of stock options, deferred stock units, restricted stock units and convertible notes.

The following table sets forth the components used in the computation of basic and diluted net income per common share (in thousands, except per share data):

	For the Years Ended December 31,		
	2008	2007	2006
Numerator:			
Net income	$ 145,138	$ 100,967	$ 57,401
Add back of interest expense on 1% convertible senior notes (net of tax)	1,757	2,840	2,841
Numerator for diluted net income	$ 146,895	$ 103,807	$ 60,242
Denominator:			
Denominator for basic net income per common share	167,673	162,959	155,366
Effect of dilutive securities:			
Stock options	4,009	7,354	7,704
Effect of escrow contingencies	351	1,051	—
Restricted stock units and deferred stock units	1,716	798	752
Assumed conversion of 1% convertible senior notes	12,936	12,932	12,945
Denominator for diluted net income per common share	186,685	185,094	176,767
Basic net income per common share	$ 0.87	$ 0.62	$ 0.37
Diluted net income per common share	$ 0.79	$ 0.56	$ 0.34

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Outstanding options to acquire an aggregate of 2.6 million, 1.4 million and 0.5 million shares of common stock as of December 31, 2008, 2007 and 2006, respectively, were excluded from the calculation of diluted earnings per share because the exercise prices of these stock options were greater than the average market price of the Company's common stock during the respective periods. Additionally, 1.9 million, 3.5 million and 2.3 million shares of common stock issuable in respect of outstanding restricted stock units were excluded from the computation of diluted net income per share for the years ended December 31, 2008, 2007 and 2006, respectively, because the performance conditions had not been met as of those dates.

The calculation of assumed proceeds used to determine the diluted weighted average shares outstanding under the treasury stock method in the periods presented was adjusted by tax windfalls and shortfalls associated with all of the Company's outstanding stock awards. Such windfalls and shortfalls are computed by comparing the tax deductible amount of outstanding stock awards to their grant-date fair values and multiplying the results by the applicable statutory tax rate. A positive result creates a windfall, which increases the assumed proceeds, and a negative result creates a shortfall, which reduces the assumed proceeds.

5. Accumulated Other Comprehensive Income (Loss):

Comprehensive income consists of net income and other comprehensive income (loss), which includes foreign currency translation adjustments and changes in unrealized gains and losses on marketable securities. For the purposes of comprehensive income disclosures, the Company does not record tax provisions or benefits for the net changes in the foreign currency translation adjustment, as the Company intends to permanently reinvest undistributed earnings of its foreign subsidiaries. Accumulated other comprehensive income (loss) is reported as a component of stockholders' equity and consisted of the following (in thousands):

	December 31,	
	2008	2007
Net unrealized (loss) gain on investments, net of tax of $14,767 at December 31, 2008	$(23,348)	$ 17
Foreign currency translation adjustments	(1,002)	3,036
Accumulated other comprehensive (loss) income	$(24,350)	$3,053

6. Marketable Securities and Investments:

On January 1, 2008, the Company adopted the provisions of SFAS No. 157 for its financial assets and liabilities. As permitted by FASB Staff Position No. SFAS 157-2, "Effective Date of FASB Statement No. 157," the Company elected to defer until January 1, 2009 the adoption of SFAS No. 157 for all non-financial assets and non-financial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis. The adoption of this accounting pronouncement did not have a material effect on the Company's consolidated financial statements for financial assets and liabilities and any other assets and liabilities carried at fair value. The Company is currently in the process of evaluating the impact of adopting this pronouncement for other non-financial assets and liabilities.

SFAS No. 157 provides a framework for measuring fair value under generally accepted accounting principles in the United States and requires expanded disclosures regarding fair value measurements. SFAS No. 157 defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. SFAS No. 157 also establishes a fair value hierarchy that

requires an entity to maximize the use of observable inputs, where available, and minimize the use of unobservable inputs when measuring fair value. The standard describes three levels of inputs that may be used to measure fair value:

Level 1 — Quoted prices in active markets for identical assets or liabilities.

Level 2 — Observable inputs, other than Level 1 prices, such as quoted prices in active markets for similar assets and liabilities, quoted prices for identical or similar assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data.

Level 3 — Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities, including certain pricing models, discounted cash flow methodologies and similar techniques.

The following is a summary of marketable securities and other investment-related assets held at December 31, 2008 and 2007 (in thousands).

		Gross Unrealized				Classified on Balance Sheet	
As of December 31, 2008	Cost	Gains	Losses	Realized Gains (Losses)	Aggregate Fair Value	Short-term Marketable Securities	Long-term Marketable Securities
Available-for-sale securities:							
Certificates of deposit	$ 640	$ —	$ —	$ —	$ 640	$ 487	$ 153
Commercial paper	39,357	52	—	—	39,409	39,409	—
U.S. corporate debt securities	216,883	681	(2,593)	—	214,971	85,907	129,064
U.S. government agency obligations	110,137	902	(12)	—	111,027	48,754	62,273
Auction rate securities	210,600	—	(37,163)	—	173,437	—	173,437
	577,617	1,635	(39,768)	—	539,484	174,557	364,927
Trading securities:							
Auction rate securities	76,500	—	—	(12,931)	63,569	—	63,569
Other investment-related assets:							
Put option related to ARS	—	—	—	12,500	12,500	—	12,500
	$ 654,117	$ 1,635	$ (39,768)	$ (431)	$ 615,553	$ 174,557	$ 440,996

		Gross Unrealized				Classified on Balance Sheet	
As of December 31, 2007	Cost	Gains	Losses	Realized Gains (Losses)	Aggregate Fair Value	Short-term Marketable Securities	Long-term Marketable Securities
Available-for-sale securities:							
Certificates of deposit	$ 835	$ —	$ —	$ —	$ 835	$ 835	$ —
Commercial paper	47,669	27	(9)	—	47,687	47,687	—
U.S. corporate debt securities	119,961	305	(423)	—	119,843	66,190	53,653
U.S. government agency obligations	39,998	118	(1)	—	40,115	6,429	33,686
Auction rate securities	279,950	—	—	—	279,950	279,950	—
	$ 488,413	$ 450	$ (433)	$ —	$ 488,430	$ 401,091	$ 87,339

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Unrealized gains and unrealized temporary losses on investments classified as available for sale are included within accumulated other comprehensive income (loss), net. Upon realization, those amounts are reclassified from accumulated other comprehensive income (loss), net to gain (loss) on investments, net. All gains and losses on investments classified as trading are included within the income statement as gain (loss) on investments, net. Realized gains and losses and other-than-temporary impairments are reflected in the income statement as gain (loss) on investments, net. As of December 31, 2008, the Company's available-for-sale securities with gross unrealized losses have been in a continuous unrealized loss position for less than 12 months.

The following table details the fair value measurements within the fair value hierarchy of the Company's financial assets, including investments and cash equivalents, at December 31, 2008 (in thousands):

	Total Fair Value at December 31, 2008	Fair Value Measurements at Reporting Date Using		
		Level 1	Level 2	Level 3
Money market funds	$ 107,772	$ 107,772	$ —	$ —
Certificates of deposit	664	664	—	—
Commercial paper	43,973	—	43,973	—
U.S. government agency obligations	117,995	—	117,995	—
U.S. corporate debt securities	214,971	—	214,971	—
Auction rate securities	237,006	—	—	237,006
Put option related to auction rate securities	12,500	—	—	12,500
	$ 734,881	$ 108,436	$ 376,939	$ 249,506

The following table reflects the activity for the Company's major classes of assets measured at fair value using Level 3 inputs for the year ended December 31, 2008 (in thousands):

	Auction Rate Securities	Put Option related to auction rate securities	Total
Balance as of December 31, 2007	$ —	$ —	$ —
Transfers in from Level 1	296,850	—	296,850
Sale of securities	(9,750)	—	(9,750)
Unrealized losses included in accumulated other comprehensive income (loss)	(37,163)	—	(37,163)
Realized gain on other investment-related assets	—	12,500	12,500
Realized loss on auction rate securities	(12,931)	—	(12,931)
Balance as of December 31, 2008	$ 237,006	$ 12,500	$ 249,506

As of December 31, 2008, the Company had grouped money market funds and certificates of deposit using a Level 1 valuation because market prices are readily available in active markets. As of December 31, 2008, the Company had grouped commercial paper, U.S. government agency obligations and U.S. corporate debt securities using a Level 2 valuation because quoted prices for identical or similar assets are available in markets that are not active. As of December 31, 2008, the fair value of the Company's assets grouped using a Level 3 valuation consisted of ARS as well as a related put option described below. ARS are long-term variable rate bonds tied to short-term interest rates that may reset through a "Dutch auction" process that are designed to occur every seven to 35 days.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Historically, the carrying value (par value) of the ARS approximated fair market value due to the resetting of variable interest rates. Beginning in mid-February 2008 and continuing throughout the period ended December 31, 2008, however, the auctions for ARS then held by the Company were unsuccessful. As a result, the interest rates on ARS reset to the maximum rate per the applicable investment offering statements. The Company will not be able to liquidate affected ARS until a future auction on these investments is successful, a buyer is found outside the auction process, the securities are called or refinanced by the issuer, or the securities mature. Due to these liquidity issues, the Company performed a discounted cash flow analysis to determine the estimated fair value of these investments. The discounted cash flow analysis performed by the Company considered the timing of expected future successful auctions, the impact of extended periods of maximum interest rates, collateralization of underlying security investments and the creditworthiness of the issuer. The discounted cash flow analysis performed as of December 31, 2008 assumes a weighted average discount rate of 6.275% and expected term of five years. The discount rate was determined using a proxy based upon the current market rates for similar debt offerings within the AAA-rated ARS market. The expected term was based on management's estimate of future liquidity. As a result, as of December 31, 2008, the Company has estimated an aggregate loss of $50.1 million, of which $37.2 million was related to the impairment of ARS deemed to be temporary and included in accumulated other comprehensive income (loss) within stockholders' equity, and of which $12.9 million was related to the impairment of ARS deemed other-than-temporary and included in gain (loss) on investments, net in the consolidated statement of operations.

The Company's ARS are primarily AAA-rated bonds, most of which are collateralized by federally guaranteed student loans as part of the Federal Family Education Loan Program through the United States Department of Education. The Company believes the quality of the collateral underlying these securities will enable it to recover the Company's principal balance.

Despite the failed auctions, the Company continues to receive cash flows in the form of specified interest payments from the issuers of ARS. In addition, except as described below for ARS related to the put option, the Company has the intent and ability to hold its ARS until a recovery of the impairment because it believes it has sufficient cash and other marketable securities on-hand and from projected cash flows from operations such that it does not anticipate a need to sell its ARS prior to a recovery to par value.

In November 2008, the Company entered into an agreement with one of its investment advisors to repurchase the $76.5 million in par value of ARS purchased through such advisor at par value beginning on June 30, 2010. Such agreement created a separate financial instrument between the two companies (the "put option"). For these particular ARS, Akamai expects to continue to hold these long-term debt instruments until the earlier of the settlement date or the date on which the market allows for active trading of ARS at par value. At any time during the period up until the June 2010, the investment advisor can call the ARS at par value.

The Company elected to apply the fair value option under SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities," to the put option. The $12.5 million fair value of the put option is grouped with long-term marketable securities on the Company's consolidated balance sheet with the resultant gain offsetting $12.9 million of the related ARS impairment included in the consolidated statement of operations. The fair value of the put option was determined by comparing the fair value of the related ARS, as described above, to their par values and also considers the credit risk associated with the investment advisor. This put option will be adjusted on each balance sheet date based on its then fair value. The fair value of the put option is based on unobservable inputs and is therefore classified as Level 3 in the hierarchy.

The underlying ARS are carried at fair value and classified as trading securities as of December 31, 2008. Previously, these securities were classified as available-for-sale. Prior to the Company's agreement with its investment advisor, its intent was to hold the ARS until the market recovered. The unrealized loss on these

investments previously was included in accumulated other comprehensive income (loss), net of tax. Management's decision to enter into the agreement with the Company's investment advisor resulted in classifying the unrealized loss on these investments as other-than-temporary. As a result, the Company recognized a loss of $12.9 million.

As of December 31, 2007, the Company held $280.0 million of ARS and classified these as short-term investments. As of December 31, 2008, the Company classified all of its ARS as long-term marketable securities on its consolidated balance sheet due to management's estimate of its inability to liquidate these investments within the following twelve months. Expected maturities of the Company's marketable securities and other investment-related assets held at December 31, 2008 and 2007 are as follows:

	December 31, 2008	December 31, 2007
Available-for-sale securities:		
Due in one year or less	$ 174,710	$ 124,243
Due after 1 year through 5 years	191,337	84,237
Due after 5 years	173,437	279,950
Trading securities:		
Due after 5 years	63,569	—
Other investment-related assets:		
Due after 1 year through 5 years	12,500	—
	$ 615,553	$ 488,430

As of December 31, 2008, $3.6 million of the Company's marketable securities were classified as restricted. These securities primarily represent security for irrevocable letters of credit in favor of third-party beneficiaries, mostly related to facility leases. The letters of credit are collateralized by restricted marketable securities, of which $3.4 million are classified as short-term marketable securities and $0.2 million are classified as long-term marketable securities on the consolidated balance sheets. The restrictions on these marketable securities lapse as the Company fulfills its obligations or such obligations expire under the terms of the letters of credit. These restrictions are expected to lapse at various times through May 2011.

For the year ended December 31, 2008, the Company recorded net losses on investments of $157,000. For the years ended December 31, 2007 and 2006, the Company recorded net gains on investments of $24,000 and $261,000, respectively, on sales of marketable securities.

7. Accounts Receivable:

Net accounts receivable consisted of the following (in thousands):

	December 31, 2008	December 31, 2007
Trade accounts receivable	$138,286	$113,357
Unbilled accounts	12,596	15,978
Gross accounts receivable	150,882	129,335
Allowance for doubtful accounts	(6,943)	(6,878)
Reserve for cash basis customers	(4,327)	(3,513)
Total accounts receivable reserves	(11,270)	(10,391)
Accounts receivable, net	$139,612	$118,944

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

8. Property and Equipment:

Property and equipment consisted of the following (dollars in thousands):

	December 31,		Estimated Useful Lives in Years
	2008	2007	
Computer and networking equipment	$ 302,213	$ 264,949	3
Purchased software	26,987	24,776	3
Furniture and fixtures	8,286	6,265	5
Office equipment	3,834	3,870	3
Leasehold improvements	22,095	11,344	5-7
Internal-use software	106,075	73,622	2
	469,490	384,826	
Accumulated depreciation and amortization	(295,007)	(250,280)	
	$ 174,483	$ 134,546	

Depreciation and amortization expense on property and equipment and capitalized internal-use software for the years ended December 31, 2008, 2007 and 2006 were $84.2 million, $60.5 million and $32.1 million, respectively.

During the years ended December 31, 2008 and 2007, the Company wrote off $40.2 million and $25.7 million, respectively, of long-lived asset costs, with accumulated depreciation and amortization costs of $39.0 million and $25.2 million, respectively. These write-offs were primarily related to purchased software and computer and networking equipment that were no longer in use.

During the years ended December 31, 2008, 2007 and 2006, the Company capitalized $25.0 million, $19.1 million and $12.6 million, net of impairments, respectively, of external consulting fees and payroll and payroll-related costs for the development and enhancement of internal-use software applications. Additionally, during the years ended December 31, 2008, 2007 and 2006, the Company capitalized $7.4 million, $6.4 million and $4.3 million, respectively, of non-cash stock-based compensation related to employees who developed and enhanced internal-use software applications. The internal-use software is used by the Company primarily to operate, manage and monitor its deployed network and deliver its services to customers.

The following table summarizes capitalized internal-use software costs (in thousands):

	December 31,	
	2008	2007
Gross costs capitalized	$107,125	$ 74,672
Less: cumulative impairments	(1,050)	(1,050)
	106,075	73,622
Less: accumulated amortization	(56,778)	(38,390)
Net book value of capitalized internal-use software	$ 49,297	$ 35,232

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

9. Goodwill and Other Intangible Assets:

The Company acquired goodwill and other intangible assets through business acquisitions during 2008, 2007, 2006, 2005 and 2000. The Company also acquired license rights from the Massachusetts Institute of Technology in 1999. During the year ended December 31, 2008, the Company recorded goodwill of $80.3 million and acquired intangible assets of $19.4 million as a result of the acquisition of acerno. During the year ended December 31, 2007, the Company recorded goodwill of $125.1 million and acquired intangible assets of $40.2 million as a result of the acquisitions of Netli and Red Swoosh.

During 2008, the Company made purchase accounting adjustments of $0.7 million to reflect the return in 2008 of approximately 59,000 shares of Akamai common stock previously held in escrow in connection with its acquisition of Speedera. The shares were previously included in the purchase price. Consequently, the Company reduced stockholders' equity by $0.7 million for the value of the shares as of the date of acquisition and reduced goodwill by the same amount.

During 2007, the Company made purchase accounting adjustments to reflect the net deferred tax assets recorded as a result of filing the final pre-acquisition income tax return for Nine Systems. Consequently, the Company increased its net deferred tax assets by $3.0 million and reduced goodwill by the same amount.

The changes in the carrying amount of goodwill for the years ended December 31, 2008 and 2007 were as follows:

	In thousands
Ending balance, December 31, 2006	$ 239,580
Netli acquisition	111,913
Red Swoosh acquisition	13,188
Tax assets recorded in connection with the Nine Systems acquisition	(3,044)
Ending balance, December 31, 2007	361,637
acerno acquisition	80,285
Purchase price adjustment in connection with the Speedera acquisition	(664)
Ending balance, December 31, 2008	$ 441,258

The Company reviews goodwill and other intangible assets for impairment annually or whenever events or changes in circumstances indicate that the carrying amount of these assets may exceed their fair value. The Company concluded that it had one reporting unit and assigned the entire balance of goodwill to this reporting unit as of December 31, 2008 and 2007 for purposes of performing an impairment test. The fair value of the reporting unit was determined using the Company's market capitalization as of December 31, 2008 and 2007. The fair value on December 31, 2008 and 2007 exceeded the net assets of the reporting unit, including goodwill, as of both dates. Accordingly, the Company concluded that no impairment existed as of these dates. Unless changes in events or circumstances indicate that an impairment test is required, the Company will next test goodwill for impairment as of December 31, 2009.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Other intangible assets that are subject to amortization consist of the following (in thousands):

	December 31, 2008		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Completed technologies	$ 35,031	$ (5,659)	$29,372
Customer relationships	88,700	(31,291)	57,409
Non-compete agreements	7,200	(1,529)	5,671
Trademarks and trade names	800	(257)	543
Acquired license rights	490	(490)	—
Total	$132,221	$ (39,226)	$92,995

	December 31, 2007		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Completed technologies	$ 25,831	$ (2,631)	$23,200
Customer relationships	84,400	(21,029)	63,371
Non-compete agreements	1,600	(1,108)	492
Trademarks	500	(109)	391
Acquired license rights	490	(444)	46
Total	$112,821	$ (25,321)	$87,500

Aggregate expense related to amortization of other intangible assets was $13.9 million, $11.4 million and $8.5 million for the years ended December 31, 2008, 2007 and 2006, respectively. Based on current circumstances, amortization expense is expected to be approximately $16.7 million, $16.4 million, $16.4 million, $15.4 million and $12.6 million for the years ending December 31, 2009, 2010, 2011, 2012 and 2013, respectively.

10. Accrued Expenses and Other Current Liabilities:

Accrued expenses and other current liabilities consisted of the following (in thousands):

	December 31,	
	2008	2007
Payroll and other related benefits	$ 26,377	$ 27,381
Bandwidth and co-location	16,642	12,968
Property, use and other taxes	13,317	10,182
Legal professional fees	1,475	1,781
Other	8,321	3,921
Total	$ 66,132	$ 56,233

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

11. Commitments, Contingencies and Guarantees:

Operating Lease Commitments

The Company leases its facilities under non-cancelable operating leases. These operating leases expire at various dates through December 2019 and generally require the payment of real estate taxes, insurance, maintenance and operating costs. In October 2007, the Company entered into facility lease agreements with its landlord to expand its corporate headquarters in Cambridge, Massachusetts. As of June 1, 2009, the Company will be occupying an additional 110,000 square feet at its current location in Cambridge. These lease obligations have been included in the future lease commitment table below.

The minimum aggregate future obligations under non-cancelable leases as of December 31, 2008 were as follows (in thousands):

	Operating Leases
2009	$ 18,131
2010	21,281
2011	17,518
2012	15,742
2013	15,243
Thereafter	79,910
Total	$ 167,825

Rent expense for the years ended December 31, 2008, 2007 and 2006 was $14.8 million, $11.0 million and $6.6 million, respectively.

As of December 31, 2008, the Company had outstanding letters of credit in the amount of $8.6 million related to certain of its real estate leases. Approximately $3.6 million of these letters of credit are collateralized by marketable securities that have been restricted as to use (see Note 6). The letters of credit expire as the Company fulfills its operating lease obligations. Certain of the Company's facility leases include rent escalation clauses. The Company normalizes rent expense on a straight-line basis over the term of the lease for known changes in lease payments over the life of the lease. In the event that the landlord provided funding for leasehold improvements to leased facilities, the Company amortizes such amount as part of rent expense on a straight-line basis over the life of the lease.

Purchase Commitments

The Company has long-term commitments for bandwidth usage and co-location with various networks and ISPs. For the years ending December 31, 2009 and 2010, the minimum commitments were, as of December 31, 2008, approximately $42.4 million and $8.0 million, respectively. Additionally, as of December 31, 2008, the Company had entered into purchase orders with various vendors for aggregate purchase commitments of $15.0 million, which are expected to be paid in 2009.

Litigation

Between July 2, 2001 and November 7, 2001, purported class action lawsuits seeking monetary damages were filed in the United States District Court for the Southern District of New York against the Company as well

as against the underwriters of its October 28, 1999 initial public offering of common stock. The complaints were filed allegedly on behalf of persons who purchased the Company's common stock during different time periods, all beginning on October 28, 1999 and ending on various dates. The complaints are similar and allege violations of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, primarily based on the allegation that the underwriters received undisclosed compensation in connection with the Company's initial public offering. On April 19, 2002, a single consolidated amended complaint was filed, reiterating in one pleading the allegations contained in the previously filed separate actions. The consolidated amended complaint defines the alleged class period as October 28, 1999 through December 6, 2000. A Special Litigation Committee of the Company's Board of Directors authorized management to negotiate a settlement of the pending claims substantially consistent with a Memorandum of Understanding that was negotiated among class plaintiffs, all issuer defendants and their insurers. The parties negotiated a settlement that was subject to approval by the Court. On February 15, 2005, the Court issued an Opinion and Order preliminarily approving the settlement, provided that the defendants and plaintiffs agree to a modification narrowing the scope of the bar order set forth in the original settlement agreement. The parties agreed to a modification narrowing the scope of the bar order, and on August 31, 2005, the Court issued an order preliminarily approving the settlement. On December 5, 2006, the United States Court of Appeals for the Second Circuit overturned the District Court's certification of the class of plaintiffs who are pursuing the claims that would be settled in the settlement against the underwriter defendants. Thereafter, the District Court ordered a stay of all proceedings in all of the lawsuits pending the outcome of plaintiffs' petition to the Second Circuit for rehearing en banc and resolution of the class certification issue. On April 6, 2007, the Second Circuit denied plaintiffs' rehearing petition, but clarified that the plaintiffs may seek to certify a more limited class in the District Court. On June 25, 2007, the District Court signed an order terminating the settlement. There were no material developments in these proceedings during the year ended December 31, 2008. The Company believes that it has meritorious defenses to the claims made in the complaint, and it intends to contest the lawsuit vigorously. An adverse resolution of this action could have a material adverse effect on its financial condition and results of operations in the period in which the lawsuit is resolved. The Company is not presently able to estimate potential losses, if any, related to this lawsuit.

In addition, on or about October 3, 2007, a purported Akamai shareholder filed a complaint in the United States District Court for the Western District of Washington, against the underwriters involved in its 1999 initial public offering of common stock, alleging violations of Section 16(b) of the Exchange Act. The complaint alleges that the combined number of shares of the Company's common stock beneficially owned by the lead underwriters and certain unnamed officers, directors and principal shareholders exceeded ten percent of its outstanding common stock from the date of the Company's initial public offering on October 29, 1999, through at least October 28, 2000. The complaint further alleges that those entities and individuals were thus subject to the reporting requirements of Section 16(a) and the short-swing trading prohibition of Section 16(b) and failed to comply with those provisions. The complaint seeks to recover from the lead underwriters any "short-swing profits" obtained by them in violation of Section 16(b). Akamai was named as a nominal defendant in the action but has no liability for the asserted claims. None of the Company's directors or officers serving in such capacities at the time of its initial public offering are currently named as defendants in this action, but there can be no guarantee that the complaint will not be amended or a new complaint or suit filed to name such directors or officers as defendants in this action or another action alleging a violation of the same provisions of the Securities Exchange Act of 1934, as amended. The Company does not expect the results of this action to have a material adverse effect on its business, results of operations or financial condition.

The Company is party to various other litigation matters that management considers routine and incidental to its business. Management does not expect the results of any of these routine actions to have a material adverse effect on the Company's business, results of operations or financial condition.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Guarantees

The Company has identified the guarantees described below as disclosable in accordance with FASB Interpretation 45 ("FIN 45"), "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others, an interpretation of FASB Statements No. 5, 57, and 107 and rescission of FASB Interpretation No. 34." The Company evaluates estimated losses for guarantees under SFAS No. 5, "Accounting for Contingencies, as Interpreted by FIN 45." The Company considers such factors as the degree of probability of an unfavorable outcome and the ability to make a reasonable estimate of the amount of loss. To date, the Company has not encountered material costs as a result of such obligations and has not accrued any liabilities related to such guarantees in its financial statements.

As permitted under Delaware law, the Company's Certificate of Incorporation provides that Akamai indemnify each of its officers and directors during his or her lifetime for certain events or occurrences that happen by reason of the fact that the officer or director is or was or has agreed to serve as an officer or director of the Company. In addition, the Company has acquired other companies that had similar director and officer indemnification provisions in their bylaws. The Company has generally become responsible for such indemnification obligations as a result of the acquisition. The maximum potential amount of future payments the Company could be required to make under these indemnification obligations is unlimited; however, the Company has a director and officer insurance policy that limits its exposure and may enable the Company to recover a portion of certain future amounts paid. In the case of obligations assumed as a result of acquisitions, the Company may have the right to be indemnified by the selling stockholders of such acquired companies for director and officer indemnification expenses incurred by the Company for matters arising prior to the acquisition which may eliminate or mitigate the impact of any such obligations.

The Company enters into standard indemnification agreements in the ordinary course of business. Pursuant to these agreements, the Company agrees to indemnify, hold harmless, and reimburse the indemnified party for losses suffered or incurred by the indemnified party, generally Akamai's business partners or customers, in connection with Akamai's provision of its services and software. Generally, these obligations are limited to claims relating to infringement of a patent, copyright or other intellectual property right or the Company's negligence, willful misconduct or violation of the law (provided that there is not gross negligence or willful misconduct on the part of the other party). Subject to applicable statutes of limitation, the term of these indemnification agreements is generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, the Company carries insurance that covers certain third party claims relating to its services and could limit the Company's exposure. There can, however, be no certainty that such insurance would cover a portion or any amount of such liability.

The Company has acquired all of the stock of numerous companies since 2000. As part of those acquisitions, the Company assumed the liability for undisclosed claims and losses previously incurred by such companies. Subject to applicable statutes of limitations, these obligations are generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make in connection with these obligations is unlimited. The Company may have the right to be indemnified by the selling stockholders of such acquired companies for losses and expenses incurred by the Company for matters arising prior to the acquisition, which may eliminate or mitigate the impact of any such obligations.

The Company leases space in certain buildings, including a corporate headquarters building, under operating leases. The Company has standard indemnification arrangements under such operating leases that require it to indemnify each landlord against losses, liabilities, and claims incurred in connection with the premises covered

by the Company leases, its use of the premises, property damage or personal injury, and breach of the lease agreement, as well as occurrences arising from the Company's negligence or willful misconduct. The Company also subleases certain space and agrees to indemnify the sublessee for losses caused by the Company's employees on the premises. Subject to applicable statutes of limitation, the terms of these indemnification agreements are generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements.

The Company entered into three joint ventures in 2001 and 2002, which have since terminated. The terms of the joint venture agreements generally provide that the Company indemnify the joint venture partner against property damage or bodily injury arising from the Company's negligence or willful misconduct; third party claims of copyright infringement or trade secret theft associated with the software or marks licensed from the Company by the partner; and losses arising from any breach by the Company of its representations and warranties. Subject to applicable statutes of limitation, the term of these indemnification agreements is generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements.

The Company leases certain equipment under operating leases that require it to indemnify the lessor against losses, liabilities and claims in connection with the lease agreement, possession or use of the leased equipment, and in some cases certain tax issues. Subject to applicable statutes of limitation, the term of these indemnification agreements is generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements.

The Company licenses technology to certain third parties under license agreements that provide for Akamai to indemnify the third parties against claims of patent and copyright infringement. This indemnity generally does not apply in the event that the licensed technology has been modified by the third party or combined with other technology, hardware, or data that the Company has not approved. Subject to applicable statutes of limitation, the term of these indemnification agreements is generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements.

The Company licenses technology from third parties under agreements that contain standard indemnification provisions that require the Company to indemnify the third party against losses, liabilities and claims arising from the Company's unauthorized use or modification of the licensed technology. Subject to applicable statutes of limitation, the term of these indemnification agreements is generally perpetual from the time of execution of the agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited. The Company has never incurred costs to defend lawsuits or settle claims related to these indemnification agreements.

Based upon the Company's historical experience and information known as of December 31, 2008, the Company believes its liabilities related to the above guarantees and indemnifications are immaterial.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Convertible Notes:

1% Convertible Senior Notes

In January 2004 and December 2003, Akamai issued $200.0 million in aggregate principal amount of 1% convertible senior notes due December 15, 2033 for aggregate proceeds of $194.1 million, net of an initial purchaser's discount and offering expenses of $5.9 million. The initial conversion price of the 1% convertible senior notes was $15.45 per share (equivalent to 64.7249 shares of common stock per $1,000 principal amount of 1% convertible senior notes). During 2007, the Company issued 9,379 shares of common stock in connection with the conversion of $145,000 in aggregate principal amount of its 1% convertible senior notes (at a conversion price of $15.45 per share). As of December 31, 2008, the carrying amount and fair value of the 1% convertible senior notes were $199.9 million and $221.0 million, respectively.

The notes may be converted at the option of the holder in the following circumstances:

- during any calendar quarter commencing after March 31, 2004, if the closing sale price of the common stock for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter is more than 120% of the conversion price in effect on such last trading day;
- if the convertible notes are called for redemption;
- if the Company makes specified distributions on its common stock or engages in specified transactions; and
- during the five trading day period immediately following any ten-consecutive trading day period in which the trading price per $1,000 principal amount of the convertible notes for each day of such ten-day period is less than 95% of the product of the closing sale price per share of the Company's common stock on that day multiplied by the number of shares of its common stock issuable upon conversion of $1,000 principal amount of the convertible notes.

The Company may redeem the 1% convertible senior notes on or after December 15, 2010 at the Company's option at 100% of the principal amount together with accrued and unpaid interest. Conversely, holders of the 1% convertible senior notes may require the Company to repurchase the notes at par value on certain specified dates beginning on December 15, 2010. In the event of a change of control, the holders may require Akamai to repurchase their 1% convertible senior notes at a repurchase price of 100% of the principal amount plus accrued interest. Interest on the 1% convertible senior notes began to accrue as of the issue date and is payable semiannually on June 15 and December 15 of each year. Deferred financing costs of $5.9 million, including the initial purchaser's discount and other offering expenses, for the 1% convertible senior notes are being amortized over the first seven years of the term of the notes to reflect the put and call rights discussed above. Amortization of deferred financing costs of the 1% convertible senior notes was approximately $0.8 million for each of the years ended December 31, 2008, 2007 and 2006. The Company records the amortization of deferred financing costs using the effective interest method as interest expense in the consolidated statement of operations.

13. Restructurings and Lease Terminations:

As of December 31, 2008, the Company had $1.7 million of accrued restructuring liabilities. In November 2008, the Company announced a workforce reduction of 110 employees from all areas of the Company. The Company recorded $2.0 million as a restructuring charge for the amount of one-time benefits provided to affected employees. Included in these costs is a net reduction in non-cash stock-based compensation of $0.8 million, reflecting a modification to certain stock-based awards previously granted to the affected

employees. Additionally, in December 2008, in connection with excess and vacated facilities under long-term non-cancelable leases, the Company recorded $0.5 million as a restructuring charge for the estimated future lease payments, less estimated sublease income, for these vacated facilities. The Company expects that the remaining $1.7 million of these liabilities will be paid in 2009.

As of December 31, 2007, the Company had $0.6 million of accrued restructuring liabilities. In connection with the Speedera, Nine Systems, Netli and Red Swoosh acquisitions, the Company's management committed to plans to exit certain activities of these entities. In accordance with EITF No. 95-3, "Recognition of Liabilities in Connection with a Purchase Business Combination," the Company recorded, as part of the purchase prices, liabilities of $1.4 million related to workforce reductions during the year ended December 31, 2007. These liabilities primarily consisted of employee severance and outplacement costs. As of December 31, 2008, these liabilities had been paid.

The following table summarizes the accrual and usage of the restructuring charges (in millions):

	Leases	Severance	Total
Ending balance, December 31, 2005	$ 2.3	$ 1.3	$ 3.6
Accrual recorded in purchase accounting	—	0.5	0.5
Cash payments	(1.4)	(0.6)	(2.0)
Ending balance, December 31, 2006	0.9	1.2	2.1
Accrual recorded in purchase accounting	—	1.4	1.4
Restructuring benefit	(0.2)	—	(0.2)
Cash payments	(0.7)	(2.0)	(2.7)
Ending balance, December 31, 2007	—	0.6	0.6
Restructuring charge	0.5	2.0	2.5
Cash payments	(0.2)	(1.2)	(1.4)
Ending balance, December 31, 2008	$ 0.3	$ 1.4	$ 1.7

14. Rights Plan and Series A Junior Participating Preferred Stock:

On September 10, 2002, the Board of Directors of the Company (the "Board of Directors") declared a dividend of one preferred stock purchase right for each outstanding share of the Company's common stock held by stockholders of record at the close of business on September 23, 2002. To implement the rights plan, the Board of Directors designated 700,000 shares of the Company's 5.0 million authorized shares of undesignated preferred stock as Series A Junior Participating Preferred Stock, par value $.01 per share. Each right entitles the registered holder to purchase from the Company one one-thousandth of a share of preferred stock at a purchase price of $9.00 in cash, subject to adjustment. No shares of Series A Junior Participating Preferred Stock are outstanding as of December 31, 2008. In January 2004, the Board of Directors of the Company approved an amendment to the rights plan in which the purchase price of each right issued under the plan increased from $9.00 per share to $65.00 per share.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

15. Stockholders' Equity:

Holders of the Company's common stock are entitled to one vote per share. At December 31, 2008, the Company had reserved approximately 5.9 million shares of common stock for issuance under its 1999 Employee Stock Purchase Plan (the "1999 ESPP") and upon the exercise of options and vesting of deferred stock units and restricted stock units under its other stock incentive plans. Additionally, the Company had reserved approximately 12.9 million shares issuable upon conversion of its 1% senior convertible notes.

16. Stock-Based Compensation:

Equity Plans

In 1998, the Board of Directors adopted the 1998 Stock Incentive Plan (the "1998 Plan") for the issuance of incentive and nonqualified stock options, restricted stock awards and other types of equity awards. Options to purchase common stock and other equity awards are granted at the discretion of the Board of Directors or a committee thereof. In October 2005, the Board of Directors delegated to the Company's Chief Executive Officer the authority to grant equity incentive awards to employees of the Company below the level of Vice President, subject to certain specified limitations. In December 2001, the Board of Directors adopted the 2001 Stock Incentive Plan (the "2001 Plan") for the issuance of nonqualified stock options, restricted stock awards and other types of equity awards. In March 2006, the Board of Directors adopted the Akamai Technologies, Inc. 2006 Stock Incentive Plan (the "2006 Plan") for the issuance of incentive and nonqualified stock options, restricted stock awards, restricted stock units and other types of equity awards. The total numbers of shares of common stock issuable under the 1998 Plan, the 2001 Plan and the 2006 Plan are 48,255,600, 5,000,000 and 7,500,000 shares, respectively. Equity incentive awards may not be issued to the Company's directors or executive officers under the 2001 Plan.

Under the terms of the 1998 Plan and the 2006 Plan, the exercise price of incentive stock options may not be less than 100% (110% in certain cases) of the fair market value of the common stock on the date of grant. Incentive stock options may not be issued under the 2001 Plan. The exercise price of nonqualified stock options issued under the 1998 Plan, the 2001 Plan and the 2006 Plan may be less than the fair market value of the common stock on the effective date of grant, as determined by the Board of Directors, but in no case may the exercise price be less than the statutory minimum. Stock option vesting typically occurs over four years under all of the plans, and options are granted at the discretion of the Board of Directors. Under the 1998 Plan and 2001 Plan, the term of options granted may not exceed ten years, or five years for incentive stock options granted to holders of more than 10% of the Company's voting stock. Under the 2006 Plan, the term of options granted may not exceed seven years.

The Company has assumed certain stock option plans and the outstanding stock options of companies that it has acquired ("Assumed Plans"). Stock options outstanding as of the date of acquisition under the Assumed Plans have been exchanged for the Company's stock options and adjusted to reflect the appropriate conversion ratio as specified by the applicable acquisition agreement, but are otherwise administered in accordance with the terms of the Assumed Plans. Stock options under the Assumed Plans generally vest over four years and expire ten years from the date of grant.

In August 1999, the Board of Directors adopted the 1999 ESPP. The Company reserved 3,100,000 shares of common stock for issuance under the 1999 ESPP. In May 2002, the stockholders of the Company approved an amendment to the 1999 ESPP that allows for an automatic increase in the number of shares of common stock available under the 1999 ESPP each June 1 and December 1 to restore the number of shares available for

issuance to 1,500,000 shares, provided that the aggregate number of shares issued under the 1999 ESPP shall not exceed 20,000,000. In April 2005, the Company's Board of Directors approved amendments to the 1999 ESPP as follows: the duration of the offering periods was decreased from 24 months to six months; the number of times a participant may elect to change his or her percentage during an offering period was changed from four times to two times; the definition of "compensation" was amended to clarify that it includes cash bonuses and other cash incentive programs; and a provision was added to clarify that upon termination of an offering period, each eligible participant will be automatically enrolled in the next offering period. These amendments became effective in June 2005. The 1999 ESPP allows participants to purchase shares of common stock at a 15% discount from the fair market value of the stock as determined on specific dates at six-month intervals. During the years ended December 31, 2008, 2007 and 2006, the Company issued 348,584, 279,356 and 295,113 shares under the 1999 ESPP, respectively, with a weighted average purchase price per share of $20.66, $34.62 and $22.0, respectively. Total cash proceeds from the purchase of shares under the 1999 ESPP in 2008, 2007 and 2006 were $7.2 million, $9.7 million and $6.5 million, respectively. As of December 31, 2008, approximately $763,000 had been withheld from employees for future purchases under the 1999 ESPP.

Stock-Based Compensation Expense

The following table summarizes the components of total stock-based compensation expense included in the Company's consolidated statements of operations for the years ended December 31, 2008, 2007 and 2006 (in thousands):

	For the Years Ended December 31,		
	2008	2007	2006
Stock-based compensation expense by type of award:			
Stock options	$ 22,381	$ 29,171	$ 24,572
Deferred stock units	1,885	925	1,976
Restricted stock units	37,005	38,958	25,410
Shares issued under the 1999 ESPP	4,064	3,854	1,903
Amounts capitalized as internal-use software	(7,436)	(6,353)	(4,293)
Total stock-based compensation before income taxes	57,899	66,555	49,568
Less: Income tax benefit	(22,069)	(20,380)	(16,011)
Total stock-based compensation, net of tax	$ 35,830	$ 46,175	$ 33,557
Effect of stock-based compensation on income by line item:			
Cost of revenues	$ 2,415	$ 3,349	$ 1,960
Research and development expense	11,088	15,658	11,435
Sales and marketing expense	26,273	26,252	18,403
General and administrative expense	18,123	21,296	17,770
Provision for income taxes	(22,069)	(20,380)	(16,011)
Total cost related to stock-based compensation, net of tax	$ 35,830	$ 46,175	$ 33,557

In addition to the amounts of stock-based compensation reported in the table above, the Company's consolidated statements of operations for the years ended December 31, 2008, 2007 and 2006 also included stock-based compensation reflected as a component of amortization of capitalized internal-use software; such additional stock-based compensation was $4.2 million, $1.8 million and $0.3 million, respectively, before tax.

Akamai has selected the Black-Scholes option pricing model to determine the fair value of the Company's stock option awards. This model requires the input of subjective assumptions, including expected stock price

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

volatility and estimated life of each award. The estimated fair value of Akamai's stock-based awards, less expected forfeitures, is amortized over the awards' vesting period on a straight-line basis. Expected volatilities are based on the Company's historical stock price volatility and implied volatility from traded options in its stock. The Company uses historical data to estimate the expected life of options granted within the valuation model. The risk-free interest rate for periods commensurate with the expected life of the option is based on the United States Treasury yield rate in effect at the time of grant.

The grant-date fair values of Akamai's stock option awards granted during the years ended December 31, 2008, 2007 and 2006 were estimated using the Black-Scholes option pricing model with the following weighted-average assumptions:

	For the Years Ended December 31,		
	2008	2007	2006
Expected life (years)	4.1	4.0	3.9
Risk-free interest rate (%)	2.7	4.5	4.7
Expected volatility (%)	51.5	60.5	67.5
Dividend yield (%)	—	—	—

For the years ended December 31, 2008, 2007 and 2006, the weighted average fair value of Akamai's stock option awards granted was $12.34 per share, $24.24 per share and $18.10 per share, respectively.

The grant-date fair values of Akamai's ESPP awards granted during the years ended December 31, 2008, 2007 and 2006 were estimated using the Black-Scholes option pricing model with the following weighted-average assumptions:

	For the Years Ended December 31,		
	2008	2007	2006
Expected life (years)	0.5	0.5	1.1
Risk-free interest rate (%)	1.8	4.6	4.0
Expected volatility (%)	59.2	47.4	77.7
Dividend yield (%)	—	—	—

For the years ended December 31, 2008, 2007 and 2006, the weighted average fair value of Akamai's ESPP awards granted was $4.58 per share, $6.24 per share and $7.39 per share, respectively.

As of December 31, 2008, total pre-tax unrecognized compensation cost for stock options, restricted stock units, deferred stock units and stock issued under ESPP was $75.9 million. This non-cash expense will be recognized through 2012 over a weighted average period of 1.2 years. Nearly all of the Company's employees have received grants through these equity compensation programs.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes stock option activity during the years ended December 31, 2008, 2007 and 2006:

	Shares (in thousands)	Weighted Average Exercise Price
Outstanding at December 31, 2005	16,276	$ 8.65
Granted (including those for business acquisitions)	1,932	26.96
Exercised	(4,153)	5.18
Forfeited and expired	(808)	12.19
Outstanding at December 31, 2006	13,247	12.33
Granted (including those for business acquisitions)	1,629	36.97
Exercised	(2,493)	8.80
Forfeited and expired	(349)	26.17
Outstanding at December 31, 2007	12,034	15.83
Granted	1,162	28.20
Exercised	(2,445)	5.84
Forfeited and expired	(371)	38.97
Outstanding at December 31, 2008	10,380	18.76
Exercisable at December 31, 2008	7,994	14.60

The total pre-tax intrinsic value of options exercised during the years ended December 31, 2008, 2007 and 2006 was $63.5 million, $91.7 million and $131.6 million, respectively. The total fair value of options vested for the years ended December 31, 2008, 2007 and 2006 was $15.0 million, $22.7 million and $20.3 million, respectively. The aggregate fair values of stock options vested for the years ended December 31, 2008 and 2007 were calculated net of capitalized stock-based compensation of $7.4 million and $6.4 million, respectively. The aggregate fair value of stock options vested for the year ended December 31, 2006 was calculated net of capitalized stock-based compensation of $4.3 million. Cash proceeds from the exercise of stock options were $14.2 million, $22.0 million and $21.4 million for the years ended December 31, 2008, 2007 and 2006, respectively. Income tax benefits realized from the exercise of stock options during the years ended December 31, 2008, 2007 and 2006 were approximately $44.9 million, $83.2 million and $103.3 million, respectively.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes stock options that are outstanding and expected to vest and stock options exercisable at December 31, 2008:

	Options Outstanding and Expected to Vest				Options Exercisable			
Range of Exercise Price ($)	Number of Options (In thousands)	Weighted Average Remaining Contractual Life (In years)	Weighted Average Exercise Price	Aggregate Intrinsic Value (In thousands)	Number of Options (In thousands)	Weighted Average Remaining Contractual Life (In years)	Weighted Average Exercise Price	Aggregate Intrinsic Value (In thousands)
0.01-0.92	486	3.8	$ 0.75	$ 6,975	482	3.8	$ 0.75	$ 6,914
0.96-1.65	384	3.9	1.58	5,181	384	3.9	1.58	5,181
2.27-4.08	316	3.9	3.26	3,737	296	3.6	3.27	3,497
4.10-5.44	1,338	4.1	4.84	13,712	1,307	4.1	4.85	13,375
5.49-8.28	59	4.3	6.07	535	49	3.4	5.74	457
8.55-12.81	671	5.8	11.87	2,163	602	5.6	11.82	1,965
12.85-14.90	3,350	5.8	14.29	2,672	3,209	5.8	14.29	2,569
15.22-22.47	673	5.0	17.17	—	495	4.3	16.97	—
22.97-34.45	1,521	8.0	28.85	—	548	7.0	27.15	—
35.05-52.46	945	7.1	43.56	—	375	6.5	44.58	—
54.26-76.06	484	5.7	56.13	—	233	5.6	56.70	—
85.00-93.94	24	1.5	85.65	—	24	1.5	85.65	—
	10,251	5.7	18.59	$ 34,975	8,004	5.2	14.60	$ 33,958
Expected forfeitures	129							
Total options outstanding	10,380							

The aggregate intrinsic value in the preceding table represents the total pre-tax intrinsic value, based on Akamai's closing stock price of $15.09 on December 31, 2008, that would have been received by the option holders had all option holders exercised their "in-the-money" options as of that date. The total number of shares related to "in-the-money" options exercisable as of December 31, 2008 was approximately 7.2 million.

Deferred Stock Units

In May 2008, the Company granted an aggregate of 47,291 deferred stock units ("DSUs") to non-employee members of its Board of Directors and its Executive Chairman. During each of 2007 and 2006, the Company granted an aggregate of approximately 56,000 DSUs to non-employee members of its Board of Directors and to the Company's Executive Chairman. Each DSU represents the right to receive one share of the Company's common stock upon vesting. The holder may elect to defer receipt of all or a portion of the vested shares of stock represented by the DSU for a period for at least one year but not more than ten years from the grant date. The DSUs typically vest 50% upon the first anniversary of grant date, with the remaining 50% vesting in equal installments of 12.5% each quarter thereafter.

In September 2006, the Company's Board of Directors adopted a policy (the "Policy") with respect to the payment of compensation to a director in good standing upon such director's departure from the Board. Pursuant to the Policy, upon a director's departure from the Board, such director will receive a cash payment equal to the annual cash retainer payable to such director under the Company's non-employee director compensation plan pro-rated through the date of departure and 100% of the unvested shares underlying the DSUs held by such director will accelerate at the time of departure and become exercisable in full. In addition, if a director has completed three years of Board service at the time of departure, 100% of the unvested options initially granted to such director upon joining the Board will accelerate at the time of departure and become fully exercisable.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes the DSU activity for the years ended December 31, 2008, 2007 and 2006 (in thousands, except grant-date fair values):

	Units	Weighted Average Grant-Date Fair Value
Outstanding at December 31, 2005	194	$ 9.34
Granted	34	31.15
Vested and distributed	(30)	40.63
Outstanding at December 31, 2006	198	12.55
Granted	22	42.30
Vested and distributed	(24)	18.87
Outstanding at December 31, 2007	196	15.03
Granted	47	39.86
Vested and distributed	(36)	7.96
Outstanding at December 31, 2008	207	24.86

The total fair value of DSUs that vested during the year ended December 31, 2008 was $1.9 million. The grant-date fair value is calculated based upon the Company's closing stock price on the date of grant. As of December 31, 2008, 52,762 DSUs were unvested, with an aggregate intrinsic value of approximately $3.1 million and a weighted average remaining contractual life of approximately 1.3 years. These units are expected to vest through May 2010. All DSUs vest upon fulfilling service conditions or upon a director's departure from the Board under the terms of the Policy. The total fair value of DSUs that vested during the years ended December 31, 2007 and 2006 was $0.9 million and $1.2 million, respectively.

Restricted Stock Units

The following table summarizes the different types of restricted stock units ("RSUs") granted by the Company (in thousands):

	For the Year Ended December 31,		
	2008	2007	2006
RSUs with service-based vesting conditions	1,529	588	834
RSUs with performance-based vesting conditions	898	1,409	2,412
Total	2,427	1,997	3,246

Each RSU represents the right to receive one share of the Company's common stock upon vesting. The fair value of these RSUs was calculated based upon the Company's closing stock price on the date of grant, and the stock-based compensation expense is being recognized over the vesting period. Most RSUs with service-based vesting provisions vest in installments over a three- or four-year period following the grant date.

The Company also granted performance-based RSUs in 2008, 2007 and 2006 to certain employees. These performance-based RSUs will only vest if the Company exceeds specified cumulative revenue and earnings per share targets over a period of three consecutive fiscal years commencing with the year in which the RSU was granted. For performance-based RSUs granted in 2006 and 2007, the maximum number of performance-based RSUs that may vest is equal to 300% of the number of non-performance-based RSUs granted on the same date.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

For performance-based RSUs granted in 2008, the maximum number of performance-based RSUs that may vest is equal to 50% of the number of non-performance-based RSUs granted on the same date. In each case, such maximum vesting would only occur if the Company meets or exceeds a specified percentage of both its cumulative revenue and earnings per share targets for the three designated fiscal years and no performance-based RSUs will vest if the Company fails to exceed the applicable targets. If the Company's cumulative revenue and/or earnings per share results for the applicable years are between 100% and the specified percentage of the targets, the holder would receive between zero performance-based RSUs and the maximum deliverable amount set forth above. For the years ended December 31, 2008, 2007 and 2006, management measured compensation expense for these performance-based RSUs based upon a review of the Company's expected achievement of future cumulative performance. Such compensation cost is being recognized ratably over three years for each series of grants, as these awards vest only in their entirety upon achievement of the specified targets. Management will continue to review the Company's expected performance and adjust the compensation cost, if needed, at such time.

The following table summarizes the RSU activity for the years ended December 31, 2008, 2007 and 2006 (in thousands, except grant-date fair values):

	Units	Weighted Average Grant-Date Fair Value
Granted	3,246	$ 25.45
Forfeited	(106)	25.54
Outstanding at December 31, 2006	3,140	25.44
Granted	1,997	52.67
Exercised	(286)	26.66
Forfeited	(256)	35.78
Outstanding at December 31, 2007	4,595	36.67
Granted	2,427	30.33
Exercised	(434)	36.96
Forfeited	(389)	39.74
Outstanding at December 31, 2008	6,199	34.64

The grant-date fair value of each RSU is calculated based upon the Company's closing stock price on the date of grant. As of December 31, 2006, 3.1 million RSUs were outstanding and unvested, with an aggregate intrinsic value of $166.8 million and a weighted average remaining contractual life of approximately 2.1 years. As of December 31, 2007, 4.6 million RSUs were outstanding and unvested, with an aggregate intrinsic value of $159.0 million and a weighted average remaining contractual life of approximately 1.5 years. As of December 31, 2008, 6.2 million RSUs were outstanding and unvested, with an aggregate intrinsic value of $93.6 million and a weighted average remaining contractual life of approximately 1.1 years. These RSUs are expected to vest on various dates through November 2011.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

17. Employee Benefit Plan:

In January 1999, the Company established a savings plan for its employees that is designed to be qualified under Section 401(k) of the Internal Revenue Code. Eligible employees are permitted to contribute to the 401(k) plan through payroll deductions within statutory and plan limits. Participants may select from a variety of investment options. Investment options do not include Akamai common stock. For 2007 and 2006, the Company made matching contributions of 1/2 of the first 2% of employee contributions in each year and then matched 1/4 of the next 4% of employee contributions. The maximum amount of the Company match was $1,000 per employee per year for the years 2007 and 2006. Effective January 1, 2008, the Company amended its matching contribution to 1/2 of the first 8% of employee contributions in each year, with the maximum amount of the Company match at $2,000 per employee per year. The Company's contributions vest 25% per annum. The Company contributed approximately $1.9 million, $0.9 million and $0.6 million of cash to the savings plan for the years ended December 31, 2008, 2007 and 2006, respectively.

18. Income Taxes:

The components of income before provision for income taxes were as follows (in thousands):

	For the Years Ended December 31,		
	2008	2007	2006
Domestic	$ 225,079	$ 156,219	$ 90,009
Foreign	9,456	11,986	8,460
Income before provision for income taxes	$ 234,535	$ 168,205	$ 98,469

The provision for income taxes consisted of the following (in thousands):

	For the Years Ended December 31,		
	2008	2007	2006
Current tax provision			
Federal	$ 2,099	$ —	$ —
State	2,974	292	203
Foreign	2,626	1,685	2,383
Deferred tax provision (benefit)			
Federal	79,045	51,567	30,624
State	1,776	6,764	8,740
Foreign	825	1,640	(882)
Change in valuation allowance	52	5,290	—
	$ 89,397	$ 67,238	$ 41,068

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company's effective rate differed from the statutory rate as follows:

	For the Years Ended December 31,		
	2008	2007	2006
United States federal income tax rate	35.0%	35.0%	35.0%
State taxes	3.8	4.4	4.5
Nondeductible stock-based compensation	1.6	2.7	5.8
United States federal and state research and development credits	(1.3)	(4.6)	(4.2)
Change in state tax rates	0.6	—	1.7
Foreign earnings	—	0.1	0.2
Other	(1.6)	(0.7)	(1.5)
Change in the deferred tax asset valuation allowance	—	3.1	—
	38.1%	40.0%	41.5%

The components of the net deferred tax asset and the related valuation allowance were as follows (in thousands):

	December 31,	
	2008	2007
Net operating loss and credit carryforwards	$150,041	$225,324
Depreciation and amortization	68,502	77,893
Compensation costs	40,227	28,089
Impairment loss on marketable securities	14,767	—
Other	15,539	17,982
Deferred tax assets	289,076	349,288
Acquired intangible assets not deductible	(36,271)	(34,418)
Internal-use software capitalized	(17,449)	(12,102)
Deferred tax liabilities	(53,720)	(46,520)
Valuation allowance	(7,096)	(11,158)
Net deferred tax assets	$228,260	$291,610

As of December 31, 2008, the Company had United States federal NOL carryforwards of approximately $319.1 million and state NOL carryforwards of approximately $186.4 million, which expire at various dates through 2026. The Company also had foreign NOL carryforwards of approximately $3.4 million as of December 31, 2008. The majority of the foreign NOL carryforwards have no expiration dates. As of December 31, 2007, the Company had United States federal NOL carryforwards of $539.6 million, state NOL carryforwards of $186.5 million, and foreign NOL carryforwards of $4.5 million. As of December 31, 2008 and 2007, the Company had United States federal and state research and development tax credit carryforwards of $25.6 million and $24.8 million, respectively, which will expire at various dates through 2028. As of December 31, 2008 and 2007, the Company had foreign tax credit carryforwards of $7.0 million and $5.2 million, respectively, which expire at various dates through 2018.

As of December 31, 2008, the Company had a total valuation allowance of $7.1 million. During the fourth quarter of 2008, the Company recorded a decrease in valuation allowance of $2.9 million against capital loss

carryforwards that expired unused. The other $1.1 million reduction in the valuation allowance in 2008 was due to a reclassification of that amount to unrecognized tax benefits of prior periods, as reflected in the table below.

The Company plans to reinvest indefinitely its undistributed foreign earnings. As of December 31, 2008, the Company had approximately $10.8 million of undistributed foreign earnings.

In June 2006, the FASB issued FIN 48, which clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109, "Accounting for Income Taxes." FIN 48 prescribes a two-step process to determine the amount of tax benefit to be recognized. First, the tax position must be evaluated to determine the likelihood that it will be sustained upon external examination. If the tax position is deemed more-likely-than-not to be sustained, the tax position is then assessed to determine the amount of benefit to recognize in the financial statements. The amount of the benefit that may be recognized is the largest amount that has a greater than 50 percent likelihood of being realized upon ultimate settlement. The Company adopted the provisions of FIN 48 on January 1, 2007. As of the date of adoption, the Company had unrecognized tax benefits of $2.1 million, including accrued interest and penalties, and did not record any cumulative effect adjustment to retained earnings as a result of adopting FIN 48.

The following is a roll-forward of the Company's unrecognized tax benefits (in millions):

	For the Years Ended December 31,	
	2008	2007
	(in millions)	
Unrecognized tax benefits — at beginning of year	$ 3.2	$ 1.5
Gross increases — tax positions of prior periods	1.1	1.3
Gross decreases — tax positions of prior periods	—	(0.6)
Gross increases — current-period tax positions	1.0	1.6
Lapse of statute of limitations	(0.5)	(0.6)
Unrecognized tax benefits — at end of year	$ 4.8	$ 3.2

As of December 31, 2008 and December 31, 2007, the Company had approximately $6.1 million and $4.0 million, respectively, of total unrecognized tax benefits, including $1.3 million and $0.8 million, respectively, of accrued interest and penalties. Interest and penalties related to unrecognized tax benefits are recorded in income tax expense. If recognized, all amounts of unrecognized tax benefits would have resulted in a reduction of income tax expense, impacting the effective income tax rate.

The Company's foreign subsidiaries file income tax returns in various foreign jurisdictions. Certain of these foreign subsidiaries have unrecognized tax benefits related to transfer pricing policies that existed in prior years. The statute of limitations expired in these foreign jurisdictions in 2008, which resulted in the recognition of approximately $0.5 million of benefit.

Generally, all tax years are open for examination by the major taxing jurisdictions to which the Company is subject including federal, state and foreign jurisdictions due to net operating losses and the limited number of prior year audits by taxing jurisdictions. The Company is currently under tax examination by the U.S. Internal Revenue Service for the tax year ended December 31, 2006.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

19. Segment and Geographic Information:

Akamai's chief decision-maker, as defined under SFAS No. 131, "Disclosures About Segments of an Enterprise and Related Information" ("SFAS No. 131"), is the Chief Executive Officer and the executive management team. As of December 31, 2008, Akamai operated in one industry segment: providing global services for accelerating and improving the delivery of content and applications over the Internet. The Company is not organized by market, and is managed and operated as one business. A single management team that reports to the Chief Executive Officer comprehensively manages the entire business. The Company does not operate any material separate lines of business or separate business entities with respect to its services. Accordingly, the Company does not accumulate discrete financial information with respect to separate product lines and does not have separately reportable segments as defined by SFAS No. 131.

The Company deploys its servers into networks worldwide. As of December 31, 2008, the Company had approximately $138.6 million and $35.9 million of property and equipment, net of accumulated depreciation, located in the United States and foreign locations, respectively. As of December 31, 2007, the Company had approximately $107.9 million and $26.6 million of property and equipment, net of accumulated depreciation, located in the United States and foreign locations, respectively.

Akamai sells its services and licenses through a sales force located both domestically and abroad. For the years ended December 31, 2008, 2007 and 2006, approximately 25%, 23% and 22%, respectively, of revenues was derived from the Company's operations outside the United States, of which 18%, 17% and 18% of overall revenues, respectively, were related to Europe. Other than the United States, no single country accounted for 10% or more of the Company's total revenues for any reported period.

AKAMAI TECHNOLOGIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

20. Quarterly Financial Results (unaudited):

The following table sets forth certain unaudited quarterly results of operations of the Company for the years ended December 31, 2008 and 2007. In the opinion of management, this information has been prepared on the same basis as the audited consolidated financial statements and all necessary adjustments, consisting only of normal recurring adjustments, have been included in the amounts below for a fair statement of the quarterly information when read in conjunction with the audited consolidated financial statements and related notes.

	For the Three Months Ended			
	March 31, 2008	June 30, 2008	Sept. 30, 2008	Dec. 31, 2008
	(In thousands, except per share data)			
Revenues	$ 187,019	$ 194,004	$ 197,347	$ 212,554
Cost of revenues	$ 51,575	$ 53,688	$ 56,659	$ 60,688
Net income	$ 36,911	$ 34,334	$ 33,360	$ 40,533
Basic net income per share	$ 0.22	$ 0.21	$ 0.20	$ 0.24
Diluted net income per share	$ 0.20	$ 0.19	$ 0.18	$ 0.22
Basic weighted average common shares	165,959	167,417	168,474	168,843
Diluted weighted average common shares	185,744	187,641	187,769	186,694

	For the Three Months Ended			
	March 31, 2007	June 30, 2007	Sept. 30, 2007	Dec. 31, 2007
	(In thousands, except per share data)			
Revenues	$ 139,274	$ 152,654	$ 161,240	$ 183,238
Cost of revenues	$ 34,480	$ 39,759	$ 43,811	$ 49,394
Net income	$ 19,179	$ 21,646	$ 24,264	$ 35,878
Basic net income per share	$ 0.12	$ 0.13	$ 0.15	$ 0.22
Diluted net income per share	$ 0.11	$ 0.12	$ 0.13	$ 0.20
Basic weighted average common shares	161,569	164,798	165,474	164,768
Diluted weighted average common shares	183,157	185,601	185,106	185,294

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

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2008. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2008, our disclosure controls and procedures were (1) effective in that they were designed to ensure that material information relating to us, including our consolidated subsidiaries, is made known to our Chief Executive Officer and Chief Financial Officer by others within those entities, particularly during the period in which this report was being prepared, as appropriate to allow timely discussions regarding required disclosure therein and (2) effective, in that they provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms.

Management's Annual Report on Internal Control over Financial Reporting

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rules 13a-15(f) or 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, our principal executive and principal financial officers and effected by the company's board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the company;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and
- Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

To assist management, we have established an internal audit function to verify and monitor our internal controls and procedures. Because of its inherent limitations, however, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2008. In making this assessment, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control — Integrated Framework*.

Based on our assessment, management, with the participation of our Chief Executive Officer and Chief Financial Officer, concluded that, as of December 31, 2008, our internal control over financial reporting was effective based on those criteria at the reasonable assurance level.

The effectiveness of the Company's internal control over financial reporting as of December 31, 2008 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report, which is included in Item 8 of this annual report on Form 10-K.

Changes in Internal Control over Financial Reporting

No changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the fiscal quarter ended December 31, 2008 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None.

PART III

Item 10. ***Directors, Executive Officers and Corporate Governance***

The complete response to this Item regarding the backgrounds of our executive officers and directors and other information required by Items 401, 405 and 407 of Regulation S-K will be contained in our definitive proxy statement for our 2009 Annual Meeting of Stockholders under the captions "Executive Compensation Matters," "Section 16(a) Beneficial Ownership Reporting Compliance" and "Corporate Governance Matters" and is incorporated herein.

Our executive officers and directors and their positions as of March 2, 2009, are as follows:

Name	Position
Paul Sagan	President, Chief Executive Officer and Director
George H. Conrades	Executive Chairman of the Board of Directors
F. Thomson Leighton	Chief Scientist and Director
Debra Canner	Senior Vice President — Human Resources
Melanie Haratunian	Senior Vice President and General Counsel
Robert W. Hughes	Executive Vice President, Global Sales, Services and Marketing
J. Donald Sherman	Chief Financial Officer
Martin M. Coyne II	Director
C. Kim Goodwin	Director
Ronald L. Graham	Director
Jill A. Greenthal	Director
David W. Kenny	Director
Peter J. Kight	Director
Geoffrey Moore	Director
Frederic V. Salerno	Director
Naomi O. Seligman	Director

We have adopted a written code of business ethics, as amended, that applies to our principal executive officer, principal financial or accounting officer or person serving similar functions and all of our other employees and members of our Board of Directors. The text of our amended code of ethics is available on our website at www.akamai.com. We did not waive any provisions of the code of business ethics during the year ended December 31, 2008. If we amend, or grant a waiver under, our code of business ethics that applies to our principal executive officer, principal financial or accounting officer, or persons performing similar functions, we intend to post information about such amendment or waiver on our website at *www.akamai.com*.

Item 11. ***Executive Compensation***

The information required by this Item is incorporated by reference herein to our definitive proxy statement for our 2009 Annual Meeting of Stockholders under the sections captioned “Executive Compensation Matters,” “Compensation Committee Interlocks and Insider Participation” and “Director Compensation.”

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

The information required by this Item is incorporated by reference herein to our definitive proxy statement for our 2009 Annual Meeting of Stockholders under the sections captioned “Security Ownership of Certain Beneficial Owners and Management” and “Securities Authorized for Issuance Under Equity Compensation Plans.”

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

The information required by this Item is incorporated by reference herein to our definitive proxy statement for our 2009 Annual Meeting of Stockholders under the sections captioned “Certain Relationships and Related Party Transactions,” “Corporate Governance Matters” and “Compensation Committee Interlocks and Insider Participation.”

Item 14. ***Principal Accountant Fees and Services***

The information required by this Item is incorporated by reference herein to our definitive proxy statement for our 2009 Annual Meeting of Stockholders under the section captioned “Ratification of Selection of Independent Auditors.”

PART IV

Item 15. ***Exhibits and Financial Statement Schedules***

(a) The following documents are included in this annual report on Form 10-K.

1. Financial Statements (see Item 8 — Financial Statements and Supplementary Data included in this annual report on Form 10-K).

2. The schedule listed below and the Report of Independent Registered Public Accounting Firm on Financial Statement Schedule are filed as part of this annual report on Form 10-K:

All other schedules are omitted as the information required is inapplicable or the information is presented in the consolidated financial statements and the related notes.

3. The exhibits required by Item 601 of Regulation S-K and Item 15(b) of this Annual Report on Form 10-K are listed in the Exhibit Index immediately preceding the exhibits and are incorporated herein.

(b) The exhibits required by Item 601 of Regulation S-K are listed in the Exhibit Index immediately preceding the exhibits and are incorporated herein.

(c) Not applicable.

SIGNATURES

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

March 2, 2009

AKAMAI TECHNOLOGIES, INC.

By: /s/ J. DONALD SHERMAN
J. Donald Sherman
Chief Financial Officer

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

Signature	Title	Date
/s/ PAUL SAGAN **Paul Sagan**	President and Chief Executive Officer and Director (Principal executive officer)	March 2, 2009
/s/ J. DONALD SHERMAN **J. Donald Sherman**	Chief Financial Officer (Principal financial and accounting officer)	March 2, 2009
/s/ GEORGE H. CONRADES **George H. Conrades**	Director	March 2, 2009
/s/ MARTIN M. COYNE II **Martin M. Coyne II**	Director	March 2, 2009
/s/ C. KIM GOODWIN **C. Kim Goodwin**	Director	March 2, 2009
/s/ RONALD L. GRAHAM **Ronald L. Graham**	Director	March 2, 2009
/s/ JILL A. GREENTHAL **Jill A. Greenthal**	Director	March 2, 2009
/s/ DAVID W. KENNY **David W. Kenny**	Director	March 2, 2009
/s/ PETER J. KIGHT **Peter J. Kight**	Director	March 2, 2009
/s/ F. THOMSON LEIGHTON **F. Thomson Leighton**	Director	March 2, 2009
/s/ GEOFFREY MOORE **Geoffrey Moore**	Director	March 2, 2009
/s/ FREDERIC V. SALERNO **Frederic V. Salerno**	Director	March 2, 2009
/s/ NAOMI O. SELIGMAN **Naomi O. Seligman**	Director	March 2, 2009

AKAMAI TECHNOLOGIES, INC.

SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS

Description	Balance at beginning of period	Charged to operations	Other	Deductions	Balance at end of period
Year ended December 31, 2006:					
Allowances deducted from asset accounts:					
Reserves for accounts receivable	$ 4,815	3,019[2]	115	(2,481)[3]	$ 5,468
Deferred tax asset valuation allowance	$ 6,861	—	4,439[1]	(4,962)	$ 6,338
Year ended December 31, 2007:					
Allowances deducted from asset accounts:					
Reserves for accounts receivable	$ 5,468	6,434[2]	337	(1,848)[3]	$ 10,391
Deferred tax asset valuation allowance	$ 6,338	5,290	75[1]	(545)	$ 11,158
Year ended December 31, 2008:					
Allowances deducted from asset accounts:					
Reserves for accounts receivable	$ 10,391	7,303[2]	(308)	(6,116)[3]	$ 11,270
Deferred tax asset valuation allowance	$ 11,158	52	(1,109)[1]	(3,005)	$ 7,096

1 Amounts related to items with no income statement effect such as the impact of stock options, acquired intangible assets and acquired net operating losses.

2 Amounts represent charges to bad debt expense and reductions to revenue for increases to the allowance for doubtful accounts and to the reserve for cash-basis customers.

3 Amounts represent cash collections from customers for accounts previously reserved and write-offs of accounts receivable recorded against the allowance for doubtful accounts or the reserve for cash-basis customers.

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EXHIBIT INDEX

3.1(A)	Amended and Restated Certificate of Incorporation of the Registrant
3.2(B)	Amended and Restated By-Laws of the Registrant, as amended
3.3(C)	Certificate of Designations of Series A Junior Participating Preferred Stock of the Registrant
4.1(D)	Specimen common stock certificate
4.2(E)	Indenture, dated as of December 12, 2003 by and between the Registrant and U.S. Bank National Association
4.3(F)	Rights Agreement, dated September 10, 2002, by and between the Registrant and Equiserve Trust Company, N.A.
4.4(G)	Amendment No. 1, dated as of January 29, 2004, to the Rights Agreement, dated as of September 10, 2002, between the Registrant and EquiServe Trust Company, N.A., as Rights Agent
10.1(H)@	Second Amended and Restated 1998 Stock Incentive Plan of the Registrant, as amended
10.2(I)@	Amended and Restated 1999 Employee Stock Purchase Plan of the Registrant, as amended
10.3(J)@	2001 Stock Incentive Plan of the Registrant
10.4(K)	2006 Stock Incentive Plan of the Registrant
10.5(L)	Speedera Networks, Inc. 1999 Stock Incentive Plan
10.6(M)	Nine Systems Corporation (formerly known as Streaming Media Corporation) 2002 Stock Option Plan
10.7(N)	Netli, Inc. Amended and Restated Stock Option Plan
10.8(N)	Netli, Inc. 2002 Equity Incentive Plan
10.9(D)@	Form of Incentive Stock Option Agreement granted under the 1998 Stock Incentive Plan of the Registrant
10.10(D)@	Form of Nonstatutory Stock Option Agreement granted under the 1998 Stock Incentive Plan of the Registrant
10.11(O)@	Form of Incentive Stock Option Agreement granted under the 2006 Stock Incentive Plan of the Registrant
10.12(O)@	Form of Nonstatutory Stock Option Agreement granted under the 2006 Stock Incentive Plan of the Registrant
10.13	Form of Deferred Stock Unit Agreement for Directors of the Registrant
10.14@	Form of Restricted Stock Unit Agreement with Annual Vesting
10.15@	Form of Restricted Stock Unit Agreement with Performance-Based Vesting
10.16@†	Form of Restricted Stock Unit Agreement with Annual Performance-Based Vesting
10.17(P)	Amended and Restated 1999 Stock Compensation Plan of Acerno Intermediate Holdings, Inc.
10.18(R)	Summary of the Registrant’s Compensatory Arrangements with Non-Employee Directors
10.19	Summary of the Registrant’s Compensatory Arrangements with Executive Officers
10.20(W)@	Form of Incentive Stock Option Agreement with Financial Performance-Related Vesting Provisions

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10.21	Office Lease Agreement dated March 31, 2008 between the Registrant and Locon San Mateo, LLC
10.22(Q)	Four Cambridge Center Lease Agreement dated October 1, 2007
10.23(Q)	Eight Cambridge Center Lease Agreement dated October 1, 2007
10.24(D)†	Patent and Copyright License Agreement, dated as of October 26, 1998, between the Registrant and Massachusetts Institute of Technology
10.25(Q)@	Incentive Stock Option Agreement, dated February 8, 2008, by and between the Registrant and Robert W. Hughes
10.26(R)@	Incentive Stock Option Agreement, dated as of September 19, 2002, by and between the Registrant and Paul Sagan
10.27(S)@	Employment Offer Letter Agreement dated January 4, 2005 by and between the Registrant and Paul Sagan
10.28(T)@	Amendment to Employment Agreement dated August 9, 2006 between the Registrant and Paul Sagan
10.29@	Amendment to Employment Agreement dated December 31, 2008 between the Registrant and Paul Sagan
10.30(T)@	Incentive Stock Option Agreement dated February 14, 2005 between the Registrant and Paul Sagan
10.31(U)@	Employment Offer Letter Agreement dated October 14, 2005 between the Registrant and J. Donald Sherman
10.32(V)@	Form of J. Donald Sherman Restricted Stock Unit Agreement
10.33@†	Form of 2009 Executive Bonus Plan
10.34@	Akamai Technologies, Inc. Executive Severance Pay Plan
10.35@	Form of Executive Change of Control and Severance Agreement
10.36(T)@	Akamai Technologies, Inc. Policy on Departing Director Compensation
10.37@†	Form of Robert W. Hughes 2009 Executive Bonus Plan
21.1(R)	Subsidiaries of the Registrant
23.1	Consent of Independent Registered Public Accounting Firm
31.1	Certification of Chief Executive Officer pursuant to Rule 13a- 14(a)/Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended
31.2	Certification of Chief Financial Officer pursuant to Rule 13a- 14(a)/Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
99.1	Agreement and Plan of Merger dated October 20, 2008, by and among the Registrant, Arrow Acquisition Corp., IB Holdco Inc., I-Behavior, Inc., IB Spinco LLC and the representative of the selling equity holders.

(A) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 14, 2000.
(B) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on May 12, 2008.
(C) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2002.
(D) Incorporated by reference to the Registrant's Registration Statement on Form S-1 (File No. 333-85679), as amended, filed with the Commission on August 20, 1999.
(E) Incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on December 16, 2003.
(F) Incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on September 11, 2002.
(G) Incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on February 2, 2004.
(H) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 9, 2004.
(I) Incorporated by reference to the Registrant's Annual Report on Form 10-K filed with the Commission on March 16, 2006.
(J) Incorporated by reference to the Registrant's Annual Report on Form 10-K filed with the Commission on February 27, 2002.
(K) Incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on May 26, 2006.
(L) Incorporated by reference to the Registrant's Registration Statement on Form S-8 filed with the Commission on June 24, 2005.
(M) Incorporated by reference to the Registrant's Registration Statement on Form S-8 (File No. 333-139408) filed with the Commission on December 15, 2006.
(N) Incorporated by reference to the Registrant's Registration Statement on Form S-8 (File No. 333-141854) filed with the Commission on April 3, 2007.
(O) Incorporated by reference to the Registrant's Annual Report on Form 10-K filed with the Commission on March 1, 2007.
(P) Incorporated by reference to the Registrant's Registration Statement on Form S-8 filed with the Commission on November 18, 2008.
(Q) Incorporated by reference to the Registrant's Annual Report on Form 10-K filed with the Commission on March 3, 2008.
(R) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2002.
(S) Incorporated by reference to the Registrant's Annual Report on Form 10-K filed with the Commission on March 16, 2005.
(T) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 9, 2006.
(U) Incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on October 20, 2005.
(V) Incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on March 8, 2006.
(W) Incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Commission on July 27, 2005.
@ Management contract or compensatory plan or arrangement filed as an exhibit to this Annual Report on Form 10-K pursuant to Item 15(b) of this Annual Report.
† Confidential Treatment has been requested as to certain portions of this Exhibit. Such portions have been omitted and filed separately with the Securities and Exchange Commission.

Exhibit 10.13

AKAMAI TECHNOLOGIES, INC.

Deferred Stock Unit Agreement Under
2006 Stock Incentive Plan

This DEFERRED STOCK UNIT AGREEMENT (the "Agreement") is entered into as of , (the "Grant Date"), between Akamai Technologies, Inc., a Delaware corporation (the "Company"), and (the "Grantee").

For valuable consideration, receipt of which is acknowledged, the parties hereto agree as follows:

1. Grant of Award. The Company hereby grants to Grantee, and Grantee hereby accepts from the Company, subject to the terms and conditions set forth in this Agreement and in the Company's 2006 Stock Incentive Plan (the "Plan"), deferred stock units of the Company (the "DSUs"). Each DSU represents the right to receive one share of the Company's Common Stock, par value $.01 per share ("Common Stock"), subject to the terms and conditions set forth in this Agreement and the Plan. The shares of Common Stock that are issuable upon vesting of the DSUs are referred to in this Agreement as "Shares." Subject to the provisions of Section 2(b) hereof, this award of DSUs is irrevocable and is intended to conform in all respects with the Plan.

2. Vesting.

(a) Regular Vesting. Except as otherwise provided in the Plan or this Section 2, the DSUs will vest as follows: 50% shall vest on first anniversary of the Grant Date, and the remaining 50% shall vest in equal installments of 12.5% on a quarterly basis thereafter.

(b) Forfeiture. Vesting in any of the DSUs pursuant to subsection (a) above is contingent upon the continuation of Grantee's service as a Director of the Company. In the event that Grantee ceases to be a Director of the Company for any reason or no reason, including but not limited to Grantee's voluntary resignation, death, or failure to be nominated for election, or to be elected, as a Director, all vesting shall cease as of the date of Grantee's cessation of service as a Director. Unvested DSUs will be immediately forfeited as of such date and neither Grantee nor its estate will have any further rights to such unvested DSUs or the Shares represented by those forfeited DSUs.

(c) Change of Control. Upon a Change in Control Event (as defined in the Plan), the number of DSUs which are considered vested shall be calculated pursuant to Section 2(a) as though the Grant Date were the date that is one year prior to the actual Grant Date.

3. Distribution of Shares.

(a) Distribution Upon Vesting. Unless Grantee has made a proper deferral election pursuant to Section 3(b) below, the Company will distribute to Grantee (or to Grantee's estate in the event that his or her death occurs after a vesting date but before distribution of the corresponding Shares), within thirty (30) days after each vesting date, the Shares of Common Stock represented by DSUs that vested on such vesting date. If Grantee has elected to defer receipt of only a portion of the Shares distributable on a vesting date pursuant to Section 3(b) below, within thirty (30) days after such vesting date, the Company will distribute to Grantee the Shares of Common Stock represented by DSUs that vested on such vesting date and as to which distribution was not deferred. No fractional Shares will be issued.

(b) Deferral of Distributions. Notwithstanding the distribution dates specified in Section 3(a) above, if the Grantee has previously elected, by providing written notice to the Vice President of Human Resources of the Company on or before December 31 of the year preceding the date of this Agreement to defer receipt of all or a portion of the Shares represented by the DSUs scheduled to vest on such vesting date until a date (the "Deferred Distribution Date") that is at least one year following the scheduled vesting date but not more than ten (10) years following the Grant Date. If Grantee elects to defer receipt of all or a portion of the Shares, Grantee must also specify how Grantee wishes the Shares to be distributed in the event of a Change in Control of the Company (i.e., whether Shares are to be distributed upon the effectiveness of the Change in Control or whether the Shares or rights attendant thereto are to be received in accordance with the deferral election). Each election made pursuant to their Section 3(b) shall be irrevocable and not subject to further deferral.

(c) Compliance with Law. The Company shall not be obligated to issue to Grantee the Shares upon the vesting of any DSU or on any Deferred Distribution Date (or otherwise) unless the issuance and delivery of such Shares shall comply with all relevant provisions of law and other legal requirements including, without limitation, any applicable federal or state securities laws and the requirements of any stock exchange upon which shares of Common Stock may then be listed.

(d) General Rule of Deferrals and Accelerations. Neither the Company nor the Participant shall have the right to accelerate or defer the deliver of any shares under this Agreement except to the extent specifically permitted under Section 409A of the Internal Revenue Code of 1986, as amended.

4. Restrictions on Transfer. This Agreement may not be transferred, assigned, pledged or otherwise encumbered by Grantee in any manner whatsoever, except that it may be transferred by will or the laws of descent and distribution. References to Grantee, to the extent relevant in the context, shall include references to authorized transferees. Without the prior written consent of the Company, Grantee shall not sell, transfer, assign, pledge or otherwise encumber or dispose of, by operation of law or otherwise, any DSUs (each, a "transfer"). Any such transfer by Grantee in violation of this Section 4 shall be void and of no force or effect, and shall result in the immediate forfeiture of all DSUs.

5. Dividend and Other Shareholder Rights.

(a) Dividends. If at any time during the period between the date that any deferred DSU vests and the Deferred Distribution Date for Shares represented by that deferred DSU (a "Deferral Period"), the Company pays a dividend on its Common Stock, then on each such dividend payment date (each, a "Dividend Payment Date"), Grantee will automatically receive an additional number of DSUs DSUs that have a value equal to the dollar value of the dividend payment based on the Fair Market Value (as defined in the Plan) of the Shares distributable in respect of such deferred DSUs on the Dividend Payment Date. Any such additional DSUs issued under this Section 5(a) shall be considered DSUs under this Agreement and shall also be credited with additional DSUs as dividends, if any, are declared. Shares represented by DSUs issued as dividends will be distributed on the same date as Shares distributable in respect of the underlying DSUs.

(b) Other Shareholder Rights. Except as set forth in Section 5(a) above and in the Plan, neither Grantee nor any person claiming under or through Grantee shall be, or have any rights or privileges of, a stockholder of the Company in respect of the Shares issuable pursuant to the DSUs granted hereunder until the Shares have been delivered to Grantee.

6. Withholding of Taxes. The Company's obligation to deliver Shares to Grantee upon the vesting of DSUs shall be subject to the satisfaction of all applicable federal, state and local income and employment tax withholding requirements ("Withholding Taxes"). The Company may take such steps as it deems necessary or desirable for satisfaction of Withholding Taxes obligations.

7. Notices. All notices required or permitted hereunder shall be in writing and deemed effectively given upon personal delivery, deposit with a nationally recognized courier service, or five days after deposit in the United States Post Office, postage prepaid, addressed to the other party hereto at the address shown beneath his, her or its respective signature to this Agreement, or at such other address or addresses as either party shall designate to the other in accordance with this Section 7.

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

9. Provisions of the Plan. This Agreement is subject to the provisions of the Plan, a copy of which is furnished to Grantee with this Agreement.

10. No Right to Status as a Director. This Agreement shall not be construed as giving Grantee the right to continued employment, service as a Director, or any other relationship with the Company.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Company and Grantee and their respective heirs, executors, administrators, legal representatives, successors and assigns, subject to the restrictions on transfer set forth in Section 4 of this Agreement.

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

13. Amendment; Waiver; Miscellaneous. This Agreement may be amended or modified only by a written instrument executed by both the Company and Grantee. Any provision for the benefit of the Company contained in this Agreement may be waived, either generally or in any particular instance, by the Board. A waiver on one occasion shall not be deemed to be a waiver of the same or any other breach on a future occasion. If there is any inconsistency between the provisions of this Agreement and of the Plan, the provisions of the Plan shall govern. Capitalized terms used but not defined herein shall have the meanings assigned to them in the Plan.

14. Entire Agreement. This Agreement and the Plan embody the entire agreement of the parties hereto with respect to the DSUs, the Shares and all other matters contained herein. This Agreement and the Plan supersede and replace any and all prior oral or written agreements with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Company and Grantee have caused this Agreement to be duly executed as of the date first above written.

AKAMAI TECHNOLOGIES, INC.

By: _____

Paul Sagan
Chief Executive Officer

Address: 8 Cambridge Center
Cambridge, MA 02142

_____

Grantee

Exhibit 10.14

AKAMAI TECHNOLOGIES, INC.

Restricted Stock Unit Agreement
Granted Under the 2006 Stock Incentive Plan

1. Grant of Award.

This Agreement evidences the grant by Akamai Technologies, Inc., a Delaware corporation (the "Company") on , 20 (the "Grant Date") to you (the "Participant") of restricted stock units of the Company (individually, an "RSU" and collectively, the "RSUs"), subject to the terms and conditions set forth in this Restricted Stock Unit Agreement (the "Agreement") and the 2006 Stock Incentive Plan (the "Plan"). Each RSU represents the right to receive one share of the common stock, par value $.01 per share, of the Company ("Common Stock") as provided in this Agreement. The shares of Common Stock that are issuable upon vesting of the RSUs are referred to in this Agreement as "Shares." Capitalized terms used but not defined in this Agreement shall have the meanings specified in the Plan.

2. Vesting; Forfeiture.

Subject to the terms and conditions of this Agreement and provided that the Participant continues to provide services until the Vesting Date (as defined below):

(a) This award shall vest as to 33% of the original number of RSUs on the first anniversary of the Grant Date and as to an additional 8.375% of the original number of RSUs at the end of each successive full three-month period thereafter; provided, however, that if any of the foregoing dates is not a business day, then vesting shall occur on the next succeeding business day. The date on which RSUs vest may be referred to herein as the "Vesting Date."

(b) Except as otherwise provided in this Section 2, RSUs shall not continue to vest unless the Participant is, and has been at all times since the Grant Date, an employee, officer or director of, or consultant or advisor to, the Company.

(c) In the event that the Participant's employment with the Company ceases or is terminated for any reason, including by reason of death or disability, other than "Cause" (as defined below), then the number of RSUs which shall be vested shall be the number that are vested as of the date of actual termination. For purposes of this Section 2, "Cause" shall mean unsatisfactory job performance (as determined by the Company), willful misconduct, fraud, gross negligence, disobedience or dishonesty. In the event that the Participant's employment with the Company is terminated for Cause, all unvested RSUs shall be forfeited effective as of the date of termination.

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

3. Distribution of Shares.

(a) The Company will distribute to the Participant (or to the Participant's estate in the event that his or her death occurs after a Vesting Date but before distribution of the corresponding Shares), the Shares of Common Stock represented by RSUs that vested on such vesting date as soon as administratively practicable after each vesting date (each such date of distribution is hereinafter referred to as a "Settlement Date") but in any event within the period ending on the later to occur of the date that is two and one-half months from the end of (i) Participant's tax year that includes the applicable Vesting Date or (ii) the Company's tax year that includes the applicable Vesting Date.

(b) The Company shall not be obligated to issue to the Participant the Shares upon the vesting of any RSU (or otherwise) unless the issuance and delivery of such Shares shall comply with all relevant provisions of law and other legal requirements including, without limitation, any applicable federal or state securities laws and the requirements of any stock exchange upon which shares of Common Stock may then be listed.

(c) Neither the Company nor the Participant shall have the right to accelerate or defer the deliver of any shares under this Agreement except to the extent specifically permitted under Section 409A of the Internal Revenue Code of 1986, as amended.

4. Restrictions on Transfer.

The Participant shall not sell, assign, transfer, pledge, hypothecate or otherwise dispose of, by operation of law or otherwise (collectively "transfer") any RSUs, or any interest therein, except by will or the laws of descent and distribution.

5. Dividend and Other Shareholder Rights.

Except as set forth in the Plan, neither the Participant nor any person claiming under or through the Participant shall be, or have any rights or privileges of, a stockholder of the Company in respect of the Shares issuable pursuant to the RSUs granted hereunder until the Shares have been delivered to the Participant.

6. Provisions of the Plan; Acquisition Event or Change in Control Event .

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

(b) Upon the occurrence of an Acquisition Event (as defined in the Plan) that is not a Change in Control Event (as defined in the Plan), each RSU (whether vested or unvested) shall inure to the benefit of the Company's successor and shall apply to the cash, securities or other property which the Common Stock was converted into or exchanged for pursuant to such Acquisition Event in the same manner and to the same extent as they applied to the Common Stock subject to such RSU.

(c) Upon the occurrence of a Change in Control Event (regardless of whether such event also constitutes an Acquisition Event), each RSU shall become exercisable, realizable or vested as to number of RSUs as would be vested pursuant to Section 2(a) as though the Grant Date were the date that is one year prior to the Grant Date.

7. Withholding Taxes.

(a) Regardless of any action the Company or the Participant's employer ("Employer") takes with respect to any or all income tax, social insurance, payroll tax, payment on account or other tax-related withholding ("Tax-Related Items"), the Participant acknowledges that the ultimate liability for all Tax-Related Items legally due by him or her is and remains the Participant's responsibility and that the Company and/or the Employer (1) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Restricted Stock Unit award, including the grant and vesting of the Restricted Stock Units, the receipt of cash or any dividends or dividend equivalents; and (2) do not commit to structure the terms of the award or any aspect of the Restricted Stock Units to reduce or eliminate the Participant's liability for Tax-Related Items.

(b) In the event that the Company, subsidiary, affiliate or division is required to withhold any Tax-Related Items as a result of the award or vesting of the Restricted Stock Units, or the receipt of cash or any dividends or dividend equivalents, the Participant shall pay or make adequate arrangements satisfactory to the Company, subsidiary, affiliate or division to satisfy all withholding and payment on account obligations of the Company, subsidiary, affiliate or division. The obligations of the Company under this Agreement, including the delivery of shares upon vesting, shall be conditioned on compliance by the Participant with this Section 7. In this regard, the Participant authorizes the Company and/or the Employer to withhold all applicable Tax-Related Items legally payable by the Participant from his or her wages or other cash compensation paid to the Participant by the Company and/or the Employer. Alternatively, or in addition, if permissible under local law, the Company may withhold in shares of Common Stock an amount of shares sufficient to cover the Participant's tax liability.

(c) The Participant will pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold as a result of the Participant's participation in the Plan or the Participant's award that cannot be satisfied by the means previously described.

(d) As a condition to receiving any Shares, on the date of this Agreement, Participant must execute the Irrevocable Standing Order to Sell Shares attached hereto, which authorizes the Company and Charles Schwab & Co., Inc. (or such substitute brokerage firm as is contracted to manage the Company's employee equity award program, the "Broker") to take the actions described in Section 7(b) and this Section 7(d) (the "Standing Order").

(e) Participant understands and agrees that the number of Shares that the Broker will sell will be based on the closing price of the Common Stock on the last trading day before the applicable Vesting Date. The Participant agrees to execute and deliver such documents, instruments and certificates as may reasonably be required in connection with the sale of the Shares pursuant to this Section 7.

(f) Participant agrees that the proceeds received from the sale of Shares pursuant to Section 7(d) will be used to satisfy the Tax-Related Items and, accordingly, Participant hereby authorizes the Broker to pay such proceeds to the Company for such purpose. Participant understands that to the extent that the proceeds obtained by such sale exceed the amount necessary to satisfy the Tax-Related Items, such excess proceeds shall be deposited into the Participants account with Broker. Participant further understands that any remaining Shares shall be deposited into such account.

(g) The Participant represents to the Company that, as of the date hereof, he is not aware of any material nonpublic information about the Company or the Common Stock. The Participant and the Company have structured this Agreement to constitute a "binding contract" relating to the sale of Common Stock pursuant to this Section 7, consistent with the affirmative defense to liability under Section 10(b) of the Securities Exchange Act of 1934 under Rule 10b5-1(c) promulgated under such Act.

8. Miscellaneous.

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

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

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

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Company and the Participant and their respective heirs, executors, administrators, legal representatives, successors and assigns, subject to the restrictions on transfer set forth in Section 4 of this Agreement.

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

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

(g) Entire Agreement; Conflicts and Interpretation. This Agreement and the Plan constitute the entire agreement between the parties, and supersedes all prior agreements and understandings, relating to the subject matter of this Agreement. In the event of any conflict between this Agreement and the Plan, the Plan shall control. In the event of any ambiguity in this Agreement, or any matters as to which this Agreement is silent, the Plan shall govern including, without limitation, the provisions thereof pursuant to which the Board of Directors (or a committee thereof) has the power, among other things, to (i) interpret the Plan, (ii) prescribe, amend and rescind rules and regulations relating to the Plan and (iii) make all other determinations deemed necessary or advisable for the administration of the Plan.

(h) Amendment. The Company may modify, amend or waive the terms of this prospectively or retroactively, but no such modification, amendment or waiver shall impair the rights of the Participant without his or her consent, except as required by applicable law, NASDAQ or stock exchange rules, tax rules or accounting rules. Any provision for the benefit of the Company contained in this Agreement may be waived, either generally or in any particular instance, by the Board of Directors (or a committee thereof) of the Company. The waiver by either party of compliance with any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by such party of a provision of this Agreement.

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

(j) Unfunded Rights. The right of the Participant to receive Common Stock pursuant to this Agreement is an unfunded and unsecured obligation of the Company. The Participant shall have no rights under this Agreement other than those of an unsecured general creditor of the Company.

(k) Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to the RSUs awarded under and participation in the Plan or future options that may

be awarded under the Plan by electronic means or to request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written. Electronic acceptance of this Agreement pursuant to the Company's instructions to Participant (including through an online acceptance process managed by the Company's agent) is acceptable.

AKAMAI TECHNOLOGIES, INC.

By: _____

Name:

Title:

_____

[Name of Participant]

Address:

IRREVOCABLE STANDING ORDER TO SELL SHARES

The Participant has been granted restricted stock units ("RSUs") by Akamai Technologies, Inc. ("Akamai"), which is evidenced by a restricted stock unit agreement between me and Akamai (the "Agreement," copy attached). Provided that I remain employed by Akamai on each vesting date, the shares vest according to the provisions of the Agreement.

I understand that on each vesting date, the shares issuable in respect of vested RSUs (the "Shares") will be deposited into my account at Charles Schwab & Co., Inc. ("Schwab") and that I will recognize taxable ordinary income as a result. Pursuant to the terms of the Agreement and as a condition of my receipt of the Shares, I understand and agree that, for each vesting date, I must sell a number of shares sufficient to satisfy all withholding taxes applicable to that ordinary income. Therefore, **I hereby direct Schwab to sell, at the market price and on each vesting date listed above (or the first business day thereafter if a vesting date should fall on a day when the market is closed), the number of Shares that Akamai informs Schwab is sufficient to satisfy the applicable withholding taxes, which shall be calculated based on the closing price of Akamai's common stock on the last trading day before each vesting date.** I understand that Schwab will remit the proceeds to Akamai for payment of the withholding taxes.

I hereby agree to indemnify and hold Schwab harmless from and against all losses, liabilities, damages, claims and expenses, including reasonable attorneys' fees and court costs, arising out of any (i) negligent act, omission or willful misconduct by Akamai in carrying out actions pursuant to the third sentence of the preceding paragraph and (ii) any action taken or omitted by Schwab in good faith reliance upon instructions herein or upon instructions or information transmitted to Schwab by Akamai pursuant to the third sentence of the preceding paragraph.

I understand and agree that by signing below or effecting an online acceptance of the Agreement, I am making an Irrevocable Standing Order to Sell Shares which will remain in effect until all of the shares have vested. I also agree that this Irrevocable Standing Order to Sell Shares is in addition to and subject to the terms and conditions of any existing Account Agreement that I have with Schwab.

_____

Signature

_____

Print Name

Exhibit 10.15

AKAMAI TECHNOLOGIES, INC.

Performance Share Restricted Stock Unit Agreement
Granted Under the 2006 Stock Incentive Plan

1. Grant of Award.

This Agreement evidences the grant by Akamai Technologies, Inc., a Delaware corporation (the "Company") on , 2009 (the "Grant Date") to you (the "Participant") of restricted stock units of the Company (individually, an "RSU" and collectively, the "RSUs"), subject to the terms and conditions set forth in this Restricted Stock Unit Agreement (the "Agreement") and the Company's 2006 Stock Incentive Plan (the "Plan"). Each RSU represents the right to receive one share of the common stock, par value $.01 per share, of the Company ("Common Stock") as provided in this Agreement. The minimum number of shares issuable is zero; the maximum number of shares issuable is equal to 50% of the number of shares granted under the terms of the other Restricted Stock Unit Agreement entered into by the Participant and Employee on the Grant Date (the number of RSUs from which such shares would derive, the "Maximum RSU Bonus Award"). The shares of Common Stock that are issuable upon vesting of the RSUs are referred to in this Agreement as "Shares." Capitalized terms used but not defined in this Agreement shall have the meanings specified in the Plan.

2. Vesting; Forfeiture.

(a) Subject to the terms and conditions of this Agreement including, without limitation, Paragraph 2(c) below, this award shall vest on the 2011 Reporting Date if, and to the extent that, the Company achieves the financial performance criteria set forth in Schedule 1 to this Agreement. Such date or any other date on which shares vest under this Agreement may be referred to herein as a "Vesting Date."

(b) The "2011 Reporting Date" shall mean the date on which the Company files its annual Public Company Financial Statements for fiscal year 2011 or completes its annual Private Company Financial Statements for fiscal year 2011, as applicable. If, on December 31, 2011, the Company is required to make periodic reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Company's consolidated financial statements filed with the Securities and Exchange Commission on Form 10-K shall constitute its "Public Company Financial Statements" and shall apply. If, on December 31, 2011, the Company is not required to make periodic reports under the Exchange Act, the Company's regularly prepared annual audited financial statements prepared by management shall be its "Private Company Financial Statements" and shall apply. The applicable financial statements may be referred to herein as the "2011 Financial Statements."

(c) Except as otherwise provided in this Section 2, RSUs shall not continue to vest unless the Participant is, and has been at all times since the Grant Date, an employee, officer or director of, or consultant or advisor to, the Company. For purposes of this Agreement, employment with the Company shall include employment with a parent, subsidiary, affiliate or division of the Company.

(d) If the Participant dies or becomes disabled on or after January 1, 2012 but before the 2011 Reporting Date, he or she shall be deemed to have been employed as of the 2011 Reporting Date.

3. Distribution of Shares.

(a) The Company will distribute to the Participant (or to the Participant's estate in the event that his or her death occurs on or after January 1, 2012) the Shares of Common Stock represented by vested RSUs as follows: within 30 days of the Vesting Date; provided that if the Participant vests as the result of the application of Section 2(d), the earlier of 30 days after the 2011 Reporting Date or March 15, 2012.

(b) The Company shall not be obligated to issue to the Participant the Shares upon the vesting of any RSU (or otherwise) unless the issuance and delivery of such Shares shall comply with all relevant provisions of law and other legal requirements including, without limitation, any applicable federal or state securities laws and the requirements of any stock exchange upon which shares of Common Stock may then be listed.

(c) Neither the Company nor the Participant shall have the right to accelerate or defer the deliver of any shares under this Agreement except to the extent specifically permitted under Section 409A of the Internal Revenue Code of 1986, as amended.

4. Restrictions on Transfer.

The Participant shall not sell, assign, transfer, pledge, hypothecate or otherwise dispose of, by operation of law or otherwise (collectively "transfer") any RSUs, or any interest therein, except by will or the laws of descent and distribution.

5. Dividend and Other Shareholder Rights.

Except as set forth in the Plan, neither the Participant nor any person claiming under or through the Participant shall be, or have any rights or privileges of, a stockholder of the Company in respect of the Shares issuable pursuant to the RSUs granted hereunder until the Shares have been delivered to the Participant.

6. Provisions of the Plan; Acquisition Event or Change in Control Event.

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

(b) Upon the occurrence of an Acquisition Event (as defined in the Plan), each RSU (whether vested or unvested) shall inure to the benefit of the Company's successor and shall apply to the cash, securities or other property which the Common Stock was converted into or exchanged for pursuant to such Acquisition Event in the same manner and to the same extent as they applied to the Common Stock subject to such RSU.

(c) Upon the occurrence of a Change in Control Event (regardless of whether such event also constitutes an Acquisition Event), vesting of each RSU shall be determined in accordance with the provisions of Schedule 1 to this Agreement.

7. Withholding Taxes.

(a) Regardless of any action the Company or the Participant's employer ("Employer") takes with respect to any or all income tax, social insurance, payroll tax, payment on account or other tax-related withholding ("Tax-Related Items"), the Participant acknowledges that the ultimate liability for all Tax-Related Items legally due by him or her is and remains the Participant's responsibility and that the Company and/or the Employer (1) make no representations or undertakings

regarding the treatment of any Tax-Related Items in connection with any aspect of the Restricted Stock Unit award, including the grant and vesting of the Restricted Stock Units, the receipt of cash or any dividends or dividend equivalents; and (2) do not commit to structure the terms of the award or any aspect of the Restricted Stock Units to reduce or eliminate the Participant's liability for Tax-Related Items.

(b) In the event that the Company, subsidiary, affiliate or division is required to withhold any Tax-Related Items as a result of the award or vesting of the Restricted Stock Units, or the receipt of cash or any dividends or dividend equivalents, the Participant shall pay or make adequate arrangements satisfactory to the Company, subsidiary, affiliate or division to satisfy all withholding and payment on account obligations of the Company, subsidiary, affiliate or division. The obligations of the Company under this Agreement, including the delivery of shares upon vesting, shall be conditioned on compliance by the Participant with this Section 7. In this regard, the Participant authorizes the Company and/or the Employer to withhold all applicable Tax-Related Items legally payable by the Participant from his or her wages or other cash compensation paid to the Participant by the Company and/or the Employer. Alternatively, or in addition, if permissible under local law, the Company may withhold in shares of Common Stock an amount of shares sufficient to cover the Participant's tax liability.

(c) The Participant will pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold as a result of the Participant's participation in the Plan or the Participant's award that cannot be satisfied by the means previously described.

(d) As a condition to receiving any Shares, on the date of this Agreement, Participant must execute the Irrevocable Standing Order to Sell Shares attached hereto, which authorizes the Company and Charles Schwab & Co., Inc. (or such substitute brokerage firm as is contracted to manage the Company's employee equity award program, the "Broker") to take the actions described in Section 7(b) and this Section 7(d) (the "Standing Order").

(e) Participant understands and agrees that the number of Shares that the Broker will sell will be based on the closing price of the Common Stock on the last trading day before the applicable Vesting Date. The Participant agrees to execute and deliver such documents, instruments and certificates as may reasonably be required in connection with the sale of the Shares pursuant to this Section 7.

(f) Participant agrees that the proceeds received from the sale of Shares pursuant to Section 7(d) will be used to satisfy the Tax-Related Items and, accordingly, Participant hereby authorizes the Broker to pay such proceeds to the Company for such purpose. Participant understands that to the extent that the proceeds obtained by such sale exceed the amount necessary to satisfy the Tax-Related Items, such excess proceeds shall be deposited into the Participants account with Broker. Participant further understands that any remaining Shares shall be deposited into such account.

(g) The Participant represents to the Company that, as of the date hereof, he is not aware of any material nonpublic information about the Company or the Common Stock. The Participant and the Company have structured this Agreement to constitute a "binding contract" relating to the sale of Common Stock pursuant to this Section 7, consistent with the affirmative defense to liability under Section 10(b) of the Securities Exchange Act of 1934 under Rule 10b5-1(c) promulgated under such Act.

8. Miscellaneous.

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

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

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

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Company and the Participant and their respective heirs, executors, administrators, legal representatives, successors and assigns, subject to the restrictions on transfer set forth in Section 4 of this Agreement.

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

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

(g) Entire Agreement; Conflicts and Interpretation. This Agreement and the Plan constitute the entire agreement between the parties and supersede all prior agreements and understandings relating to the subject matter of this Agreement. In the event of any conflict between this Agreement and the Plan, the Plan shall control. In the event of any ambiguity in this Agreement, or any matters as to which this Agreement is silent, the Plan shall govern including, without limitation, the provisions thereof pursuant to which the Board of Directors (or a committee thereof) has the power, among other things, to (i) interpret the Plan, (ii) prescribe, amend and rescind rules and regulations relating to the Plan and (iii) make all other determinations deemed necessary or advisable for the administration of the Plan.

(h) Amendment. The Company may modify, amend or waive the terms of this prospectively or retroactively, but no such modification, amendment or waiver shall impair the rights of the Participant without his or her consent, except as required by applicable law, NASDAQ or stock exchange rules, tax rules or accounting rules. Any provision for the benefit of the Company contained in this Agreement may be waived, either generally or in any particular instance, by the Board of Directors (or a committee thereof) of the Company. The waiver by either party of compliance with any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by such party of a provision of this Agreement.

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

(j) Unfunded Rights. The right of the Participant to receive Common Stock pursuant to this Agreement is an unfunded and unsecured obligation of the Company. The Participant shall have no rights under this Agreement other than those of an unsecured general creditor of the Company.

(k) Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to the RSUs awarded under and participation in the Plan or future options that may be awarded under the Plan by electronic means or to request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written. Electronic acceptance of this Agreement pursuant to the Company's instructions to Participant (including through an online acceptance process managed by the Company's agent) is acceptable.

AKAMAI TECHNOLOGIES, INC.

By: _____

Name:

Title:

_____

[Name of Participant]

Address:

IRREVOCABLE STANDING ORDER TO SELL SHARES

The Participant has been granted restricted stock units ("RSUs") by Akamai Technologies, Inc. ("Akamai"), which is evidenced by a restricted stock unit agreement between me and Akamai (the "Agreement," copy attached). Provided that I remain employed by Akamai on each vesting date, the shares vest according to the provisions of the Agreement.

I understand that on each vesting date, the shares issuable in respect of vested RSUs (the "Shares") will be deposited into my account at Charles Schwab & Co., Inc. ("Schwab") and that I will recognize taxable ordinary income as a result. Pursuant to the terms of the Agreement and as a condition of my receipt of the Shares, I understand and agree that, for each vesting date, I must sell a number of shares sufficient to satisfy all withholding taxes applicable to that ordinary income. Therefore, **I hereby direct Schwab to sell, at the market price and on each vesting date listed above (or the first business day thereafter if a vesting date should fall on a day when the market is closed) or as soon as practicable thereafter, the number of Shares that Akamai informs Schwab is sufficient to satisfy the applicable withholding taxes, which shall be calculated based on the closing price of Akamai's common stock on the last trading day before each vesting date.** I understand that Schwab will remit the proceeds to Akamai for payment of the withholding taxes.

I hereby agree to indemnify and hold Schwab harmless from and against all losses, liabilities, damages, claims and expenses, including reasonable attorneys' fees and court costs, arising out of any (i) negligent act, omission or willful misconduct by Akamai in carrying out actions pursuant to the third sentence of the preceding paragraph and (ii) any action taken or omitted by Schwab in good faith reliance upon instructions herein or upon instructions or information transmitted to Schwab by Akamai pursuant to the third sentence of the preceding paragraph.

I understand and agree that by signing below or effecting an online acceptance of the Agreement, I am making an Irrevocable Standing Order to Sell Shares which will remain in effect until all of the shares have vested. I also agree that this Irrevocable Standing Order to Sell Shares is in addition to and subject to the terms and conditions of any existing Account Agreement that I have with Schwab.

_____

Signature

_____

Print Name

SCHEDULE 1

VESTING CRITERIA FOR RSUs

A. Overview

The RSUs shall vest only upon the Company's achievement of certain financial metrics based on target cumulative Revenue of $ million and target cumulative Normalized EPS of $ per share over the Company's fiscal years 2009, 2010 and 2011. The Company's performance measured against each metric shall be equally weighted to enable comparison as a percentage of a combined target. For purposes of this Agreement, such metrics shall have the following meanings:

"Revenue" shall mean the Company's cumulative annual revenue for fiscal years 2009, 2010 and 2011 calculated in accordance with generally accepted accounting principles in the United States of America as reported in the 2011 Financial Statements.

"Normalized EPS" shall mean the Company's shall mean the Company's cumulative annual earnings per diluted share for fiscal years 2009, 2010 and 2011 excluding cumulative amortization of intangible assets, equity-related compensation, restructuring charges and benefits, certain gains and losses on equity investments, non-cash income taxes and loss on early extinguishment of debt.

"Vesting Amount" shall mean the aggregate amount, if any, issuable to the Participant based on the Company's Revenue and Normalized EPS performance measured against the Actual Percentage of Targets defined below.

B. Calculation of Percentages

The Company's Revenue shall be calculated as a percentage of the Company's target cumulative revenue for fiscal years 2009, 2010 and 2011of $ million and multiplied by 0.5 (the "Revenue Percentage Component"). The Company's Normalized EPS shall be calculated as a percentage of the Company's target cumulative normalized earnings per share, calculated in accordance with generally accepted accounting principles in the United States of America, as reported in the 2011 Financial Statements for fiscal years 2009, 2010 and 2011 of $ and multiplied by 0.5 (the "Normalized EPS Component"). The sum of the Revenue Percentage Component and the Normalized EPS Component shall be the "Actual Percentage of Targets."

C. Vesting Amounts

1. If the Actual Percentage of Targets fails to exceed 100%, then none of the RSUs shall vest and zero Shares shall be distributed in respect thereof.

2. If the Actual Percentage of Targets equals %, then the Vesting Amount shall equal one-half of the Maximum RSU Bonus Award, as defined in Paragraph 1 of the Agreement (the "Intermediate RSU Bonus Award"), and shall vest.

3. If the Actual Percentage of Targets equals % or more, then the Vesting Amount shall equal the Maximum RSU Bonus Award, as defined in Paragraph 1 of the Agreement, and shall vest.

4. If the Actual Percentage of Targets is between 100% and %, then the Vesting Amount shall equal a number of RSUs equal to the product of the Intermediate RSU Bonus Award multiplied by a fraction the numerator of which is the Actual Percentage of Targets Revenue minus 100% and the denominator is % and shall vest.

5. If the Actual Percentage of Targets is between % and %, then the Vesting Amount shall equal the sum of (a) the Intermediate RSU Bonus Award plus (b) the product of (i) the difference between the Maximum RSU Bonus Award and the Intermediate RSU Bonus Award multiplied by (ii) a fraction the numerator of which is the Actual Percentage of Targets Revenue minus 103% and the denominator is 4%, and shall vest.

D. Effect of an Acquisition by the Company

In the event that the Company enters into an Acquisition Transaction during 2009, then Revenue and Normalized EPS shall be adjusted to give effect to such Acquisition Transaction. An "Acquisition Transaction" means (i) the purchase by the Company of more than 50% of the voting power of another entity, (ii) any merger, reorganization, consolidation, recapitalization, business combination, liquidation, dissolution or share exchange which results in the Company acquiring more than 50% of the voting power of another entity, or (iii) the purchase or other acquisition (including, without limitation, via license outside of the ordinary course of business or joint venture) of assets that constitute more than 50% of another entity's total assets or assets that account for more than 50% of the consolidated net revenues or net income of such entity.

As soon as practicable following the closing of an Acquisition Transaction, the Compensation Committee of the Board of Directors of the Company shall make a determination of the estimated impact of the Acquisition Transaction on the Company's cumulative Revenue and Normalized EPS through 2011. If the Acquisition Transaction is estimated to be accretive, then:

(i) in calculating Revenue for purposes of determining the Revenue Percentage Component, reported Revenue shall be reduced by the amount of estimated revenue contribution from the Acquisition Transaction; and

(ii) in calculating Normalized EPS for purposes of determining the Normalized EPS Percentage Component, Normalized EPS, as calculated based on the 2011 Financial Statements, shall be reduced by the amount of the estimated Normalized EPS contribution from the Acquisition Transaction.

If the Acquisition is estimated to be non-accretive, then:

(iii) in calculating Normalized EPS for purposes of determining the Normalized EPS Percentage Component, Normalized EPS, as calculated based on the 2011 Financial Statements, shall be increased by the amount of the estimated negative Normalized EPS impact from the Acquisition Transaction.

All determinations of the Compensation Committee regarding the estimated impact of an Acquisition Transaction shall be final, binding and non-appealable. This Agreement shall be deemed to be automatically amended, without further action by the Company or the Participant, to give effect to any adjustments required by this Section D.

E. Effect of a Change in Control Event

(1) If there is a Change of Control Event prior to December 31, 2011, the RSUs shall vest as of the closing date of the Change of Control Event and Participant shall be entitled to receive a pro rated number of Shares based on the amount of time elapsed between the Grant Date and December 31, 2011. The number of Shares issuable in respect of vested RSUs, if any, shall be calculated based on a pro forma Actual Percentage of Targets calculated as follows:

(i) If the Change of Control Event occurs in 2009, Revenue and Normalized EPS shall be calculated based on the Company's Revenue and Normalized EPS results during the twelve-month period ending on the last day of the most recently reported fiscal quarter prior to the closing date of the Change of Control Event. Such numbers shall then be multiplied by three for purposes of calculating the Actual Percentage of Targets.

(ii) If the Change of Control Event occurs in 2010, Revenue and Normalized EPS shall be calculated based on the Company's Revenue and Normalized EPS results for fiscal year 2009. Such numbers shall then be multiplied by three for purposes of calculating the Actual Percentage of Targets.

(iii) If the Change of Control Event occurs in 2011, Revenue and Normalized EPS shall be calculated based on the cumulative Revenue and Normalized EPS results for fiscal years 2009 and 2010 plus an amount equal to the Revenue and Normalized EPS for 2011 that would result if the rate of growth (loss) for Revenue and Normalized EPS, respectively, between 2009 and 2010 were to continue for 2011. Such sums shall be used for calculating the Actual Percentage of Targets.

Once the pro forma Actual Percentage of Targets has been determined and the number of Shares, if any, that would have been issuable in respect of the RSUs on the 2011 Reporting Date (the "Pro Forma Distribution Amount") calculated, the actual number of Shares issuable shall be adjusted proportionally based on the percentage of the three-year calculation period that has elapsed as of the closing date of the Change of Control Event (e.g., if the closing date of the Change in Control Event were April 1, 2010, the number of Shares issuable would be 41.7% (15 months/36 months) of the total Pro Forma Distribution Amount).

(2) If (i) there is a Change of Control Event between January 1, 2012 and September 30, 2012; (ii) Participant meets the requirements of Paragraph 2(c) of this Agreement as of immediately prior to the Change of Control Event and (iii) Participant's employment is terminated by the surviving entity in the Change of Control transaction at any time during the period between the Change of Control Event and October 1, 2012 for any reason other than for Cause (as defined below), then the entire portion of the Vesting Amount that had not vested prior to Participation's termination shall vest in full as of the effective date of Participant's termination. For purposes of this Agreement, "Cause" shall mean (a) any act or omission by Participant that has an adverse effect on Akamai's business or on the employee's ability to perform services for Akamai, including, without limitation, the commission of any crime (other than ordinary traffic violations), or (b) refusal or failure to perform assigned duties, serious misconduct, or excessive absenteeism. Whether a Participant has been terminated for "Cause" shall be determined in the sole discretion of the Company's management or, in the case of an executive officer, the Board of Directors or a committee thereof.

Exhibit 10.16

AKAMAI TECHNOLOGIES, INC.

Restricted Stock Unit Agreement
Granted Under the Second Amended and Restated 1998 Stock Incentive Plan

1. Grant of Award.

This Agreement evidences the grant by Akamai Technologies, Inc., a Delaware corporation (the "Company"), on January 29, 2008 (the "Grant Date") to you (the "Participant") of restricted stock units of the Company (individually, an "RSU" and collectively, the "RSUs"), subject to the terms and conditions set forth in this Agreement and the Second Amended and Restated 1998 Stock Incentive Plan (the "Plan"). Each RSU represents the right to receive one share of the common stock, par value $.01 per share, of the Company ("Common Stock") as provided in this Agreement. The shares of Common Stock that are issuable upon vesting of the RSUs are referred to in this Agreement as "Shares." Capitalized terms used but not defined in this Agreement shall have the meanings specified in the Plan.

2. Vesting; Forfeiture.

Subject to the terms and conditions of this Agreement and provided that the Participant continues to provide services until the Vesting Date (as defined below):

(a) This award shall vest:

(i) as to one-third of the original number of RSUs on the second business day following the date on which the Company releases its earnings results for 2009 in the event that the Company achieved the following revenue and normalized earnings per share ("Normalized EPS") metrics during 2009:

Revenue	Normalized EPS
$ million	$.

(ii) as to one-third of the original number of RSUs on the second business day following the date on which the Company releases its earnings results for 2010 in the event that the Company achieved the revenue and Normalized EPS metrics for 2010 established by the Board (or a committee thereof) in early 2010.

(iii) as to one-third of the original number of RSUs on the second business day following the date on which the Company releases its earnings results for 2011 in the event that the Company achieved the revenue and Normalized EPS metrics for 2011 established by the Board (or a committee thereof) in early 2011.

"Normalized EPS" shall mean shall mean the Company's annual earnings per diluted share for the applicable fiscal year excluding amortization of intangible assets, equity-related compensation, restructuring charges and benefits, certain gains and losses on equity investments, loss on early extinguishment of debt, utilitzation of tax NOLs/credits, release of deferred tax assets and similar items excluded by the Company in determining normalized earnings per share in issuing its earnings announcement for such fiscal year.

The date on which RSUs vest may be referred to herein as the "Vesting Date." If the Company does not meet the applicable revenue and Normalized EPS metrics during a fiscal year, the 33% of RSUs eligible for vesting in connection therewith shall be forfeited.

(b) Except as otherwise provided in this Section 2, RSUs shall not continue to vest unless the Participant is, and has been at all times since the Grant Date, an employee, officer or director of, or consultant or advisor to, the Company.

(c) In the event that the Participant's employment with the Company ceases or is terminated for any reason, including by reason of death or disability, other than "Cause" (as defined below), then the number of RSUs which shall be vested shall be the number that are vested as of the date of actual termination. For purposes of this Section 2, "Cause" shall mean unsatisfactory job performance (as determined by the Company), willful misconduct, fraud, gross negligence, disobedience or dishonesty. In the event that the Participant's employment with the Company is terminated for Cause, all unvested RSUs shall be forfeited effective as of the date of termination.

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

3. Distribution of Shares.

(a) The Company will distribute to the Participant (or to the Participant's estate in the event that his or her death occurs after a Vesting Date but before distribution of the corresponding Shares), the Shares of Common Stock represented by RSUs that vested on such vesting date as soon as administratively practicable after each Vesting Date (each such date of distribution is hereinafter referred to as a "Settlement Date") but in any event within the period ending on the later to occur of the date that is two and one-half months from the end of (i) Participant's tax year that includes the applicable Vesting Date or (ii) the Company's tax year that includes the applicable Vesting Date.

(b) The Company shall not be obligated to issue to the Participant the Shares upon the vesting of any RSU (or otherwise) unless the issuance and delivery of such Shares shall comply with all relevant provisions of law and other legal requirements including, without limitation, any applicable federal or state securities laws and the requirements of any stock exchange upon which shares of Common Stock may then be listed.

(c) Neither the Company nor the Participant shall have the right to accelerate or defer the deliver of any shares under this Agreement except to the extent specifically permitted under Section 409A of the Internal Revenue Code of 1986, as amended.

4. Restrictions on Transfer.

The Participant shall not sell, assign, transfer, pledge, hypothecate or otherwise dispose of, by operation of law or otherwise (collectively "transfer") any RSUs, or any interest therein, except by will or the laws of descent and distribution.

5. Dividend and Other Shareholder Rights.

Except as set forth in the Plan, neither the Participant nor any person claiming under or through the Participant shall be, or have any rights or privileges of, a stockholder of the Company in respect of the Shares issuable pursuant to the RSUs granted hereunder until the Shares have been delivered to the Participant.

6. Provisions of the Plan; Acquisition Event or Change in Control Event.

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

(b) Upon the occurrence of an Acquisition Event (as defined in the Plan) that is not a Change in Control Event (as defined in the Plan), each RSU (whether vested or unvested) shall inure to the benefit of the Company's successor and shall apply to the cash, securities or other property which the Common Stock was converted into or exchanged for pursuant to such Acquisition Event in the same manner and to the same extent as they applied to the Common Stock subject to such RSU.

(c) Upon the occurrence of a Change in Control Event (regardless of whether such event also constitutes an Acquisition Event), each RSU shall become exercisable, realizable or vested as to number of RSUs as would be vested pursuant to Section 2(a) as though the Grant Date were the date that is one year prior to the Grant Date.

7. Withholding Taxes.

(a) Regardless of any action the Company or the Participant's employer ("Employer") takes with respect to any or all income tax, social insurance, payroll tax, payment on account or other tax-related withholding ("Tax-Related Items"), the Participant acknowledges that the ultimate liability for all Tax-Related Items legally due by him or her is and remains the Participant's responsibility and that the Company and/or the Employer (1) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Restricted Stock Unit award, including the grant and vesting of the Restricted Stock Units, the receipt of cash or any dividends or dividend equivalents; and (2) do not commit to structure the terms of the award or any aspect of the Restricted Stock Units to reduce or eliminate the Participant's liability for Tax-Related Items.

(b) In the event that the Company, subsidiary, affiliate or division is required to withhold any Tax-Related Items as a result of the award or vesting of the Restricted Stock Units, or the receipt of cash or any dividends or dividend equivalents, the Participant shall pay or make adequate arrangements satisfactory to the Company, subsidiary, affiliate or division to satisfy all withholding and payment on account obligations of the Company, subsidiary, affiliate or division. The obligations of the Company under this Agreement, including the delivery of shares upon vesting, shall be conditioned on compliance by the Participant with this Section 7. In this regard, the Participant authorizes the Company and/or the Employer to withhold all applicable Tax-Related Items legally payable by the Participant from his or her wages or other cash compensation paid to the Participant by the Company and/or the Employer. Alternatively, or in addition, if permissible under local law, the Company may withhold in shares of Common Stock an amount of shares sufficient to cover the Participant's tax liability.

(c) The Participant will pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold as a result of the Participant's participation in the Plan or the Participant's award that cannot be satisfied by the means previously described.

(d) As a condition to receiving any Shares, on the date of this Agreement, Participant must execute the Irrevocable Standing Order to Sell Shares attached hereto, which authorizes the Company and Charles Schwab & Co., Inc. (or such substitute brokerage firm as is contracted to manage the Company's employee equity award program, the "Broker") to take the actions described in Section 7(b) and this Section 7(d) (the "Standing Order").

(e) Participant understands and agrees that the number of Shares that the Broker will sell will be based on the closing price of the Common Stock on the last trading day before the applicable Vesting Date. The Participant agrees to execute and deliver such documents, instruments and certificates as may reasonably be required in connection with the sale of the Shares pursuant to this Section 7.

(f) Participant agrees that the proceeds received from the sale of Shares pursuant to Section 7(d) will be used to satisfy the Tax-Related Items and, accordingly, Participant hereby authorizes the Broker to pay such proceeds to the Company for such purpose. Participant understands that to the extent that the proceeds obtained by such sale exceed the amount necessary to satisfy the Tax-Related Items, such excess proceeds shall be deposited into the Participants account with Broker. Participant further understands that any remaining Shares shall be deposited into such account.

(g) The Participant represents to the Company that, as of the date hereof, he is not aware of any material nonpublic information about the Company or the Common Stock. The Participant and the Company have structured this Agreement to constitute a "binding contract" relating to the sale of Common Stock pursuant to this Section 7, consistent with the affirmative defense to liability under Section 10(b) of the Securities Exchange Act of 1934 under Rule 10b5-1(c) promulgated under such Act.

8. Miscellaneous.

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

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

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

(d) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Company and the Participant and their respective heirs, executors, administrators, legal representatives, successors and assigns, subject to the restrictions on transfer set forth in Section 4 of this Agreement.

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

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

(g) Entire Agreement; Conflicts and Interpretation. This Agreement and the Plan constitute the entire agreement between the parties, and supersedes all prior agreements and understandings, relating to the subject matter of this Agreement. In the event of any conflict between this Agreement and the Plan, the Plan shall control. In the event of any ambiguity in this Agreement, or any matters as to which this Agreement is silent, the Plan shall govern including, without limitation, the

provisions thereof pursuant to which the Board of Directors (or a committee thereof) has the power, among other things, to (i) interpret the Plan, (ii) prescribe, amend and rescind rules and regulations relating to the Plan and (iii) make all other determinations deemed necessary or advisable for the administration of the Plan.

(h) Amendment. The Company may modify, amend or waive the terms of this prospectively or retroactively, but no such modification, amendment or waiver shall impair the rights of the Participant without his or her consent, except as required by applicable law, NASDAQ or stock exchange rules, tax rules or accounting rules. Any provision for the benefit of the Company contained in this Agreement may be waived, either generally or in any particular instance, by the Board of Directors (or a committee thereof) of the Company. The waiver by either party of compliance with any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by such party of a provision of this Agreement.

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

(j) Unfunded Rights. The right of the Participant to receive Common Stock pursuant to this Agreement is an unfunded and unsecured obligation of the Company. The Participant shall have no rights under this Agreement other than those of an unsecured general creditor of the Company.

(k) Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to the RSUs awarded under and participation in the Plan or future options that may be awarded under the Plan by electronic means or to request the Participant's consent to participate in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and, if requested, to agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written. Electronic acceptance of this Agreement pursuant to the Company's instructions to Participant (including through an online acceptance process managed by the Company's agent) is acceptable.

AKAMAI TECHNOLOGIES, INC.

By: _____

Name:

Title:

_____

[Name of Participant]

Address:

IRREVOCABLE STANDING ORDER TO SELL SHARES

The Participant has been granted restricted stock units ("RSUs") by Akamai Technologies, Inc. ("Akamai"), which is evidenced by a restricted stock unit agreement between me and Akamai (the "Agreement," copy attached). Provided that I remain employed by Akamai on each vesting date, the shares vest according to the provisions of the Agreement.

I understand that on each vesting date, the shares issuable in respect of vested RSUs (the "Shares") will be deposited into my account at Charles Schwab & Co., Inc. ("Schwab") and that I will recognize taxable ordinary income as a result. Pursuant to the terms of the Agreement and as a condition of my receipt of the Shares, I understand and agree that, for each vesting date, I must sell a number of shares sufficient to satisfy all withholding taxes applicable to that ordinary income. Therefore, **I hereby direct Schwab to sell, at the market price and on each vesting date listed above (or the first business day thereafter if a vesting date should fall on a day when the market is closed), the number of Shares that Akamai informs Schwab is sufficient to satisfy the applicable withholding taxes, which shall be calculated based on the closing price of Akamai's common stock on the last trading day before each vesting date.** I understand that Schwab will remit the proceeds to Akamai for payment of the withholding taxes.

I hereby agree to indemnify and hold Schwab harmless from and against all losses, liabilities, damages, claims and expenses, including reasonable attorneys' fees and court costs, arising out of any (i) negligent act, omission or willful misconduct by Akamai in carrying out actions pursuant to the third sentence of the preceding paragraph and (ii) any action taken or omitted by Schwab in good faith reliance upon instructions herein or upon instructions or information transmitted to Schwab by Akamai pursuant to the third sentence of the preceding paragraph.

I understand and agree that by signing below or effecting an online acceptance of the Agreement, I am making an Irrevocable Standing Order to Sell Shares which will remain in effect until all of the shares have vested. I also agree that this Irrevocable Standing Order to Sell Shares is in addition to and subject to the terms and conditions of any existing Account Agreement that I have with Schwab.

_____

Signature

_____

Print Name

Exhibit 10.19

Summary of the Registrant's Compensatory Arrangements with Executive Officers

Name and Title	Base Salary
Paul Sagan President and CEO	$ 547,750
J. Donald Sherman Senior Vice President – Chief Financial Officer	$ 427,450
Debra Canner Senior Vice President – Human Resources	$ 283,250
George Conrades Executive Chairman	$ 70,000[1]
Melanie Haratunian Senior Vice President and General Counsel	$ 334,750
Robert Hughes Executive Vice President – Global Sales, Services and Marketing	$ 427,450
Tom Leighton Chief Scientist	$ 20,000

[1] Reflects cash compensation for serving as Executive Chairman of the Board of Directors

OFFICE LEASE AGREEMENT

BETWEEN

LOCON SAN MATEO, LLC, a Delaware limited liability company
("LANDLORD")

AND

AKAMAI TECHNOLOGIES, INC., a Delaware corporation
("TENANT")

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OFFICE LEASE AGREEMENT

THIS OFFICE LEASE AGREEMENT (the "Lease") is made and entered into as of the 31 st day of March, 2008, by and between **LOCON SAN MATEO, LLC, a Delaware limited liability company** ("Landlord") and **AKAMAI TECHNOLOGIES, INC., a Delaware corporation** ("Tenant").

1. Basic Lease Information.

A. "Building" shall mean the building located at 3125 Clearview Way, San Mateo, California, commonly known as Building B of the Clearview office park.

B. "Premises" shall mean the approximately 50,000 rentable square feet of space shown on **Exhibit A** to this Lease. The Premises are located on a portion of the first floor and the entire second and third floors of the Building and known as suite number(s) 200. If the Premises include one or more floors in their entirety, all corridors and restroom facilities located on such full floor(s) shall be considered part of the Premises.

C. "Base Rent":

Period	Annual Rate Per Square Foot	Annual Base Rent	Monthly Base Rent
10/1/08 – 9/30/09	$ 37.80	$ 1,890,000.00	$ 157,500.00
10/1/09 – 9/30/10	$ 39.31	$ 1,965,600.00	$ 163,800.00
10/1/10 – 9/30/11	$ 40.88	$ 2,044,224.00	$ 170,352.00
10/1/11 – 9/30/12	$ 42.52	$ 2,125,942.96	$ 177,161.91
10/1/12 – 9/30/13	$ 44.22	$ 2,211,032.68	$ 184,252.72
10/1/13 – 9/30/14	$ 45.99	$ 2,299,473.99	$ 191,622.83
10/1/14 – 9/30/15	$ 47.83	$ 2,391,452.94	$ 199,287.75
10/1/-15 – Termination Date	$ 49.74	$ 2,487,111.06	$ 207,259.26

* The foregoing Base Rent shall be subject to abatement, as more particularly described in Section 4 below.

D. "Tenant's Share": 76.98% of the Building and 19.14% of the Project (based upon approximately 261,251 rentable square feet).

"Tenant's Monthly Expense and Tax Payment": $51,541.67, which is Tenant's Share of the monthly estimated Expenses and monthly estimated Taxes (as more fully described in, and subject to adjustment as described in, Section 4 below).

E. "Term": A period of eighty-five (85) months. The Term shall commence on the date (the "Commencement Date") that is the earlier of October 1, 2008 or the date that Tenant substantially completes the Initial Alterations (as defined in **Exhibit D** attached hereto) and, unless terminated early or extended in accordance with this Lease, end on the last day of the 85th month of the Term (the "Termination Date"), which Termination Date is estimated to be October 31, 2015. Promptly after the Commencement Date, Landlord and Tenant shall enter into a commencement letter agreement in the form attached hereto as **Exhibit C**.

F. "Rent Commencement Date": October 1, 2008, subject to adjustment as provided in Section 3 below.

G. Tenant allowances: $2,500,000.00 (a sum equal to $50.00 per rentable square foot of the Premises) for construction of the Initial Alterations and $7,500.00 (a sum equal to $0.15 per rentable square foot of the Premises) for preparation of the initial space plan, as more particularly described in **Exhibit D** attached hereto.

H. “Security Deposit”: $75,000.00.

I. “Guarantor(s)”: As of the date of this Lease, there are no guarantors.

J. “Broker(s)”: NAI BT Commercial representing Landlord and Jones Lang LaSalle representing Tenant.

K. “Permitted Use”: General office use.

L. “Notice Addresses”:

Tenant:

On and after the Commencement Date, notices shall be sent to Tenant at the Premises with a copy to:

Akamai Technologies, Inc.
8 Cambridge Center
Cambridge, MA 02142
Attention: Mr. Skip Hartwell
Phone: (617) 444-3971
Fax: (617) 444-3908

If any additional person listed above fails to receive the copy of the notice of Tenant default, the validity of the notice served on Tenant shall not be affected thereby.

Prior to the Commencement Date, notices shall be sent to Tenant at the following address:

Akamai Technologies, Inc.
8 Cambridge Center
Cambridge, MA 02142
Attention: Mr. Skip Hartwell
Phone: (617) 444-3971
Fax: (617) 444-3908

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Landlord:

Lowe Enterprises Real Estate Group
455 Market Street, Suite 640
San Francisco, CA 94105
Attention: Mike Sanford, Senior Vice President

With a copy to:

Lowe Enterprises Real Estate Group
2020 Main Street, Suite 1150
Irvine, California 92614
Attention: Lynda Cook, Senior Vice President

And to:

Lowe Enterprises
11777 San Vicente Boulevard, 9th Floor
Los Angeles, California 90049
Attention: John DeMarco, Senior Vice President,
Corporate Counsel

Rent (defined in Section 4.A) is payable to the order of Landlord at the following address:

Lowe Enterprises Real Estate Group
455 Market Street, Suite 640
San Francisco, CA 94105
Attention: Kelly Mullane

M. "Business Day(s)" are Monday through Friday of each week, exclusive of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day ("Holidays"). Landlord may designate additional Holidays, provided that the additional Holidays are commonly recognized by other office buildings in the area where the Building is located.

N. "Landlord Work" means the work that Landlord is obligated to perform in the Premises pursuant to the separate work letter agreement (the "Work Letter") attached as **Exhibit D**.

O. "Law(s)" means all applicable statutes, codes, ordinances, orders, rules and regulations of any municipal or governmental entity.

P. "Normal Business Hours" for the Building are 8:00 A.M. to 6:00 P.M. on Business Days.

Q. "Property" means the Building and the parcel(s) of land on which it is located and, at Landlord's discretion, the landscaping, the parking facilities and all other improvements owned by Landlord and serving the Building and the tenants thereof and the parcel(s) of land on which they are located.

R. "Project" means the Clearview office project, containing six (6) buildings totaling approximately 261,251 rentable square feet of Class A office buildings located on an approximately 21.86 acre hill-top campus on Clearview Way, San Mateo, California.

S. "Exterior Common Areas" mean those areas of the Project and/or the Property which are not located within the Building or any other building and which are provided and maintained for the use and benefit of Landlord and tenants of the Building and/or the Project generally and the employees, invitees and licensees of Landlord and such tenants, including, without limitation, any parking garage, artificial lakes, walkways, plaza, roads, driveways, sidewalks, surface parking and landscapes, if any.

2. Lease Grant.

Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord, together with the right in common with others to use any portions of the Property that are designated by Landlord for the common use of tenants and others, such as sidewalks, unreserved parking areas, common corridors, elevator foyers, restrooms, vending areas and lobby areas (the "Common Areas"). The Exterior Common Areas, as of the date of this Lease, are as shown on the site plan attached hereto as Exhibit A-1. Landlord also has the right to make changes to the Common Areas as Landlord deems reasonably appropriate, provided the changes do not materially affect Tenant's ability to access the Premises or to use the Premises for the Permitted Use. Notwithstanding anything to the contrary contained herein, Landlord shall not make any permanent changes to the parking areas at the Property that reduces the number of parking spaces available for Tenant's use pursuant to the terms of this Lease or otherwise materially adversely affect Tenant's parking rights hereunder. However, the foregoing shall not be deemed to prohibit Landlord from constructing a parking garage at the Property during the Term. If Landlord constructs a parking garage at the Property, Tenant may use such parking garage, free of monthly parking charge, provided that the foregoing shall not be deemed to increase the total number of parking spaces available to Tenant pursuant to the terms of this Lease and the Parking Agreement. If Landlord makes temporary changes to the parking areas at the Property that affect Tenant's parking rights hereunder, Landlord shall provide reasonable alternate parking in the vicinity of the Building, which may include valet parking, and Tenant's alternate parking spaces (if valet services are not used) shall at all times be located at or adjacent to the Property within reasonable walking distance of the Building (i.e., without the need for parking shuttles or other transportation to and from such parking spaces). Landlord shall use reasonable efforts to minimize the time periods during which such alternate parking arrangements will be required in connection with any temporary changes or other work with respect to the parking areas.

3. Adjustment of Commencement Date; Possession.

A. The Landlord Work shall be deemed to be "Substantially Complete" on the later of (i) the date that all Landlord Work (or applicable portion thereof) has been performed, other than any minor details of construction, mechanical adjustment or any other similar matter, the noncompletion of which does not materially interfere with Tenant's use of the Premises, and (ii) the date Landlord receives from the appropriate governmental authorities, with respect to the Landlord Work performed by Landlord or its contractors in the Premises, all approvals necessary for the conduct of Tenant's work at (including, without limitation, the Initial Alterations) and Tenant's occupancy of the Premises (which may include a certificate of temporary occupancy or substantially equivalent approval). However, if Landlord is delayed in the performance of the Landlord Work as a result of any Tenant Delay(s) (defined below), the Landlord Work shall be deemed to be Substantially Complete on the date that Landlord could reasonably have been expected to Substantially Complete the Landlord Work absent any Tenant Delay. "Tenant Delay" means any act or omission of Tenant or any Tenant's Parties to the extent that the same actually delays the substantial completion of the Landlord Work, including, without limitation: (1) Tenant's failure to furnish information or approvals within any time period specified in this Lease, including the failure to prepare or approve preliminary or final plans by any applicable due date; (2) Tenant's selection of equipment or materials that have long lead times after first being informed in writing by Landlord that the selection may result in a delay; (3) changes requested or made by Tenant to previously approved plans and specifications; (4) performance of work in the Premises by Tenant or Tenant's contractor(s) during the performance of the Landlord Work, which interferes with the performance of the Landlord Work; or (5) if the performance of any portion of the Landlord Work depends on the prior or simultaneous performance of work by Tenant, a delay by Tenant or Tenant's contractor(s) in the completion of such work. Landlord shall notify Tenant in writing of any circumstances of which Landlord is aware that have caused or may cause a Tenant Delay, so that Tenant may take whatever action is appropriate to minimize or prevent such Tenant Delay. For purposes of the foregoing sentence, correspondence via e-mail, facsimile or as included in any construction meeting minutes delivered to Tenant's construction project manager, with a copy to Skip Hartwell at hartwell@akamai.com, shall constitute written notice of such Tenant Delay. No Tenant Delay shall be deemed to accrue unless and until Landlord has provided written notice to Tenant specifying that a delay has occurred

because of actions, inaction or circumstances specified in the notice in reasonable detail. If such actions, inaction or circumstances qualify as a Tenant Delay, then a Tenant Delay shall be deemed to have occurred commencing as of the date Tenant received such notice from Landlord.

B. Subject to Landlord's obligation, if any, to perform the Landlord Work and Landlord's obligations under Section 9.B., and except as expressly provided in this Lease, the Premises are accepted by Tenant in "as is" condition and configuration. By taking possession of the Premises, except as provided below in this Section 3.B, Tenant agrees that the Premises are in good order and satisfactory condition, and that there are no representations or warranties by Landlord regarding the condition of the Premises, the Building or the Project. However, notwithstanding the foregoing, Landlord covenants that the base Building electrical, heating, ventilation and air conditioning and plumbing systems located in the Premises shall be in good working order as of the date Landlord delivers possession of the Premises to Tenant with the Initial Landlord Alterations (as defined in **Exhibit D** attached hereto) Substantially Complete (the "Delivery Date"). Except to the extent caused by the acts or omissions of Tenant or any Tenant Entities or by any alterations or improvements performed by or on behalf of Tenant (except for the Landlord Work), if such systems are not in good working order as of the date that Landlord Substantially Completes the Second Phase Landlord Alterations (as defined in Exhibit D attached hereto) and Tenant provides Landlord with notice of the same within thirty (30) days following the such date, Landlord shall be responsible for repairing or restoring the same. Tenant and Landlord acknowledge and agree that the only portion of the Landlord Work required to be completed by Landlord by the Delivery Date (prior to the Commencement Date) shall be the Initial Landlord Alterations. Landlord shall use good faith efforts to give Tenant at least thirty (30) days' prior written notice of the anticipated Delivery Date. Tenant's acceptance of the Premises shall be subject to Landlord's obligation to correct portions of the Initial Landlord Alterations as set forth on a construction punch list prepared by Landlord and Tenant in accordance with the terms hereof. Within fifteen (15) days after the Initial Landlord Alterations are Substantially Complete, Landlord and Tenant shall together conduct an inspection of the Premises and prepare a "punch list" setting forth any portions of the Initial Landlord Alterations that are not in conformity with the Initial Landlord Alterations as required by the terms of this Lease. Notwithstanding the foregoing, at the request of Landlord, such construction punch list shall be mutually prepared by Landlord and Tenant prior to the date on which Tenant first begins to move its furniture, equipment or other personal property into the Premises. Landlord, as part of the Initial Landlord Alterations, shall use good faith efforts to correct all such items within a reasonable time following the completion of the punch list. Landlord and Tenant shall coordinate in good faith so as to minimize interference with each other during Landlord's completion of any punch list items and Tenant's performance of the Initial Alterations.

If the Delivery Date has not occurred on or before the Outside Completion Date (defined below) due to Landlord's failure to timely complete the Initial Landlord Alterations for any reason (including an event of Force Majeure, but subject to Tenant Delay as provided below), Tenant shall be entitled to a rent abatement following the Rent Commencement Date in an amount equal to the per diem holdover rent, if any, that Tenant is required to pay (and actually pays) under the Existing Lease (defined below) for every day in the period beginning on the Outside Completion Date and ending on the Delivery Date (not to exceed an amount equal to $112,969.17 per month, which abatement shall be credited toward rent hereunder next due and payable). Tenant shall provide Landlord written notice and satisfactory evidence of the exact amount of such payments made within 30 days after any such payment to its landlord under the Existing Lease. For purposes hereof, the "per diem holdover rent" shall mean that portion of rent (calculated on a per diem basis) that Tenant pays under the Existing Lease that is in excess of and in addition to the rent that Tenant was required to pay for the last month of the lease term under the Existing Lease (calculated on a per diem basis). For example, if Tenant's rent for the last month of the lease term of the Existing Lease is $400.00 per day and, as a result of a holdover by Tenant under the Existing Lease, such rent increases to $600.00 per day, the abatement of Base Rent Tenant is entitled to receive hereunder shall equal $200.00 per day. The "Outside Completion Date" shall mean May 31, 2008. Landlord and Tenant acknowledge and agree that the determination of the Delivery Date shall take into consideration the effect of any Tenant Delays by Tenant. As used herein, the "Existing Lease" shall mean that certain Office Lease dated as of September 23, 1999, as same may have been amended, by and between Tenant, as tenant, and 1400 Fashion Island LLC (as successor in interest to Cornerstone Suburban Office, L.P.), as landlord, relating to certain

premises in the building commonly known as Century Centre II located at 1400 Fashion Island Blvd., San Mateo, California. Tenant represents and warrants that Tenant has previously delivered the true and correct copy of the Existing Lease to Landlord.

In addition, if the Delivery Date has not occurred on or before the Outside Completion Date due to Landlord's failure to complete the Initial Landlord Alterations for any reason (including an event of Force Majeure, but subject to any Tenant Delays), the Rent Commencement Date shall be delayed by one day for each day beginning on the Outside Completion Date and ending on the Delivery Date (and the Termination Date shall be similarly extended).

If the Delivery Date has not occurred on or before December 1, 2008 (the "Delivery Deadline"), Tenant, as its sole remedy, may terminate this Lease by giving Landlord written notice of termination on or before the earlier to occur of: (i) December 15, 2008; and (ii) the Delivery Date. In such event, this Lease shall be deemed null and void and of no further force and effect and Landlord shall promptly refund any prepaid rent and Security Deposit previously advanced by Tenant under this Lease except to the extent required to cure any then uncured default by Tenant and, so long as there is no uncured default(s) under the Work Letter, the parties hereto shall have no further responsibilities or obligations to each other with respect to this Lease. Landlord and Tenant acknowledge and agree that the determination of the Delivery Deadline shall take into consideration the effect of any Tenant Delays.

C. Notwithstanding the foregoing, provided that this Lease has been fully executed by all parties and Tenant has delivered all prepaid rental, the Security Deposit and the insurance certificates required hereunder, Tenant, at Tenant's sole risk, shall be permitted to access the Premises prior to the Delivery Date solely for purposes of planning or designing the Initial Alterations pursuant to **Exhibit D**. Tenant shall also have the right to access the Premises after the Delivery Date for purposes of performing the Tenant Work and to use and occupy the Premises for purposes of conducting its business therein. Such possession prior to the Commencement Date shall be subject to all of the terms and conditions of this Lease, except that Tenant shall not be required to pay Base Rent or Tenant's Share of Expenses and Taxes with respect to the period of time prior to the Rent Commencement Date during which Tenant occupies the Premises for design, construction or business purposes. Landlord may withdraw such permission to enter the Premises prior to the Commencement Date at any time that Landlord reasonably determines that such entry by Tenant is causing a dangerous situation for Landlord, Tenant or their respective contractors or employees, or if Landlord reasonably determines that such entry by Tenant is unreasonably hampering or otherwise preventing Landlord from proceeding with the timely completion of the Landlord Work described in **Exhibit D**.

4. Rent.

A. Payments. As consideration for this Lease, Tenant shall pay Landlord, without any notice, setoff or deduction (except as otherwise expressly set forth herein), the total amount of Base Rent and Additional Rent due for the Term. "Additional Rent" means all sums (exclusive of Base Rent) that Tenant is required to pay Landlord under this Lease. Additional Rent and Base Rent are sometimes collectively referred herein to as "Rent". Tenant shall pay and be liable for all rental, sales and use taxes (but excluding income taxes), if any, imposed upon or measured by Rent under applicable Law. Base Rent and recurring monthly charges of Additional Rent shall be due and payable in advance commencing on the Rent Commencement Date and continuing on the first day of each calendar month thereafter without notice or demand, provided that the installment of Base Rent and Tenant's Monthly Expense and Tax Payment (defined in Section 1.D. above) for the first full calendar month of the Term shall be payable upon the Commencement Date (it being agreed that if the Commencement Date occurs prior to the Rent Commencement Date, Tenant shall deliver the first month's Base Rent and Tenant's Monthly Expense and Tax Payment simultaneously with Tenant's written notice to Landlord that the Initial Alterations are substantially complete). All other items of Rent shall be due and payable by Tenant on or before twenty-one (21) days after billing by Landlord. All payments of Rent shall be by good and sufficient check or by other means (such as automatic debit or electronic transfer) acceptable to Landlord. If

Tenant fails to pay any item or installment of Rent when due, Tenant shall pay Landlord an administration fee equal to 5% of the past due Rent; provided, however, that the foregoing late charge shall not apply to the first two (2) such late payments in any twelve (12) month period of the Term of this Lease or any extension thereto. If the Rent Commencement Date occurs on a day other than the first day of a calendar month or the Term terminates on a day other than the last day of a calendar month, the monthly Base Rent and Tenant's Share of Expenses (defined in **Exhibit E**) and Taxes (defined in **Exhibit E**) for the month shall be prorated based on the number of days in such calendar month. Landlord's acceptance of less than the correct amount of Rent shall be considered a payment on account of the earliest Rent due. No endorsement or statement on a check or letter accompanying a check or payment shall be considered an accord and satisfaction, and either party may accept the check or payment without prejudice to that party's right to recover the balance or pursue other available remedies. Tenant's covenant to pay Rent is independent of every other covenant in this Lease, except as otherwise expressly provided herein.

B. Payment of Tenant's Share of Expenses and Taxes. Tenant shall pay Tenant's Share of the total amount of Expenses and Taxes for each calendar year during the Term in accordance with **Exhibit E** hereto.

C. Abatement. Notwithstanding anything in this Lease to the contrary, so long as Tenant is not then in default beyond any applicable notice and cure periods under this Lease, Tenant shall be entitled to an abatement of monthly Base Rent and Tenant's Share of Expenses and Taxes with respect to the Premises, as originally described in this Lease, with respect to the 4th, 8th, 12 th and 85th full calendar months of the Term (collectively, the "Abated Rent"). Only Base Rent and Tenant's Share of Expenses and Taxes shall be abated pursuant to this Section, as more particularly described herein, and all other rent and other costs and charges specified in this Lease shall remain as due and payable pursuant to the provisions of this Lease.

5. Compliance with Laws; Use.

The Premises shall be used only for the Permitted Use and for no other use whatsoever. Tenant shall not use or permit the use of the Premises for any purpose which is illegal, dangerous to persons or property or which, in Landlord's reasonable opinion, unreasonably disturbs any other tenants of the Building or the Project or interferes with the operation of the Building or the Project. Tenant shall comply with all Laws, including the Americans with Disabilities Act, regarding the operation of Tenant's business and the use, condition, configuration and occupancy of the Premises. In addition, Tenant shall, at its sole cost and expense, promptly comply with any Laws that relate to the "Base Building" (defined below), but only to the extent such obligations are triggered by Tenant's use of the Premises, other than for general office use, or Alterations or improvements in the Premises performed or requested by Tenant. Except to the extent that (i) Tenant is responsible for complying with Laws that relate to the Base Building as provided above, or (ii) changes to the Base Building are required due to the negligent or willful acts or omissions of Tenant, its agents, employees or contractors (other than the mere discovery of the violation), Landlord shall be responsible for correcting violations of any Laws existing as of the date of this Lease and Laws that first come into effect after the date of this Lease with respect to the Base Building located in the Building, provided that the cost of such compliance incurred after the Commencement Date shall be included in Expenses to the extent permitted in **Exhibit E** attached hereto. Tenant shall promptly provide Landlord with copies of any notices it receives regarding an alleged violation of Law; provided, however, if Tenant receives any notice of violation of Laws with respect to the Base Building, Tenant shall, within five (5) business days after receipt thereof, provide Landlord with copies of any such notices it receives with respect to such violation. Notwithstanding the foregoing, Landlord shall have the right to contest any alleged violation in good faith, including, without limitation, the right to apply for and obtain a waiver or deferment of compliance, the right to assert any and all defenses allowed by Law and the right to appeal any decisions, judgments or rulings to the fullest extent permitted by Law. Landlord, after the exhaustion of any and all rights to appeal or contest, will make all repairs, additions, alterations or improvements necessary to comply with the terms of any final order or judgment. "Base Building" shall include the structural portions of the Building, the public restrooms and the Building mechanical, electrical and plumbing systems and equipment located in the internal core of the Building on the floor or floors on which the Premises are located. Tenant, within ten (10) days after receipt, shall

provide Landlord with copies of any notices it receives regarding a violation or alleged violation of any Laws. Tenant shall comply with the rules and regulations of the Building attached as **Exhibit B** and such other reasonable rules and regulations adopted by Landlord from time to time and provided to Tenant in writing. Tenant shall also cause its agents, contractors, subcontractors, employees, customers, invitees and subtenants (each a "Tenant Entity" and collectively, the "Tenant Entities") to comply with all rules and regulations. Landlord shall not discriminate against Tenant in Landlord's adoption and enforcement of the rules and regulations.

Tenant shall not be liable for any cost or expense related to removal, cleaning, abatement or remediation of Hazardous Materials (as hereafter defined) existing in, on, under or above the Premises Property or Building prior to the date Landlord tenders possession of the Premises to Tenant, including, without limitation, Hazardous Materials in the ground water or soil, except to the extent that any of the foregoing results directly or indirectly from any act or omission by Tenant or any Tenant Entity, or if Tenant has actual knowledge of any existing Hazardous Material, any Hazardous Materials disturbed, distributed or exacerbated (as opposed to the mere discovery of an existing Hazardous Material) by Tenant or any Tenant Entity. To the extent that Tenant or any Tenant Entity discover or exacerbates an existing Hazardous Material, Tenant shall provide prompt written notice of such exacerbation to Landlord. As used herein, "Hazardous Materials" means any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance subject to regulation by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances ("Environmental Laws").

As of the date hereof, Landlord represents and warrants that it has not received written notice from any governmental agencies that the Building is in violation of any Environmental Laws. Further, to Landlord's actual knowledge, there are no Hazardous Materials in, at, under or about the Building or Property other than small quantities of Hazardous Materials to the extent customary in similar office buildings and necessary for the normal use, operating and maintenance of the Building and except to the extent set forth in that certain Phase I Environmental Site Assessment, dated May 4, 2005, prepared by LFR Levine-Fricke (the "Phase I Report"). For purposes of this Section, "Landlord's actual knowledge" shall be deemed to mean and limited to the current actual knowledge of Mike L. Sanford, and not any implied, imputed, or constructive knowledge of said individual or of Landlord or any parties related to or comprising Landlord and without any independent investigation or inquiry having been made or any implied duty to investigate or make any inquiries (other than review of the Phase I Report); it being understood and agreed that such individual shall have no personal liability in any manner whatsoever hereunder or otherwise related to the transactions contemplated hereby. Landlord represents that Mike L. Sanford is the person employed by Landlord with the best knowledge with respect to the foregoing representation.

To the extent Landlord removes asbestos containing materials in connection with performing the Landlord Work, Landlord shall, at Landlord's sole cost and expense, comply with all applicable Laws, in effect and as applied as of the date Landlord performs such Landlord Work, with respect to such removal (the "Required ACM Remediation"). Landlord shall have the right to contest any alleged Required ACM Remediation in good faith, including, without limitation, the right to apply for and obtain a waiver or deferment of compliance, the right to assert any and all defenses allowed by Law and the right to appeal any decisions, judgments or rulings to the fullest extent permitted by Law. Landlord shall deliver a copy of the O&M Plan for the Building to Tenant on or before May 15, 2008. The O&M Plan shall identify the location of any known asbestos containing materials remaining in the Building and shall set forth any required procedures with respect to work in the affected areas.

Landlord, at its sole cost and expense, shall be responsible for correcting any violations of Laws with respect to the Landlord Work. Notwithstanding the foregoing, Landlord shall have the right to contest any alleged violation in good faith, including, without limitation, the right to apply for and obtain a waiver or

deferment of compliance, the right to assert any and all defenses allowed by law and the right to appeal any decisions, judgments or rulings to the fullest extent permitted by law. Landlord, after the exhaustion of any and all rights to appeal or contest, will make all repairs, additions, alterations or improvements necessary to comply with the terms of any final order or judgment. Notwithstanding the foregoing, Tenant, not Landlord, shall be responsible for the correction of any violations that arise out of or in connection with any claims brought under any provision of the Americans With Disabilities Act other than Title III thereof, the specific nature of Tenant's business in the Premises (other than general office use), the acts or omissions of Tenant or any Tenant Entities, Tenant's arrangement of any furniture, equipment or other property in the Premises, any repairs, alterations, additions or improvements performed by or on behalf of Tenant (other than the Landlord Work) and any design or configuration of the Premises specifically requested by Tenant after being informed in writing that such design or configuration may not be in strict compliance with Laws.

6. Security Deposit.

The Security Deposit, in the amount set forth in Section 1.H. above, shall be delivered to Landlord upon the execution of this Lease by Tenant and shall be held by Landlord without liability for interest (unless required by Law) as security for the performance of Tenant's obligations. The Security Deposit is not an advance payment of Rent or a measure of Tenant's liability for damages. Landlord may, from time to time, without prejudice to any other remedy, use all or a portion of the Security Deposit to satisfy Rent which remains unpaid after notice and the expiration of any applicable cure period or to cure any other default by Tenant which remains uncured after notice and the expiration of any applicable cure period. If Landlord uses the Security Deposit, Tenant shall on demand restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, Landlord shall return any unapplied balance of the Security Deposit to Tenant within thirty (30) days after Tenant surrenders the Premises to Landlord in accordance with this Lease. In addition to any other deductions Landlord is entitled to make pursuant to the terms hereof, Landlord shall have the right to make a good faith estimate of any unreconciled Expenses and/or Taxes as of the Termination Date and to deduct any anticipated shortfall from the Security Deposit. Such estimate shall be final and binding upon Tenant. If Landlord transfers its interest in the Premises, Landlord may assign the Security Deposit to the transferee and, following the assignment, Landlord shall have no further liability for the return of the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its other accounts. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, or any similar or successor Laws now or hereinafter in effect.

7. Services to be Furnished by Landlord.

A. Landlord agrees to furnish Tenant with the following services: (1) water service for use in the lavatories on each floor on which the Premises are located, twenty-four (24) hours per day, seven (7) days per week, subject to Force Majeure; (2) heat and air conditioning in season during Normal Business Hours, at such temperatures and in such amounts that satisfy the HVAC Operating Criteria (as defined below); provided that (i) Tenant, upon such advance notice as is reasonably required by Landlord (but not to exceed twenty-four (24) hours), shall have the right to receive HVAC service during hours other than Normal Business Hours and (ii) Tenant shall pay Landlord the standard charge for the additional service as reasonably determined by Landlord from time to time, which standard charge shall reflect Landlord's actual cost (including depreciation) without markup; (3) maintenance and repair of the Property as described in Section 9.B.; (4) janitor service on Business Days. If Tenant's use, floor covering or other improvements require special services in excess of the standard services for the Building, Tenant shall pay the additional cost attributable to the special services; (5) elevator service; (6) electricity to the Premises for general office use, in accordance with and subject to the terms and conditions in Section 10; and (7) such other services as Landlord reasonably determines are necessary or appropriate for the Building, the Property or the Project. The "HVAC Operating Criteria" shall be not less than the following: (i) cooling season indoor temperatures are not in excess of 73°F-79°F when outdoor temperatures are 91°F ambient, and (ii) heating season indoor temperatures are between 68°F-75°F when outdoor temperatures are at 50°F ambient.

B. Landlord's failure to furnish, or any interruption or termination of, services due to the application of Laws, the failure of any equipment, the performance of repairs, improvements or alterations, or the occurrence of any event or cause beyond the reasonable control of Landlord (a "Service Failure") shall not render Landlord liable to Tenant, constitute a constructive eviction of Tenant, give rise to an abatement of Rent, nor relieve Tenant from the obligation to fulfill any covenant or agreement. However, notwithstanding the foregoing, if the Premises, or a material portion of the Premises, are made untenantable for a period in excess of five (5) consecutive business days due to a Service Failure, then Tenant, as its sole remedy, shall be entitled to receive an abatement of Rent payable hereunder during the period beginning on the sixth (6^{th}) consecutive business day of the Service Failure and ending on the day the interrupted service has been restored. If the entire Premises have not been rendered untenantable by the Service Failure, the amount of abatement shall be equitably prorated. In no event shall Landlord be liable to Tenant for any loss or damage, including the theft of Tenant's Property (defined in Section 15), arising out of or in connection with the failure of any security services, personnel or equipment, except to the extent of any loss or damage arising due to any gross negligence or willful misconduct of Landlord or its agents, employees or contractors.

8. Premises Improvements.

All improvements to the Premises (collectively, "Premises Improvements") shall be owned by Landlord and shall remain upon the Premises without compensation to Tenant; provided, however, that Tenant shall retain title to all furniture, equipment and other moveable personal property (including the personal property listed on **Exhibit I** attached hereto) brought onto the Premises by or on behalf of Tenant and shall have the right to remove the same from the Premises during the Term (subject to Tenant's obligation to repair any damage required by such removal). However, Landlord, by written notice to Tenant within forty-five (45) days prior to the Termination Date, may require Tenant to remove, at Tenant's expense: (1) Cable (defined in Section 9.A) installed by or for the exclusive benefit of Tenant and located in the Premises or other portions of the Building; and (2) subject to the terms of this Section, any Premises Improvements that are performed by or for the benefit of Tenant that Tenant is required to remove pursuant to notice given by Landlord to Tenant at least ten (10) days prior to expiration of the Term (collectively referred to as "Required Removables"). Without limitation, it is agreed that Required Removables include internal stairways, raised floors, personal baths and showers, vaults, rolling file systems and structural alterations and modifications of any type, except as otherwise approved in writing by Landlord. The Required Removables designated by Landlord shall be removed by Tenant before the Termination Date. Tenant shall repair damage caused by the installation or removal of Required Removables. If Tenant fails to remove any Required Removables or perform related repairs in a timely manner, Landlord, at Tenant's expense, may remove and dispose of the Required Removables and perform the required repairs. Tenant, within ten (10) days after receipt of an invoice, shall reimburse Landlord for the reasonable costs incurred by Landlord. Tenant, at the time it requests approval for a proposed Alteration, including any Initial Alterations, as such term is defined in the Work Letter attached as **Exhibit D**, may request in writing (as more particularly described below) that Landlord advise Tenant whether the Alteration, including any Initial Alterations, or any portion thereof, is a Required Removable. So long as Tenant's written request for consent for a proposed alteration or improvements contains the following statement (or a substantially similar statement) in large, bold and capped font (or is otherwise reasonably conspicuous to the reader) "**PURSUANT TO SECTION 8 OF THE LEASE, IF LANDLORD CONSENTS TO THE SUBJECT ALTERATION, LANDLORD SHALL NOTIFY TENANT IN WRITING WHETHER OR NOT LANDLORD WILL REQUIRE SUCH ALTERATION TO BE REMOVED AT THE EXPIRATION OR EARLIER TERMINATION OF THE LEASE. LANDLORD'S FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) DAYS SHALL BE DEEMED LANDLORD'**", at the time Landlord gives its consent for any Alterations, then, Tenant shall also be notified whether or not such Alteration is a Required Removable. Landlord shall respond to Tenant's request within ten (10) days after receipt of Tenant's request. If Tenant's written notice complies with the foregoing and if Landlord fails to so notify Tenant whether Tenant shall be required to remove the subject Alterations at the expiration or earlier termination of this Lease, it shall be deemed that Landlord shall not require the removal of the subject Alterations. Landlord hereby agrees that Tenant shall not be required to remove any portion of the

Initial Alterations to the extent such Initial Alterations or portions thereof constitute standard and customary Class A general office improvements ("Standard Office Improvements"); provided, however that Tenant hereby acknowledges and agrees that (i) Tenant shall be required to remove all Cable, and (ii) any Alterations, including, without limitation, any of the Initial Alterations, that are not, in Landlord's reasonable discretion, Standard Office Improvements, may be designated by Landlord to be a Required Removable in accordance with the procedure set forth in this paragraph.

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9. Repairs and Alterations.

A. Tenant's Repair Obligations. Tenant shall, at its sole cost and expense, promptly perform all maintenance and repairs to the Premises that are not Landlord's express responsibility under this Lease, and shall keep the Premises in good condition and repair, reasonable wear and tear and damage by fire or other casualty excepted. Tenant's repair obligations include, without limitation, repairs to: (1) floor covering; (2) interior partitions; (3) doors; (4) the interior side of demising walls; (5) electronic, phone and data cabling and related equipment (collectively, "Cable") that is installed by or for the exclusive benefit of Tenant and located in the Premises or other portions of the Building; (6) supplemental air conditioning units, private showers and kitchens, including hot water heaters, plumbing, and similar facilities located exclusively within the Premises and/or serving Tenant exclusively; and (7) Alterations performed by contractors retained by Tenant, including any related HVAC balancing. All work shall be performed in accordance with the rules and procedures described in Section 9.C. below. If Tenant fails to make any repairs to the Premises for more than ten (10) days after written notice from Landlord (although notice shall not be required if there is an emergency), Landlord may make the repairs, and Tenant shall pay the reasonable cost of the repairs to Landlord within ten (10) days after receipt of an invoice and reasonable supporting documentation, together with an administrative charge in an amount equal to 10% of the cost of the repairs.

B. Landlord's Repair Obligations. Landlord shall keep and maintain in good repair and working order and make repairs to and perform maintenance upon: (1) structural elements of the Building (including, without limitation, foundations); (2) mechanical (including HVAC), electrical, plumbing and fire/life safety systems serving the Building; (3) Common Areas (including, without limitation, all driveways, parking areas and landscape areas of the Project); (4) the roof of the Building; (5) exterior areas and windows of the Building; and (6) elevators serving the Building. Landlord shall promptly make repairs (considering the nature and urgency of the repair) for which Landlord is responsible. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932, and Sections 1941 and 1942 of the California Civil Code, or any similar or successor Laws now or hereinafter in effect.

C. Alterations. Tenant shall not make alterations, additions or improvements to the Premises or install any Cable in the Premises or other portions of the Building or the Project (collectively referred to as "Alterations") without first obtaining the written consent of Landlord in each instance, which consent shall not be unreasonable withheld, conditioned or delayed. Notwithstanding anything herein to the contrary, Tenant shall not be required to obtain Landlord's prior written consent to any Alteration that satisfies all of the following criteria (a "Cosmetic Alteration"): (1) is not visible from the exterior of the Premises or Building; (2) will not affect the systems or structure of the Building or the Project; and (3) costs less than $50,000.00 per floor during the Term of this Lease or $500,000.00 in the aggregate during the Term of this Lease. However, even though consent is not required, (a) the performance of Cosmetic Alterations shall be subject to all the other provisions of this Section 9.C, and (b) if the Cosmetic Alteration involves the relocation of walls or otherwise changes the layout or configuration of the Premises, Tenant shall provide prior written notice to Landlord of such Cosmetic Alterations and shall provide as-built drawings to Landlord within thirty (30) days following completion of such work. Prior to starting work (other than Cosmetic Alterations), Tenant shall furnish Landlord with plans and specifications reasonably acceptable to Landlord; names of contractors reasonably acceptable to Landlord (provided that Landlord may designate specific contractors with respect to Building systems); copies of contracts; necessary permits and approvals; evidence of contractor's and subcontractor's insurance in amounts reasonably required by Landlord; and any security for performance that is reasonably required by Landlord. Changes to the plans and

specifications (other than Cosmetic Alterations) must also be submitted to Landlord for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. Alterations shall be constructed in a good and workmanlike manner using materials of a quality that is at least equal to the quality reasonably designated by Landlord as the minimum standard for the Building (provided that, except to the extent required by applicable Laws, such standard shall not exceed the standard for Initial Alterations as approved by Landlord in accordance with the terms hereof). Landlord may designate reasonable rules, regulations and procedures for the performance of work in the Building and the Project which are not inconsistent with the foregoing provisions of this Section 9.C, and, to the extent reasonably necessary to avoid disruption to the occupants of the Building and the Project, shall have the right to reasonably designate the time when Alterations may be performed. Tenant shall reimburse Landlord within ten (10) days after receipt of an invoice accompanied by reasonable supporting documentation for actual reasonable out-of-pocket sums paid by Landlord for third party examination of Tenant's plans for any Alterations. In addition, within ten (10) days after receipt of an invoice from Landlord, Tenant shall pay Landlord a fee for Landlord's oversight and coordination of any non-Cosmetic Alterations equal to 2.5% of the cost of the Alterations. For purposes of calculating the foregoing fee, the "cost of the Alterations" shall exclude the cost of purchasing any specialized equipment (i.e., above standard office equipment) to be installed in the Premises, unless such equipment will affect the Building's systems or structure (in which case, the cost of such equipment shall be included for purposes of calculating Landlord's construction supervision fee). Upon completion, Tenant shall furnish "as-built" plans (except for Cosmetic Alterations), completion affidavits, full and final waivers of lien in recordable form, and receipted bills covering all labor and materials. Tenant shall assure that the Alterations comply with all insurance requirements and Laws. Landlord's approval of an Alteration shall not be a representation by Landlord that the Alteration complies with applicable Laws or will be adequate for Tenant's use.

10. Use of Electrical Services by Tenant.

A. Electricity used by Tenant in the Premises shall, at Landlord's option, be paid for by Tenant either: (1) through inclusion in Expenses (except as provided in Section 10.B. for excess usage); (2) by a separate charge payable by Tenant to Landlord within thirty (30) days after billing by Landlord accompanied by reasonable supporting documentation; or (3) by separate charge billed by the applicable utility company and payable directly by Tenant. Electrical service to the Premises may be furnished by one or more companies providing electrical generation, transmission and distribution services, and the cost of electricity may consist of several different components or separate charges for such services, such as generation, distribution and stranded cost charges.

B. Tenant's use of electrical service shall not exceed, either in voltage, rated capacity, use beyond Normal Business Hours or overall load, that which Landlord deems to be standard for the Building. If Tenant requests permission to consume excess electrical service, Landlord may refuse to consent or may condition consent upon conditions that Landlord reasonably elects (including, without limitation, the installation of utility service upgrades, meters, submeters, air handlers or cooling units), and the additional usage (to the extent permitted by Law), installation and maintenance costs shall be paid by Tenant. If Landlord reasonably believes that Tenant's use of electrical service is above Building standard, Landlord shall have the right to separately meter electrical usage for the Premises, at Tenant's sole cost and expense, and to measure electrical usage by survey or other commonly accepted methods.

11. Entry by Landlord.

Landlord, its agents, contractors and representatives may enter the Premises to inspect or show the Premises, to clean and make repairs, alterations or additions to the Premises, and to conduct or facilitate repairs, alterations or additions to any portion of the Building or the Project, including other tenants' premises; provided, however, that Landlord shall not enter the Premises to show the Premises to perspective tenants except during the last six (6) months of the Term or after the occurrence and during the continuation of any default. Notwithstanding the foregoing, except (i) to the extent requested by Tenant, (ii) in connection with scheduled

maintenance programs, and/or (iii) in the event of an emergency, Landlord shall provide to Tenant at least 24 hours' prior written notice (it being agreed that, for purposes of the foregoing, e-mail and facsimile transmission shall constitute written notice) before Landlord enters the Premises. Except in emergencies or to provide janitorial or security services, such entry shall be during Normal Business Hours. Except in emergencies, Tenant shall be entitled (and Landlord shall reasonably coordinate with Tenant) to have any third parties (such as prospective lenders, purchasers or tenants) so entering the Premises execute Tenant's standard confidentiality agreement in the form attached hereto as **Exhibit G** prior to entering the Premises (other than the reception area thereof), provided Tenant makes such employee and confidentiality agreement available at the time Landlord or such other party desires to enter the Premises as set forth in such prior notice to Tenant, and further provided that such confidentiality agreement is in a standard form that Tenant requires all non-employee entrants to the Premises to execute prior to entry to the Premises and is on commercially reasonable terms. The provisions of Section 39 below shall apply to any Confidential Information to which Landlord or Landlord's employees may have access during any entry to the Premises hereunder. If Tenant requests maintenance, repairs or any special services in the Premises (or if Landlord requires access to the Premises for maintenance or repairs by a third party contractor or third party agent of Landlord), Tenant may request in writing concurrently with its request (or in the event of Landlord's proposed access for repairs and maintenance, within 12 hours of Landlord's notice to Tenant) that any third party contractor or third party agent of Landlord that enters the Premises in connection with such maintenance, repairs or services sign Tenant's standard confidentiality agreement as provided above. Upon such a Tenant request, or in connection with janitorial or other scheduled maintenance at the Premises, Landlord shall provide Tenant with contact information for the applicable agent or contractor so that Tenant may pursue such an agreement, and in all events except in emergencies, Landlord shall not allow such third party access to the Premises until Tenant confirms to Landlord that it has obtained such agreement or waived the requirement for such agreement. If Tenant requires a confidentiality agreement from any such third party, Landlord shall not be responsible for any delays that occur as a result of such requirement in Landlord's response to Tenant's request for repairs or services. Nothing in the foregoing shall prohibit Landlord from accessing the Premises with a third party contractor or third party agent without such an agreement in an event of emergency or, following a reasonable period in which Landlord allows Tenant to seek such an agreement, to the extent reasonably necessary to perform maintenance and repairs to the Premises and the Building.

If reasonably necessary for the protection and safety of Tenant and its employees, Landlord shall have the right to temporarily close all or a portion of the Premises to perform repairs, alterations and additions. Entry by Landlord shall not constitute constructive eviction or entitle Tenant to an abatement or reduction of Rent. Except in emergency situations, as determined by Landlord, Landlord shall exercise reasonable efforts to perform any entry into the Premises in a manner that is reasonably designed to minimize interference with the operation of Tenant's business in the Premises.

Notwithstanding the foregoing, Tenant, at its own expense, may designate the data closets located in the Premises as a "Secured Area" and provide its own locks to such area ("Secured Area"). Tenant need not furnish Landlord with a key, but upon the Termination Date or earlier expiration or termination of Tenant's right to possession, Tenant shall surrender all such keys to Landlord. If Landlord must gain access to a Secured Area in a non-emergency situation (i.e., to perform Landlord's maintenance and repair obligations within the Premises), Landlord shall contact Tenant in writing or orally, and Landlord and Tenant shall arrange a mutually agreed upon time for Landlord to have such access, no less than twenty-four (24) hours thereafter. Landlord shall comply with all reasonable security measures pertaining to the Secured Area. If Landlord determines in its sole discretion that an emergency in the Building or the Premises, including, without limitation, a suspected fire or flood, requires Landlord to gain access to the Secured Area, Tenant hereby authorizes Landlord to forcibly enter the Secured Area. In such event, Landlord shall have no liability whatsoever to Tenant, and Tenant shall pay all reasonable expenses (including any deductible) incurred by Landlord in repairing or reconstructing any entrance, corridor, door or other portions of the Premises damaged as a result of a forcible entry by Landlord; provided, however, that Landlord shall apply any insurance proceeds Landlord actually receives toward the cost of such repair and reconstruction. Landlord shall have no obligation to provide any maintenance or janitorial service in the Secured Area.

12. Assignment and Subletting.

A. Tenant shall not assign, sublease, transfer or encumber any interest in this Lease or allow any third party to use any portion of the Premises (collectively or individually, a "Transfer") without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed if Landlord does not elect to exercise its termination rights under Section 12.B below. Without limitation, it is agreed that Landlord's consent shall not be considered unreasonably withheld if: (1) upon giving appropriate weight, if applicable, to the fact that Tenant will nevertheless remain liable under this Lease (to the extent permitted by applicable Law), the proposed assignee or subtenant does not possess adequate financial capability to assure the performance of the Tenant obligations as and when due or required; (2) the proposed transferee's business is not suitable for the Building or the Project, or would result in a violation of any other tenant's exclusive rights, provided that Landlord has delivered written notice to Tenant of such rights (not to exceed seven (7) competitor names); (3) the proposed transferee is a governmental agency or the proposed transferee is an occupant of the Building, the Property or the Project (provided, however, that Landlord will not withhold its consent solely because the proposed subtenant or assignee is an occupant of the Building if Landlord does not have space available for lease in the Building that is comparable to the space Tenant desires to sublet or assign. Landlord shall be deemed to have comparable space if it has, or will have, space available on any floor of the Building that is approximately the same size as the space Tenant desires to sublet or assign within 6 months of the proposed commencement of the proposed sublease or assignment); (4) Tenant is in default after the expiration of the notice and cure periods in this Lease; or (5) any portion of the Premises, the Building or the Project would likely become subject to additional or different Laws as a consequence of the proposed Transfer and the proposed transferee or Tenant is unwilling to pay all costs of complying with such Law(s). Tenant shall not be entitled to receive any consequential, special or indirect damages based upon a claim that Landlord unreasonably withheld its consent to a proposed Transfer. Instead, any such claim of Tenant shall be limited to the foreseeable, direct and actual damages incurred by Tenant. Tenant hereby waives the provisions of Section 1995.310 of the California Civil Code, or any similar or successor Laws, now or hereinafter in effect, and all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable Laws, on behalf of the proposed transferee. Any attempted Transfer in violation of this Section shall, at Landlord's option, be void. Consent by Landlord to one or more Transfer(s) shall not operate as a waiver of Landlord's rights to approve any subsequent Transfers. In no event shall any Transfer or Permitted Transfer (as defined below) release or relieve Tenant from any obligation under this Lease.

B. As part of its request for Landlord's consent to a Transfer, Tenant shall provide Landlord with financial statements for the proposed transferee, a complete copy of the proposed assignment, sublease and other contractual documents and such other information as Landlord may reasonably request. Landlord shall, by written notice to Tenant within twenty-one (21) days of its receipt of the required information and documentation, either: (1) consent to the Transfer by the execution of a consent agreement in a form reasonably designated by Landlord or reasonably refuse to consent to the Transfer in writing; or (2) exercise its right to terminate this Lease, if Tenant is proposing to assign the Lease, or with respect to the portion of the Premises that Tenant is proposing to sublet if the proposed sublease (if approved) would result in 50% or more of the Tenant's Premises being subject to sublease or if the proposed sublease term, with or without renewal options relating thereto, is for more than 50% of the then remaining Term of this Lease. Any such termination shall be effective on the proposed effective date of the Transfer for which Tenant requested consent. Tenant shall reimburse Landlord for Landlord's actual, reasonable, out-of-pocket costs and expenses (including reasonable attorney's fees) (the "Review Reimbursement").

C. Tenant shall pay Landlord 50% of all rent and other consideration which Tenant receives as a result of a Transfer that is in excess of the Rent payable to Landlord for the portion of the Premises and Term covered by the Transfer. Tenant shall pay Landlord for Landlord's share of any excess within twenty-one (21) days after Tenant's receipt of such excess consideration. Tenant may deduct from the excess the following reasonable and customary expenses directly incurred by Tenant attributable to the Transfer (other than Landlord's review fee):

brokerage fees, legal fees and construction costs directly incurred by Tenant attributable to the Transfer, amortized on a straight-line basis, over the entire period for which Tenant is to receive excess Rent. If Tenant is in default (defined in Section 19.A. below) beyond applicable notice and cure periods, Landlord may require that all sublease payments be made directly to Landlord.

D. If Tenant is a corporation, limited liability company, partnership, or similar entity, and if the entity which owns or controls a majority of the voting shares/rights at any time changes for any reason (including but not limited to a merger, consolidation or reorganization), such change of ownership or control shall constitute a Transfer. The foregoing shall not apply so long as Tenant is an entity whose outstanding stock is listed on a recognized security exchange, or if at least 80% of its voting stock is owned by another entity, the voting stock of which is so listed.

E. So long as Tenant is not entering into the Permitted Transfer for the purpose of avoiding or otherwise circumventing the remaining terms of this Section 12, Tenant may assign its entire interest under this Lease, without the consent of Landlord, to (a) an affiliate, subsidiary, or parent of Tenant, or a corporation, partnership or other legal entity wholly owned by Tenant (collectively, an "Affiliated Party"), or (b) a successor to Tenant by purchase, merger, consolidation or reorganization, provided that all of the following conditions are satisfied (each such transfer a "Permitted Transfer" and any such assignee or sublessee of a Permitted Transfer, a "Permitted Transferee"): (i) Tenant is not in default under this Lease; (ii) the Permitted Use does not allow the Premises to be used for retail purposes; (iii) Tenant shall give Landlord written notice at least twenty-one (21) days prior to the effective date of the proposed Permitted Transfer (provided, however, that if Tenant is prohibited by applicable Laws or by contract from disclosing the proposed Permitted Transfer and/or the proposed Permitted Transferee prior to the effective date of the Permitted Transfer, Tenant shall provide written notice of such Permitted Transfer to Landlord within thirty (30) days following the effective date of such Permitted Transfer); (iv) with respect to a proposed Permitted Transfer to an Affiliated Party, Tenant continues to have a net worth equal to or greater than Tenant's net worth as of the day immediately prior to the proposed Transfer; and (v) with respect to a purchase, merger, consolidation or reorganization or any Permitted Transfer which results in Tenant ceasing to exist as a separate legal entity, (A) Tenant's successor shall own all or substantially all of the assets of Tenant, and (B) Tenant's successor shall have a net worth which is at least equal to the greater of Tenant's net worth as of the day prior to the proposed purchase, merger, consolidation or reorganization. Tenant's notice to Landlord shall include information and documentation showing that each of the above conditions has been satisfied. If requested by Landlord, Tenant's successor shall sign a commercially reasonable form of assumption agreement. As used herein, (1) "parent" shall mean a company which owns a majority of Tenant's voting equity; (2) "subsidiary" shall mean an entity wholly owned by Tenant or at least 51% of whose voting equity is owned by Tenant; and (3) "affiliate" shall mean an entity controlled, controlling or under common control with Tenant.

13. Liens.

Tenant shall not permit mechanic's or other liens to be placed upon the Premises, Building, Property, Project or Tenant's leasehold interest in connection with any work or service done or purportedly done by or for benefit of Tenant. If a lien is so placed, Tenant shall, within twenty (20) days the filing of the lien, fully discharge the lien by settling the claim which resulted in the lien or by bonding or insuring over the lien in the manner prescribed by the applicable lien Law. If Tenant fails to discharge, bond or insure over the lien within such twenty (20) day period, then, in addition to any other right or remedy of Landlord, Landlord may bond or insure over the lien or otherwise discharge the lien. Tenant shall reimburse Landlord for any amount paid by Landlord to bond or insure over the lien or discharge the lien, including, without limitation, reasonable, out-of-pocket attorneys' fees (if and to the extent permitted by Law) within ten (10) days after receipt of an invoice from Landlord, accompanied by reasonable supporting documentation.

14. Indemnity and Waiver of Claims.

A. Tenant shall indemnify and defend Landlord and save it harmless from and against any and all claims, suits, actions, proceedings, liability, damages, costs or expenses, including attorneys' and experts' fees and court costs, arising (i) from any act, omission, or negligence of Tenant or its officers, contractors, licensees, agents, employees, guests, invitees, or visitors in or about the Premises, (ii) from Tenant's use or occupancy of the Premises or the business conducted by Tenant therein, (iii) from any breach or default under this Lease by Tenant, (iv) from or relating to the enforcement by Landlord of the provision of this Lease as against Tenant, (v) from any accident, injury, or damage, howsoever and by whomsoever caused, to any person or property, occurring in the Premises, or (vi) from any injury or damage to any person or property occurring outside of the Premises in the Building or the Property caused by Tenant or any Tenant Entity. This provision shall not be construed to make Tenant responsible for loss, damage, liability or expense resulting from the injuries to third parties caused solely and directly by the negligence or willful misconduct of Landlord or trustees, members, principals, beneficiaries, partners, officers, directors, employees, Mortgagee(s) (defined in Section 26) and agents ("Landlord Parties"). The provisions of this Section shall survive the expiration or termination of this Lease.

B. Landlord shall protect, indemnify and hold Tenant harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of any damage to any property (including but not limited to property of Tenant) or any injury (including but not limited to death) to any person occurring in, on or about the common areas of the Building to the extent that such injury or damage shall be caused by or arise from the active negligence or willful misconduct of Landlord or any of Landlord's agents or employees.

C. Landlord and the Landlord Parties shall not be liable for, and Tenant waives, all claims for loss or damage to Tenant's business or loss, theft or damage to Tenant's Property or the property of any person claiming by, through or under Tenant resulting from: (1) wind or weather; (2) the failure of any sprinkler, heating or air-conditioning equipment, any electric wiring or any gas, water or steam pipes; (3) the backing up of any sewer pipe or downspout; (4) the bursting, leaking or running of any tank, water closet, drain or other pipe; (5) water, snow or ice upon or coming through the roof, skylight, stairs, doorways, windows, walks or any other place upon or near the Building or the Project; (6) any act or omission of any party other than Landlord or Landlord Parties; and (7) any causes not reasonably within the control of Landlord.

15. Insurance. Tenant shall maintain in full force and effect during the entire term of this Lease, at its own cost and expense, the following policies of insurance:

A. Commercial General Liability Insurance and Umbrella Liability Insurance. Tenant shall carry Commercial General Liability insurance and Umbrella Liability insurance in an amount equal to that currently maintained by Tenant, but not less than $ 2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location. Said policy shall provide coverage for bodily injury, property damage and advertising/personal injury arising from premises, operations, independent contractors, products-completed operations, and liability assumed under an insured contract. Not more frequently than once each three (3) years, if, in the opinion of Landlord the amount of Commercial General Liability insurance coverage at that time is not adequate, Tenant shall increase the insurance coverage as reasonably required by Landlord not more than the amount customarily required by landlords for comparable buildings.

B. Commercial Automobile Insurance and Umbrella Liability Insurance. Tenant shall carry Commercial Automobile insurance and Umbrella Liability insurance in an amount equal to that currently maintained by Tenant, but not less than $1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos).

C. Workers' Compensation Insurance and Employers' Liability Insurance. Tenant shall carry Worker's Compensation insurance as required by law and Employer's Liability insurance in an amount equal to that currently maintained by Tenant, but not less than the following:

1. Bodily Injury by Accident: $1,000,000 each accident;

2. Bodily Injury by Disease: $1,000,000 policy limit; and

3. Bodily Injury by Disease: $1,000,000 each employee.

D. Commercial Property Insurance. Tenant shall carry Commercial Property insurance covering the Premises including fixtures, inventory, equipment, furniture and other personal property (collectively, "Tenant's Property"), Premises Improvements, Alterations and betterments and all other content of the Premises and (if any, such as installed by or for Tenant) all mechanical, plumbing, heating, ventilating, air conditioning, electrical. The policy shall, at minimum, cover the perils insured under the ISO Special Causes of Loss Form (CP 10 30), but must include coverage for the following: vandalism, malicious mischief, sprinkler leakage. Such insurance shall be in an amount equal to 100% of the full replacement cost. Any coinsurance requirement in the policy shall be eliminated through the attachment of an agreed amount endorsement, or as is otherwise appropriate under the particular policy form. The proceeds of such insurance, so long as this Lease remains in effect, shall be used to repair and/or replace the Premises, and the Leasehold Improvements, fixtures, glass, equipment, mechanical, plumbing, heating, ventilating, air conditioning, electrical, telecommunication and other equipment, systems and facilities so insured. Because this Property is located in a zone known for the hazard of Earthquakes, Tenant shall also purchase Earthquake coverage with a limit equal to the full replacement cost of the property described in this Section 15.D.

E. Business Interruption or Rental Loss Insurance. Tenant shall carry Business Interruption or Rental Loss insurance sufficient to cover, for a period of not less than one (1) year, all rental, expense and other payment obligations of Tenant under this Lease, including, without limitation, Base Rent and adjustments thereto and Taxes, Expenses and all other costs, fees, charges and payments which would be borne by or due from Tenant under this Lease if the Premises and Tenant's business were fully open and operating.

F. Tenant shall also carry any other forms of insurance Landlord may reasonably require from time to time, in form and amounts and for insurance risks against which a prudent Tenant of comparable size in a comparable business would protect itself.

G. Form of Insurance. All insurance required to be carried by Tenant hereunder:

1. shall be issued by insurance carriers authorized to conduct business in the state in which the Premises are located and with an A.M. Best's guide rating of no less than A- VII;

2. shall be written as primary insurance over any insurance purchased by Landlord;

3. shall contain a provision whereby each insurer agrees to give Landlord at least ten (10) days' prior written notice of any cancellation;

4. may provide for a deductible so long as the deductible does not exceed $25,000 per occurrence. Notwithstanding the foregoing, Landlord hereby agrees that Tenant's insurance policies may provide for an earthquake deductible equal to 10% of the claim with a $50,000.00 minimum, a Personal & Advertising Injury deductible equal to $500,000.00 and a workers' compensation deductible in an amount equal to $150,000.00 per loss and $1,000,000.00 aggregate. Any increase in such deductibles shall be subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed;

5. shall be written on an "occurrence" basis (except for Tenant's Personal & Advertising Injury Policy, which may be on a "claims made" basis). Except as expressly provided with respect to Tenant's Personal & Advertising Injury Policy, any policies underwritten as "claims made" will not satisfy the insurance requirements outlined in this Section;

6. shall not be modified to reduce the extent of coverage or limits required herein without the prior written consent of Landlord;

7. with respect to the Commercial General Liability, Commercial Automobile Liability policies, Tenant shall ensure that the following are added by endorsement under the ISO (CG 20 11) or comparable form (it being agreed that a "Designated Insured" endorsement shall be sufficient as to the Commercial Automobile Liability policies) as additional insureds to the policies: Landlord, its parent companies, subsidiaries, affiliate companies and partnerships and all of its directors, officers, agents, representatives and employees; and

8. with respect to Commercial Property insurance shall be provided under the form ACORD 24, and certificates of all other insurance and appropriate endorsements shall be provided under the form ACORD 25, said certificates shall be provided to Landlord five (5) days prior to occupancy and evidence of renewal shall be provided to Landlord concurrent with the expiry of each policy.

H. Failure to Maintain. If Tenant shall fail to acquire and maintain the insurance required pursuant to this Section, Landlord may, in addition to any other rights and remedies available to Landlord, but shall not be obligated to, acquire such insurance and pay the premiums therefor, which premiums shall be payable by Tenant to Landlord immediately upon demand.

I. Blanket Insurance. Tenant may, at its option, satisfy its insurance obligations hereunder by policies of so-called blanket insurance carried by Tenant provided that the same shall, in all respects, comply with the provision hereof. In such event, Tenant shall not be deemed to have complied with its obligation hereunder until Tenant shall have obtained and delivered to Landlord a certificate of insurance with appropriate endorsements, or upon Landlord's reasonable request, a copy of said policy with endorsements.

J. Insurance Maintained by Landlord. Landlord shall obtain and keep in force during the Term Commercial General Liability insurance, Commercial Property insurance and Boiler & Machinery insurance covering the Building, Property and permanent Tenant improvements provided by Landlord, with coverages and in amounts deemed prudent by Landlord from time to time. Tenant shall pay to Landlord as Additional Rent Tenant's Share of the cost of the premiums for all such insurance and the reasonable cost of Landlord's insurance consultants. Notwithstanding any contribution by Tenant to the cost of insurance premiums as provided herein, Tenant acknowledges that Tenant has no right to receive any proceeds from any insurance policies carried by Landlord.

16. Subrogation.

Landlord and Tenant hereby waive any recovery of damages against each other (including their employees, officers, directors, agents, or representatives) for loss or damage to the building, Tenant improvements and betterments, fixtures, equipment, and any other personal property to the extent covered by commercial property insurance or boiler and machinery insurance required above. If the commercial property insurance and boiler and machinery insurance purchased by Tenant or Landlord as required above do not expressly allow the insured to waive rights of subrogation prior to loss, Tenant and Landlord shall cause the policies to be endorsed with a waiver of subrogation to the extent described in this Section 16. The cost of the endorsement, if any, shall be borne exclusively by Tenant and Landlord respectively.

17. Casualty Damage.

A. If all or any part of the Premises is damaged by fire or other casualty, Tenant shall notify Landlord in writing as promptly as reasonably practicable. During any period of time that all or a material portion of the Premises is rendered untenantable as a result of a fire or other casualty, the Rent shall abate for the portion of the Premises that is untenantable and not used by Tenant. Landlord shall have the right to terminate this Lease if: (1) the Building shall be damaged by fire or casualty and such fire or casualty damage cannot, in the ordinary course, reasonably be expected to be repaired within two hundred ten (210) days from the time that repair work would commence; (2) Landlord is not permitted by Law to rebuild the Building or the Project in substantially the same form as existed before the fire or casualty; (3) the Premises have been materially damaged and there is less than eighteen (18) months of the Term remaining on the date of the casualty; (4) any Mortgagee requires that the insurance proceeds be applied to the payment of the mortgage debt; or (5) a material uninsured loss to the Building or the Project occurs. Landlord may exercise its right to terminate this Lease by notifying Tenant in writing within ninety (90) days after the date of the casualty. If Landlord does not terminate this Lease, Landlord shall commence and proceed with reasonable diligence to repair and restore the Building and the Premises Improvements (excluding any Alterations that were performed by Tenant in violation of this Lease). However, in no event shall Landlord be required to spend more than the insurance proceeds received by Landlord; provided, however, that if Landlord elects not to fully restore the Premises, Landlord shall notify Tenant in writing as promptly as reasonably practicable. Landlord shall not be liable for any loss or damage to Tenant's Property or to the business of Tenant resulting in any way from the fire or other casualty or from the repair and restoration of the damage. Landlord and Tenant hereby waive the provisions of any Law relating to the matters addressed in this Section, and agree that their respective rights for damage to or destruction of the Premises shall be those specifically provided in this Lease. Tenant shall have the right to terminate this Lease if: (a) a substantial portion of the Premises has been damaged by fire or other casualty and such damage cannot reasonably be repaired (as reasonably determined by Landlord) within 60 days after Landlord's receipt of all required permits to restore the Premises; (b) there is less than eighteen (18) months of the Term remaining on the date of such casualty; and (c) Tenant provides Landlord with written notice of its intent to terminate within thirty (30) days after the date of the fire or other casualty. In addition, if (A) Landlord has not exercised its termination right pursuant to this Section 17.A, (B) all or a material portion of the Premises is untenantable and not used by Tenant, and (C) Landlord delivers written notice to Tenant that Landlord elects not to rebuild or fully restore the Premises, Tenant shall have the right to terminate this Lease by delivering written notice thereof to Landlord within ten (10) business days following Tenant's receipt of Landlord's notice that Landlord will not rebuild or fully restore the Premises.

B. If all or any portion of the Premises shall be made untenantable by fire or other casualty, Landlord shall, with reasonable promptness, cause an architect or general contractor selected by Landlord to provide Landlord and Tenant with a written estimate of the amount of time required to substantially complete the repair and restoration of the Premises and make the Premises tenantable again, using standard working methods ("Completion Estimate"). If the Completion Estimate indicates that the Premises cannot be made tenantable within two hundred ten (210) days from the date the repair and restoration is started, then regardless of anything in Section 17.A above to the contrary, either party shall have the right to terminate this Lease by giving written notice to the other of such election within ten (10) days after receipt of the Completion Estimate. Notwithstanding the foregoing, if Tenant was entitled to but elected not to exercise its right to terminate the Lease and Landlord does not substantially complete the repair and restoration of the Premises within two (2) months after the expiration of the estimated period of time set forth in the Completion Estimate, which period shall be extended to the extent of any Reconstruction Delays, then Tenant may terminate this Lease by written notice to Landlord within fifteen (15) days after the expiration of such period, as the same may be extended. For purposes of this Lease, the term "Reconstruction Delays" shall mean: (i) any delays caused by the insurance adjustment process; (ii) any delays caused by Tenant; and (iii) any delays caused by events of Force Majeure.

C. The provisions of this Lease, including this Section 17, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the

Building, the Property or the Project, and any Laws, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any similar or successor Laws now or hereinafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises, the Building, the Property or the Project.

18. Condemnation.

Either party may terminate this Lease if the whole or any material part of the Premises shall be taken or condemned for any public or quasi-public use under Law, by eminent domain or private purchase in lieu thereof (a "Taking"). Landlord shall also have the right to terminate this Lease if there is a Taking of any portion of the Building, Property or Project which would leave the remainder of the Building or the Project unsuitable for use as an office building or an office project in a manner comparable to the use of the Building or the Project prior to the Taking. In order to exercise its right to terminate the Lease, Landlord or Tenant, as the case may be, must provide written notice of termination to the other within forty-five (45) days after the terminating party first receives notice of the Taking. Any such termination shall be effective as of the date the physical taking of the Premises or the portion of the Building, Property or Project occurs. If this Lease is not terminated, the rentable square footage of the Building, the rentable square footage of the Premises, the Building's allocable percentage of the Project and Tenant's Share shall, if applicable, be appropriately adjusted. In addition, Rent for any portion of the Premises taken or condemned shall be abated during the unexpired Term of this Lease effective when the physical taking of the portion of the Premises occurs. All compensation awarded for a Taking, or sale proceeds, shall be the property of Landlord, any right to receive compensation or proceeds being expressly waived by Tenant. However, Tenant may file a separate claim at its sole cost and expense for Tenant's Property and Tenant's reasonable relocation expenses, provided the filing of the claim does not diminish the award which would otherwise be receivable by Landlord. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws.

Should any part of the Premises be so taken or condemned during the Term hereof, and should this Lease not be terminated in accordance with the foregoing provisions, and the holder of any mortgage which includes the Premises as part of the mortgaged premises or any ground lessor of any ground lease which includes the Project as part of the demised premises allows the net condemnation proceeds to be applied to the restoration of the Building, Landlord agrees that after the determination of the net amount of condemnation proceeds available to Landlord, Landlord shall use due diligence to put what may remain of the Premises into proper condition for use and occupation as nearly like the condition of the Premises prior to such taking as shall be practicable (excluding Tenant's Property). If such net condemnation proceeds are not allowed by such mortgagee or ground lessor to be applied to, or are otherwise insufficient for, the restoration of the Building (and/or the Project) and if Landlord does not otherwise elect to spend the additional funds necessary to fully restore the Building (and/or the Project), then Landlord shall give notice ("Landlord's Insufficient Condemnation Proceeds Notice") to Tenant that Landlord does not elect to fund the amount of the insufficiency and Tenant shall thereafter have the right to terminate this Lease by providing Landlord with a notice of termination within thirty (30) days after Tenant's receipt of Landlord's Insufficient Condemnation Proceeds Notice (the effective date of which termination shall not be less than sixty (60) days after the date of such notice of such termination).

In the event of a taking of the Premises or any part thereof for temporary use, (a) this Lease shall be and remain unaffected thereby except that Rent shall proportionately abate, and (b) Landlord shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking. For purpose of this paragraph, a temporary taking shall be defined as a taking for a period of three hundred sixty-five (365) days or less.

19. Events of Default.

Tenant shall be considered to be in default of this Lease upon the occurrence of any of the following "Events of Default":

A. Tenant's failure to pay when due all or any portion of the Rent when due ("Monetary Default") and such failure shall continue for a period of five (5) days after written notice that such payment was not made when due. However, if Landlord provides Tenant with notice of Tenant's failure to timely pay Rent on two (2) occasions during any twelve (12) month period, Tenant's subsequent failure to pay Rent when due shall be an Event of Default without notice.

B. Tenant's failure (other than a Monetary Default) to comply with any term, provision or covenant of this Lease, if the failure is not cured within thirty (30) days after written notice to Tenant. However, if Tenant's failure to comply cannot reasonably be cured within thirty (30) days, Tenant shall be allowed additional time (not to exceed ninety (90) days, subject to a day for day extension for events of Force Majeure, provided that Tenant is diligently prosecuting the cure to completion) as is reasonably necessary to cure the failure so long as: (1) Tenant commences to cure the failure within thirty (30) days, and (2) Tenant diligently pursues a course of action that will cure the failure and bring Tenant back into compliance with the Lease. However, if Tenant's failure to comply creates a hazardous condition, the failure must be cured as quickly as reasonably possible, given the nature of the hazardous condition, following notice to Tenant. In addition, if Landlord provides Tenant with notice of Tenant's failure to comply with any particular term, provision or covenant of the Lease on three (3) occasions during any twelve (12) month period, Tenant's subsequent violation of such term, provision or covenant shall, at Landlord's option, be an incurable Event of Default by Tenant.

C. Tenant or any Guarantor becomes insolvent, makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts when due.

D. The leasehold estate is taken by process or operation of Law.

E. Tenant has failed to provide an estoppel certificate within the time periods provided in Section 26 below.

F. Tenant is in default beyond applicable notice and cure periods under the Parking Agreement attached hereto as Exhibit F.

20. Remedies.

A. Upon the occurrence of any Event or Events of Default under this Lease, whether enumerated in Section 19 or not, Landlord shall have the option to pursue any one or more of the following remedies without any notice (except as expressly prescribed herein) or demand whatsoever (and without limiting the generality of the foregoing, Tenant hereby specifically waives notice and demand for payment of Rent or other obligation, except for those notices specifically required pursuant to the terms of Section 19 or this Section 20, and waives any and all other notices or demand requirements imposed by applicable law):

1. Terminate this Lease and Tenant's right to possession of the Premises and recover from Tenant an award of damages equal to the sum of the following:

(a) The Worth at the Time of Award of the unpaid Rent which had been earned at the time of termination;

(b) The Worth at the Time of Award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant affirmatively proves could have been reasonably avoided;

(c) The Worth at the Time of Award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant affirmatively proves could be reasonably avoided;

(d) Any other amount necessary to compensate Landlord for all the detriment either proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and

(e) All such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law.

The "Worth at the Time of Award" of the amounts referred to in parts (a) and (b) above, shall be computed by allowing interest at the lesser of a per annum rate equal to: (i) the greatest per annum rate of interest permitted from time to time under applicable law, or (ii) the Prime Rate plus 5%. For purposes hereof, the "Prime Rate" shall be the per annum interest rate publicly announced as its prime or base rate by a federally insured bank selected by Landlord in the State of California. The "Worth at the Time of Award" of the amount referred to in part (c), above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%;

2. Employ the remedy described in California Civil Code § 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations); or

3. Notwithstanding Landlord's exercise of the remedy described in California Civil Code § 1951.4 in respect of an Event or Events of Default, at such time thereafter as Landlord may elect in writing, to terminate this Lease and Tenant's right to possession of the Premises and recover an award of damages as provided above in Paragraph 20.A.1.

B. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No waiver by Landlord of any breach hereof shall be effective unless such waiver is in writing and signed by Landlord.

C. TENANT HEREBY WAIVES ANY AND ALL RIGHTS CONFERRED BY SECTION 3275 OF THE CIVIL CODE OF CALIFORNIA AND BY SECTIONS 1174 (c) AND 1179 OF THE CODE OF CIVIL PROCEDURE OF CALIFORNIA AND ANY AND ALL OTHER LAWS AND RULES OF LAW FROM TIME TO TIME IN EFFECT DURING THE LEASE TERM PROVIDING THAT TENANT SHALL HAVE ANY RIGHT TO REDEEM, REINSTATE OR RESTORE THIS LEASE FOLLOWING ITS TERMINATION BY REASON OF TENANT'S BREACH. TENANT ALSO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE.

D. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable law or in equity. In addition to other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable law, to injunctive relief, or to a decree compelling performance of any of the covenants, agreements, conditions

or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such default.

E. If Tenant is in default which has not been cured after notice and the expiration of any cure period, then, to the extent permitted by Law, Landlord shall be entitled to receive interest on any unpaid item of Rent at a rate equal to the lesser of the maximum rate permitted by Law or the Prime Rate plus 5% per annum. For purposes hereof, the "Prime Rate" shall be the per annum interest rate publicly announced as its prime or base rate by a federally insured bank selected by Landlord in the state in which the Building is located.

F. This Section 20 shall be enforceable to the maximum extent such enforcement is not prohibited by applicable law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

21. Limitation of Liability.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE LIABILITY OF LANDLORD (AND OF ANY SUCCESSOR LANDLORD) TO TENANT SHALL BE LIMITED TO THE INTEREST OF LANDLORD IN THE PROPERTY. TENANT SHALL LOOK SOLELY TO LANDLORD'S INTEREST IN THE PROPERTY FOR THE RECOVERY OF ANY JUDGMENT OR AWARD AGAINST LANDLORD. NEITHER LANDLORD NOR ANY LANDLORD RELATED PARTY SHALL BE PERSONALLY LIABLE FOR ANY JUDGMENT OR DEFICIENCY, AND IN NO EVENT SHALL LANDLORD OR ANY LANDLORD RELATED PARTY BE LIABLE TO TENANT FOR ANY LOST PROFIT, DAMAGE TO OR LOSS OF BUSINESS OR ANY FORM OF SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGE. IN ADDITION, EXCEPT TO THE EXTENT DAMAGES ARE RECOVERABLE BY LANDLORD FOR A HOLDOVER BY TENANT UNDER SECTION 25 OR FOR STATUTORY DAMAGES UNDER SECTION 20, TENANT SHALL NOT BE LIABLE FOR ANY LOST PROFIT, DAMAGE TO OR LOSS OF BUSINESS OR ANY FORM OF SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGE. BEFORE FILING SUIT FOR AN ALLEGED DEFAULT BY LANDLORD, TENANT SHALL GIVE LANDLORD AND THE MORTGAGEE(S) (DEFINED IN SECTION 26 BELOW) WHOM TENANT HAS BEEN NOTIFIED HOLD MORTGAGES (DEFINED IN SECTION 26 BELOW) ON THE PROPERTY, BUILDING OR PREMISES, NOTICE AND REASONABLE TIME TO CURE THE ALLEGED DEFAULT.

22. No Waiver.

Either party's failure to declare a default immediately upon its occurrence, or delay in taking action for a default shall not constitute a waiver of the default, nor shall it constitute an estoppel. Either party's failure to enforce its rights for a default shall not constitute a waiver of its rights regarding any subsequent default. Receipt by Landlord of Tenant's keys to the Premises shall not constitute an acceptance or surrender of the Premises.

23. Quiet Enjoyment.

Tenant shall, and may peacefully have, hold and enjoy the Premises, subject to the terms of this Lease, provided Tenant pays the Rent and performs all of its covenants and agreements. This covenant and all other covenants of Landlord shall be binding upon Landlord and its successors only during its or their respective periods of ownership of the Building, and shall not be a personal covenant of Landlord or the Landlord Parties.

24. Intentionally Omitted.

25. Holding Over.

If Tenant fails to surrender the Premises in accordance with the terms of this Lease at the expiration or earlier termination of this Lease, occupancy of the Premises after the termination or expiration shall be that of a tenancy at sufferance. Tenant's occupancy of the Premises during the holdover shall be subject to all the terms and provisions of this Lease and Tenant shall pay an amount (on a per diem basis if Tenant's holdover persists for ten (10) days or less, and thereafter on a per month basis without reduction for partial months during the holdover) equal to 150% of the sum of the Base Rent and Additional Rent due for the period immediately preceding the holdover. No holdover by Tenant or payment by Tenant after the expiration or early termination of this Lease shall be construed to extend the Term or prevent Landlord from immediate recovery of possession of the Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, Tenant shall be liable to Landlord for all damages, including, without limitation, consequential damages, that Landlord suffers from the holdover; provided, however, that Tenant shall not be responsible for consequential damages unless Tenant fails to vacate the Premises within thirty (30) days after the expiration or earlier termination of this Lease.

26. Subordination to Mortgages; Estoppel Certificate.

A. Tenant accepts this Lease subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or subsequently arising upon the Premises, the Building, the Property or the Project, and to renewals, modifications, refinancings and extensions thereof (collectively referred to as a "Mortgage"). The party having the benefit of a Mortgage shall be referred to as a "Mortgagee". This clause shall be self-operative, but upon request from a Mortgagee, Tenant shall execute a commercially reasonable subordination agreement in favor of the Mortgagee. In lieu of having the Mortgage be superior to this Lease, a Mortgagee shall have the right at any time to subordinate its Mortgage to this Lease. If requested by a successor-in-interest to all or a part of Landlord's interest in the Lease, Tenant shall, without charge, attorn to the successor-in-interest. Notwithstanding the foregoing, upon written request by Tenant, Landlord will use reasonable efforts to obtain a commercially reasonable non-disturbance, subordination and attornment agreement from Landlord's then current Mortgagee. "Reasonable efforts" of Landlord shall not require Landlord to incur any cost, expense or liability to obtain such agreement, it being agreed that Tenant shall be responsible for any fee or review costs charged by the Mortgagee. Upon request of Landlord, Tenant will execute the Mortgagee's commercially reasonable form of non-disturbance, subordination and attornment agreement and return the same to Landlord for execution by the Mortgagee. Landlord's failure to obtain a non-disturbance, subordination and attornment agreement for Tenant shall have no effect on the rights, obligations and liabilities of Landlord and Tenant or be considered to be a default by Landlord hereunder.

B. Within ten (10) days following any written request which Landlord may make from time to time, Tenant shall execute and deliver to Landlord or mortgagee or prospective mortgagee a sworn statement certifying: (a) the date of commencement of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications to this Lease, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Landlord (to Tenant's actual knowledge) or Tenant except as specified in Tenant's statement; and (e) such other matters as may be reasonably requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Section may be relied upon by any mortgagee, beneficiary or purchaser. Tenant irrevocably agrees that if Tenant fails to execute and deliver such certificate within such ten (10) day period, Landlord may provide to Tenant a second written request with respect to such estoppel certificate. If Tenant fails to execute and deliver such certificate within a five (5) business day period following the date of Landlord's second written request therefor, Tenant's failure shall be deemed an Event of Default without any further notice or cure period. Landlord shall, within ten (10) business days after receipt of a written request from Tenant, execute and deliver a commercially reasonable estoppel certificate to Tenant's assignee or sublessee (and/or proposed assignee or

sublessee, as the case may be) or to Tenant's lender; provided, however, that with respect to any estoppel certificate requested for the benefit of a lender of Tenant, Landlord shall not be obligated to provide an estoppel certificate more than once during any twelve month period during the Term. Such estoppel certificate shall provide a certification solely as to (i) the status of this Lease, (ii) Landlord's then-current actual knowledge of the existence of any defaults hereunder, and (iii) the amount of rent that is due and payable under this Lease.

27. Attorneys' Fees.

If either party institutes a suit against the other for violation of or to enforce any covenant or condition of this Lease, or if either party intervenes in any suit in which the other is a party to enforce or protect its interest or rights, the prevailing party shall be entitled to all of its costs and expenses, including, without limitation, reasonable attorneys' fees.

28. Notice.

If a demand, request, approval, consent or notice (collectively referred to as a "notice") shall or may be given to either party by the other, the notice shall be in writing and delivered by hand or sent by registered or certified mail with return receipt requested, or sent by overnight or same day courier service at the party's respective Notice Address(es) set forth in Section 1, except that if Tenant has vacated the Premises (or if the Notice Address for Tenant is other than the Premises, and Tenant has vacated such address) without providing Landlord a new Notice Address, Landlord may serve notice in any manner described in this Section or in any other manner permitted by Law. Each notice shall be deemed to have been received or given on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Tenant has vacated the Premises or the other Notice Address of Tenant without providing a new Notice Address, three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above. Either party may, at any time, change its Notice Address (other than to a post office box address) by giving the other party written notice of the new address in the manner described in this Section.

29. Excepted Rights.

Landlord excepts and reserves exclusively to itself the use of: (1) roofs, except as otherwise provided herein, (2) telephone, electrical and janitorial closets, (3) equipment rooms, Building risers or similar areas that are used by Landlord for the provision of Building services, (4) rights to the land and improvements below the floor of the Premises, (5) the improvements and air rights above the Premises, (6) the improvements and air rights outside the demising walls of the Premises, and (7) the areas within the Premises used for the installation of utility lines and other installations serving occupants of the Building or the Project. Landlord has the right to change the Building's or Project's name or address. Notwithstanding the foregoing, Landlord shall not, during the Term of this Lease, rename the Project using the name of another tenant, company or person. Landlord shall not voluntarily (as opposed to being required by applicable governmental authorities) change the street address of the Premises. Subject to the terms of Section 2 above, Landlord also has the right to make such other changes to the Building, Property and Project as Landlord deems appropriate, provided the changes do not materially affect Tenant's ability to access the Premises or to use the Premises for the Permitted Use. Landlord shall also have the right (but not the obligation) to temporarily close the Building if Landlord reasonably determines that there is an imminent danger of significant damage to the Building or of personal injury to Landlord's employees or the occupants of the Building. The circumstances under which Landlord may temporarily close the Building shall include, without limitation, electrical interruptions, hurricanes and civil disturbances. Except as expressly provided in this Lease, closure of the Building under such circumstances shall not constitute a constructive eviction nor entitle Tenant to an abatement or reduction of Rent.

30. Surrender of Premises.

At the expiration or earlier termination of this Lease or Tenant's right of possession, Tenant shall remove Tenant's Property (defined in Section 15) from the Premises, and quit and surrender the Premises to Landlord, broom clean, and in good order, condition and repair, ordinary wear and tear and damage by fire or other casualty excepted. Tenant shall also be required to remove the Required Removables in accordance with Section 8. If Tenant fails to remove any of Tenant's Property as of the termination of this Lease or of Tenant's right to possession, Landlord, at Tenant's sole cost and expense, shall be entitled (but not obligated) to remove and store Tenant's Property. Landlord shall not be responsible for the value, preservation or safekeeping of Tenant's Property. Tenant shall pay Landlord, upon demand, the expenses and storage charges incurred for Tenant's Property, provided that Landlord provides Tenant prompt written notice of such storage. In addition, if Tenant fails to remove Tenant's Property from the Premises or storage, as the case may be, within fifteen (15) days after written notice, Landlord may deem all or any part of Tenant's Property to be abandoned, and title to Tenant's Property shall be deemed to be immediately vested in Landlord.

31. Miscellaneous.

A. This Lease and the rights and obligations of the parties shall be interpreted, construed and enforced in accordance with the Laws of the State of California and Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of such state. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by Law. The headings and titles to the Sections of this Lease are for convenience only and shall have no effect on the interpretation of any part of the Lease.

B. Tenant shall not record this Lease or any memorandum without Landlord's prior written consent.

C. Except as otherwise expressly provided herein, whenever a period of time is prescribed for the taking of an action by Landlord or Tenant, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, civil disturbances and other causes beyond the reasonable control of the performing party ("Force Majeure"). However, events of Force Majeure shall not extend any period of time for the payment of Rent or other sums payable by either party or any period of time for the written exercise of an option or right by either party.

D. Landlord shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Building, Property and/or Project referred to herein, and upon such transfer Landlord shall be released from any further obligations hereunder, and Tenant agrees to look solely to the successor in interest of Landlord for the performance of such obligations, provided that Landlord and its successors, as the case may be, shall remain liable after their respective periods of ownership with respect to any sums due in connection with a breach or default by such party that arose during such period of ownership by such party.

E. Landlord and Tenant each hereby represents to the other that it has dealt directly with and only with the Broker as a broker in connection with this Lease. Tenant shall indemnify and hold Landlord and the Landlord Parties harmless from all claims of any brokers (other than Broker) claiming to have represented Tenant in connection with this Lease. Landlord agrees to indemnify and hold Tenant and the Tenant Entities harmless from all claims of Broker and any other brokers claiming to have represented Landlord in connection with this Lease. Landlord shall pay the commissions due to the Broker in accordance with a separate agreement between Landlord and Broker.

F. Tenant covenants, warrants and represents that: (1) each individual executing, attesting and/or delivering this Lease on behalf of Tenant is authorized to do so on behalf of Tenant; (2) this Lease is binding

upon Tenant; and (3) Tenant is duly organized and legally existing in the state of its organization and is qualified to do business in the State of California. If there is more than one Tenant, or if Tenant is comprised of more than one party or entity, the obligations imposed upon Tenant shall be joint and several obligations of all the parties and entities. Notices, payments and agreements given or made by, with or to any one person or entity shall be deemed to have been given or made by, with and to all of them. Tenant hereby represents and warrants that Tenant is not (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons." If the foregoing representation is untrue at any time during the Term, an Event of Default will be deemed to have occurred, without the necessity of notice to Tenant.

Landlord represents and warrants that it has full right and authority to enter into this Lease and to perform all of Landlord's obligations hereunder and that all persons signing this Lease on its behalf are authorized to do so. Landlord hereby represents and warrants that Landlord is not (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons."

G. Time is of the essence with respect to Tenant's exercise of any expansion, renewal or extension rights granted to Tenant. This Lease shall create only the relationship of landlord and tenant between the parties, and not a partnership, joint venture or any other relationship. This Lease and the covenants and conditions in this Lease shall inure only to the benefit of and be binding only upon Landlord and Tenant and their permitted successors and assigns.

H. The expiration of the Term, whether by lapse of time or otherwise, shall not relieve either party of any obligations which accrued prior to or which may continue to accrue after the expiration or early termination of this Lease. Without limiting the scope of the prior sentence, it is agreed that Tenant's obligations under Sections 4, 8, 9, 20, 25 and 30 shall survive the expiration or early termination of this Lease.

I. Landlord has delivered a copy of this Lease to Tenant for Tenant's review only, and the delivery of it does not constitute an offer to Tenant or an option. This Lease shall not be effective against any party hereto until an original copy of this Lease has been signed by such party.

J. All understandings and agreements previously made between the parties are superseded by this Lease, and neither party is relying upon any warranty, statement or representation not contained in this Lease. This Lease may be modified only by a written agreement signed by Landlord and Tenant.

K. Tenant, within fifteen (15) days after request, shall provide Landlord with a current financial statement and such other information as Landlord may reasonably request in order to create a "business profile" of Tenant and determine Tenant's ability to fulfill its obligations under this Lease. Landlord, however, shall not require Tenant to provide such information unless Landlord is requested to produce the information in connection with a proposed financing or sale of the Building or in connection with any renewal or extension of the Term (including the exercise of Tenant's Renewal Option granted hereunder). Upon written request by Tenant, Landlord shall enter into a commercially reasonable confidentiality agreement covering any confidential information that is disclosed by Tenant. Notwithstanding the foregoing, so long as Tenant is a publicly traded company on an "over-the-counter" market or any recognized national or international securities exchange, the foregoing shall not apply so long as Tenant's current public annual report (in compliance with applicable securities laws) for such applicable year is available to Landlord in the public domain.

L. Tenant's Security System. Subject to the terms of this Lease, including, without limitation Section 9 above, Tenant may, at its own expense, install its own security system ("Tenant's Security System") at the Building and in the Premises; provided, however, that Tenant shall coordinate the installation and operation of Tenant's Security System with Landlord to assure that Tenant's Security System is compatible with Landlord's security system and the Building's systems and equipment and to the extent that Tenant's Security System is not compatible with Landlord's security system and the Building systems and equipment, Tenant shall not be entitled to install or operate it (and Tenant shall not actually install or operate Tenant's Security System unless Tenant has obtained Landlord's approval of such compatibility in writing prior to such installation or operation). Landlord and Tenant shall in good faith cooperate to resolve any compatibility problems that arise with respect to Landlord's security system and Tenant's Security System. Tenant shall be solely responsible, at Tenant's sole cost and expense, for the monitoring, operation and removal of Tenant's Security System.

M. If one or more buildings are removed from the group of buildings comprising the Project, whether as a result of a sale or demolition of the building(s) or otherwise, or if one or more buildings owned by Landlord are added to the group of buildings comprising the Project, as described above in this Section, then the definition of "Project" and "Tenant's Share" with respect to the Premises, shall be appropriately modified or adjusted to reflect the deletion or addition of such buildings.

32. Waiver of Jury Trial. LANDLORD AND TENANT EACH ACKNOWLEDGES THAT IT IS AWARE OF AND HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY, AND, TO THE EXTENT ENFORCEABLE UNDER CALIFORNIA LAW, EACH PARTY DOES HEREBY EXPRESSLY AND KNOWINGLY WAIVE AND RELEASE ALL SUCH RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER (AND/OR AGAINST ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUBSIDIARY OR AFFILIATED ENTITIES) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE. FURTHERMORE, THIS WAIVER AND RELEASE OF ALL RIGHTS TO A JURY TRIAL IS DEEMED TO BE INDEPENDENT OF EACH AND EVERY OTHER PROVISION, COVENANT, AND/OR CONDITION SET FORTH IN THIS LEASE.

IF THE JURY WAIVER PROVISIONS OF THIS SECTION 32 ARE NOT ENFORCEABLE UNDER CALIFORNIA LAW, THEN THE FOLLOWING PROVISIONS OF THIS SECTION 32 SHALL APPLY. IT IS THE DESIRE AND INTENTION OF THE PARTIES TO AGREE UPON A MECHANISM AND PROCEDURE UNDER WHICH CONTROVERSIES AND DISPUTES ARISING OUT OF THIS LEASE OR RELATED TO THE PREMISES WILL BE RESOLVED IN A PROMPT AND EXPEDITIOUS MANNER. ACCORDINGLY, EXCEPT WITH RESPECT TO ACTIONS FOR UNLAWFUL OR FORCIBLE DETAINER OR WITH RESPECT TO THE PREJUDGMENT REMEDY OF ATTACHMENT, ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER (AND/OR AGAINST ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUBSIDIARY OR AFFILIATED ENTITIES) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE, SHALL BE HEARD AND RESOLVED BY A REFEREE UNDER THE PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE, SECTIONS 638 — 645.1, INCLUSIVE (AS SAME MAY BE AMENDED, OR ANY SUCCESSOR STATUTE(S) THERETO) (THE "REFEREE SECTIONS"). ANY FEE TO INITIATE THE JUDICIAL REFERENCE PROCEEDINGS SHALL BE PAID BY THE PARTY INITIATING SUCH PROCEDURE; PROVIDED HOWEVER, THAT THE COSTS AND FEES, INCLUDING ANY INITIATION FEE, OF SUCH PROCEEDING SHALL ULTIMATELY BE BORNE

IN ACCORDANCE WITH SECTION 27 ABOVE. THE VENUE OF THE PROCEEDINGS SHALL BE IN THE COUNTY IN WHICH THE PREMISES ARE LOCATED. WITHIN TEN (10) DAYS OF RECEIPT BY ANY PARTY OF A WRITTEN REQUEST TO RESOLVE ANY DISPUTE OR CONTROVERSY PURSUANT TO THIS SECTION 32, THE PARTIES SHALL AGREE UPON A SINGLE REFEREE WHO SHALL TRY ALL ISSUES, WHETHER OF FACT OR LAW, AND REPORT A FINDING AND JUDGMENT ON SUCH ISSUES AS REQUIRED BY THE REFEREE SECTIONS. IF THE PARTIES ARE UNABLE TO AGREE UPON A REFEREE WITHIN SUCH TEN (10) DAY PERIOD, THEN ANY PARTY MAY THEREAFTER FILE A LAWSUIT IN THE COUNTY IN WHICH THE PREMISES ARE LOCATED FOR THE PURPOSE OF APPOINTMENT OF A REFEREE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 AND 640, AS SAME MAY BE AMENDED OF ANY SUCCESSOR STATUTE(S) THERETO. IF THE REFEREE IS APPOINTED BY THE COURT, THE REFEREE SHALL BE A NEUTRAL AND IMPARTIAL RETIRED JUDGE WITH SUBSTANTIAL EXPERIENCE IN THE RELEVANT MATTERS TO BE DETERMINED, FROM JAMS/ENDISPUTE, INC., THE AMERICAN ARBITRATION ASSOCIATION OR SIMILAR MEDIATION/ARBITRATION ENTITY. THE PROPOSED REFEREE MAY BE CHALLENGED BY ANY PARTY FOR ANY OF THE GROUNDS LISTED IN SECTION 641 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE, AS SAME MAY BE AMENDED OR ANY SUCCESSOR STATUTE(S) THERETO. THE REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES OF FACT AND LAW AND REPORT HIS OR HER DECISION ON SUCH ISSUES, AND TO ISSUE ALL RECOGNIZED REMEDIES AVAILABLE AT LAW OR IN EQUITY FOR ANY CAUSE OF ACTION THAT IS BEFORE THE REFEREE, INCLUDING AN AWARD OF ATTORNEYS' FEES AND COSTS IN ACCORDANCE WITH CALIFORNIA LAW. THE REFEREE SHALL NOT, HOWEVER, HAVE THE POWER TO AWARD PUNITIVE DAMAGES, NOR ANY OTHER DAMAGES WHICH ARE NOT PERMITTED BY THE EXPRESS PROVISIONS OF THIS LEASE, AND THE PARTIES HEREBY WAIVE ANY RIGHT TO RECOVER ANY SUCH DAMAGES. THE PARTIES SHALL BE ENTITLED TO CONDUCT ALL DISCOVERY AS PROVIDED IN THE CALIFORNIA CODE OF CIVIL PROCEDURE, AND THE REFEREE SHALL OVERSEE DISCOVERY AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE, WITH RIGHTS TO REGULATE DISCOVERY AND TO ISSUE AND ENFORCE SUBPOENAS, PROTECTIVE ORDERS AND OTHER LIMITATIONS ON DISCOVERY AVAILABLE UNDER CALIFORNIA LAW. THE REFERENCE PROCEEDING SHALL BE CONDUCTED IN ACCORDANCE WITH CALIFORNIA LAW (INCLUDING THE RULES OF EVIDENCE), AND IN ALL REGARDS, THE REFEREE SHALL FOLLOW CALIFORNIA LAW APPLICABLE AT THE TIME OF THE REFERENCE PROCEEDING. IN ACCORDANCE WITH SECTION 644 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE, THE DECISION OF THE REFEREE UPON THE WHOLE ISSUE MUST STAND AS THE DECISION OF THE COURT, AND UPON THE FILING OF THE STATEMENT OF DECISION WITH THE CLERK OF THE COURT, OR WITH THE JUDGE IF THERE IS NO CLERK, JUDGMENT MAY BE ENTERED THEREON IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE PARTIES SHALL PROMPTLY AND DILIGENTLY COOPERATE WITH ONE ANOTHER AND THE REFEREE, AND SHALL PERFORM SUCH ACTS AS MAY BE NECESSARY TO OBTAIN A PROMPT AND EXPEDITIOUS RESOLUTION OF THE DISPUTE OR CONTROVERSY IN ACCORDANCE WITH THE TERMS OF THIS SECTION 32. TO THE EXTENT THAT NO PENDING LAWSUIT HAS BEEN FILED TO OBTAIN THE APPOINTMENT OF A REFEREE, ANY PARTY, AFTER THE ISSUANCE OF THE DECISION OF THE REFEREE, MAY APPLY TO THE COURT OF THE COUNTY IN WHICH THE PREMISES ARE LOCATED FOR CONFIRMATION BY THE COURT OF THE DECISION OF THE REFEREE IN THE SAME MANNER AS A PETITION FOR CONFIRMATION OF AN ARBITRATION AWARD PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1285 ET SEQ. (AS SAME MAY BE AMENDED OR ANY SUCCESSOR STATUTE(S) THERETO).

33. Option to Renew.

A. Tenant shall, provided the Lease is in full force and effect and Tenant is not in default beyond applicable notice and cure periods under any of the other terms and conditions of the Lease at the time of notification or commencement, have one (1) option to renew (the "Renewal Option") this Lease for a term of five (5) years (the "Renewal Term"), for the portion of the Premises being leased by Tenant as of the date the Renewal Term is to commence, on the same terms and conditions set forth in this Lease, except as modified by the terms, covenants and conditions as set forth below:

1. If Tenant elects to exercise the Renewal Option, then Tenant shall provide Landlord with written notice no earlier than the date which is three hundred sixty-five (365) days prior to the expiration of the Term of this Lease but no later than the date which is two hundred seventy (270) days prior to the expiration of the Term of this Lease (the "Renewal Notice"). If Tenant fails to provide such notice, Tenant shall have no further right to extend or renew the Term of this Lease.

2. The Base Rent in effect during the Renewal Term shall be the Prevailing Market (as defined below) rate. Landlord shall advise Tenant of the new Base Rent for the Premises no later than thirty (30) days after receipt of Tenant's written request therefor. Without triggering the exercise by Tenant of the Renewal Option and not more than once, Tenant, may also request and Landlord shall provide (within thirty (30) days after receipt of Tenant's written request therefor), for informational purposes only, Landlord's good faith estimate, as of the date of Tenant's request, of the Base Rent applicable to the Renewal Term; provided, however, that such good faith estimate shall not be binding on Landlord and the Base Rent applicable to the Renewal Term shall be determined as set forth in this Section 33 at the time that Tenant actually exercises its Renewal Option in accordance with this Section. Said request for the new Base Rent (including any request made pursuant to the immediately preceding sentence) shall be made no earlier than thirty (30) days prior to the first date on which Tenant may exercise its Renewal Option under this Section 33.

(a) If Tenant and Landlord are unable to agree on a mutually acceptable Base Rent rate for the Renewal Term not later than sixty (60) days prior to the expiration of the then current Term, then Landlord and Tenant, within five (5) days after such date, shall each simultaneously submit to the other, in a sealed envelope, its good faith estimate of the Prevailing Market rate for the Premises during the Renewal Term (collectively referred to as the "Estimates"). If the higher of such Estimates is not more than 105% of the lower of such Estimates, then the Prevailing Market rate shall be the average of the two Estimates. If the Prevailing Market rate is not established by the exchange of Estimates, then, within seven (7) days after the exchange of Estimates, Landlord and Tenant shall each select an appraiser to determine which of the two Estimates most closely reflects the Prevailing Market rate for the Premises during the Renewal Term. Each appraiser so selected shall be certified as an MAI appraiser or as an ASA appraiser and shall have had at least five (5) years experience within the previous ten (10) years as a real estate appraiser working in the San Mateo/Foster City/Redwood Shores, California area, with working knowledge of current rental rates and practices. For purposes hereof, an "MAI" appraiser means an individual who holds an MAI designation conferred by, and is an independent member of, the American Institute of Real Estate Appraisers (or its successor organization, or in the event there is no successor organization, the organization and designation most similar), and an "ASA" appraiser means an individual who holds the Senior Member designation conferred by, and is an independent member of, the American Society of Appraisers (or its successor organization, or, in the event there is no successor organization, the organization and designation most similar).

(b) Upon selection, Landlord's and Tenant's appraisers shall work together in good faith to agree upon which of the two Estimates most closely reflects the Prevailing Market rate for the Premises. The Estimate chosen by such appraisers shall be binding on both Landlord and Tenant. If either Landlord or Tenant fails to appoint an appraiser within the seven (7) day period referred to above, the appraiser appointed by the other party shall be the sole appraiser for the purposes hereof. If the two appraisers cannot agree upon which of the two Estimates most closely reflects the Prevailing Market rate within twenty (20) days after their

appointment, then, within ten (10) days after the expiration of such twenty (20) day period, the two appraisers shall select a third appraiser meeting the aforementioned criteria. Once the third appraiser (i.e., the arbitrator) has been selected as provided for above, then, as soon thereafter as practicable but in any case within fourteen (14) days, the arbitrator shall make his or her determination of which of the two Estimates most closely reflects the Prevailing Market rate and such Estimate shall be binding on both Landlord and Tenant as the Prevailing Market rate for the Premises. If the arbitrator believes that expert advice would materially assist him or her, he or she may retain one or more qualified persons to provide such expert advice. The parties shall share equally in the costs of the arbitrator and of any experts retained by the arbitrator. Any fees of any appraiser, counsel or experts engaged directly by Landlord or Tenant, however, shall be borne by the party retaining such appraiser, counsel or expert.

(c) If the Prevailing Market rate has not been determined by the commencement date of the Renewal Term, Tenant shall pay Base Rent upon the terms and conditions in effect during the last month of the initial Term until such time as the Prevailing Market rate has been determined. Upon such determination, the Base Rent for the Premises shall be retroactively adjusted to the commencement of such Renewal Term for the Premises.

B. This Renewal Option is not transferable; the parties hereto acknowledge and agree that they intend that the aforesaid option to renew this Lease shall be "personal" to Tenant as set forth above and that in no event will any assignee or sublessee have any rights to exercise this Renewal Option.

C. If Tenant validly exercises or fails to exercise this Renewal Option, Tenant shall have no further right to extend the Term of this Lease.

D. For purposes of this Renewal Option, "Prevailing Market" shall mean the arms length fair market annual rental rate per rentable square foot under new leases entered into on or about the date on which the Prevailing Market is being determined hereunder for space comparable to the Premises in the Building and buildings comparable to the Building in the San Mateo/Foster City/Redwood Shores, California area as of the date the Renewal Term is to commence, taking into account the specific provisions of this Lease which will remain constant, including, without limitation, that the Lease shall continue to provide that there shall be no additional rent or charge for parking during the Renewal Term. The determination of Prevailing Market shall take into account any material economic differences between the terms of this Lease and any comparison lease or amendment, such as rent abatements, construction costs (but disregarding any core and shell modifications or tenant improvements that are above-standard office improvements paid for by Tenant) and other concessions and the manner, if any, in which the landlord under any such lease is reimbursed for operating expenses and taxes, as well as relevant information contained in letters of intent and/or leases being entered into in the applicable geographic area at the time that Prevailing Market is being determined pursuant to the terms of this Lease.

34. Acceleration Option.

A. Tenant shall have the right to accelerate the Termination Date ("Acceleration Option") of the Lease, with respect to the entire Premises only, from the date that is the last day of the 85th month of the Term to the date that is the last day of the 60th month of the Term (the "Accelerated Termination Date"), if:

1. Tenant is not in default beyond applicable notice and cure periods under the Lease at the date Tenant provides Landlord with an Acceleration Notice (hereinafter defined); and

2. no part of the Premises is sublet for a term extending past the Accelerated Termination Date; and

3. the Lease has not been assigned;

4. Tenant delivers to Landlord notice of its exercise of the Acceleration Option ("Acceleration Notice") not less than two hundred seventy (270) days prior to the Accelerated Termination Date;

5. Tenant has not exercised its Expansion Option (as such term is defined in Section 36 below.); and

6. Landlord has received the Acceleration Fee (defined below).

B. If Tenant exercises its Acceleration Option, Tenant, simultaneously with delivery of the Acceleration Notice shall pay to Landlord the sum of an amount equal to the unamortized portion of all of the following: (a) any leasing commissions paid by Landlord in connection with this Lease, (b) the amount of the Allowance distributed by Landlord to Tenant, and (c) an amount equal to the difference between (x) the amount of Tenant's overall effective rent for the initial Term and (y) the amount that Landlord would have received effective rental rate for the initial Term but for Tenant's exercise of this Acceleration Option (collectively, the "Acceleration Fee") as a fee in connection with the acceleration of the Termination Date and not as a penalty; provided that the Acceleration Fee shall be increased by an amount equal to the unamortized portion of the any leasing commissions, tenant improvements paid for by Landlord, tenant allowances or other concessions incurred by Landlord in connection with any additional space other than the initial Premises leased by Tenant under this Lease and that is subject to acceleration hereunder. A hypothetical calculation of the Acceleration Fee is attached hereto as **Exhibit H**. Tenant shall remain liable for all Base Rent, Additional Rent and other sums due under the Lease up to and including the Accelerated Termination Date even though billings for such may occur subsequent to the Accelerated Termination Date. The "unamortized portion" of any of the foregoing shall be determined using an interest rate of 9% per annum.

C. As of the date Tenant provides Landlord with an Acceleration Notice, any unexercised rights or options of Tenant to renew the Term of the Lease or to expand the Premises (whether expansion options, rights of first or second refusal, rights of first or second offer, or other similar rights), and any outstanding tenant improvement allowance not claimed and properly utilized by Tenant in accordance with the Lease as of such date, shall immediately be deemed terminated and no longer available or of any further force or effect.

35. Signage.

A. **Building Signage.**

1. Tenant shall be entitled to one tenant identification sign to be located on or along the top of the Building (the "Building Signage"). The exact location of the Building Signage shall be determined by Tenant, subject to all applicable Laws, any reasonable signage guidelines for the Project established by Landlord and provided to Tenant prior to installation of the Building Signage, and Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided that the location does not detract from the first-class quality of the Building. Such right to the Building Signage is personal to Tenant and is subject to the following terms and conditions: (a) Tenant shall submit plans and drawings for the Building Signage to Landlord and to the City of San Mateo and to any other public authorities having jurisdiction and shall obtain written approval from Landlord (not to be unreasonably withheld, conditioned or delayed) and, if applicable, each such jurisdiction prior to installation, and shall comply with all applicable Laws; (b) Tenant shall, at Tenant's sole cost and expense, design, construct and install the Building Signage; (c) the size, color and design of the Building Signage shall be subject to Landlord's prior written approval; and (d) Tenant shall maintain the Building Signage in good condition and repair, and all costs of maintenance and repair shall be borne by Tenant. Maintenance shall include, without limitation, cleaning and, if the Building Signage is illuminated, relamping at reasonable intervals. Tenant shall be responsible for any electrical energy used in connection with the Building Signage. Notwithstanding the foregoing, Tenant shall not be liable for any fee in connection with Tenant's right to display the Building Signage in accordance with this Lease. At Landlord's option, Tenant's right to the Building Signage may be revoked and terminated upon occurrence of any of the

following events: (i) Tenant shall be in default under this Lease beyond any applicable notice and cure periods; (ii) Tenant leases less than 66% of the rentable area of the Building; or (iii) this Lease shall terminate or otherwise no longer be in effect.

2. Upon the expiration or earlier termination of this Lease or at such other time that Tenant's signage rights are terminated pursuant to the terms hereof, if Tenant fails to remove the Building Signage and repair the Building in accordance with the terms of this Lease, Landlord shall cause the Building Signage to be removed from the Building and the Building to be repaired and restored to the condition which existed prior to the installation of the Building Signage (including, if necessary, the replacement of any precast concrete panels), all at the sole cost and expense of Tenant and otherwise in accordance with this Lease, without further notice from Landlord notwithstanding anything to the contrary contained in this Lease. Tenant shall pay all costs and expenses for such removal and restoration within fifteen (15) business days following delivery of an invoice therefor accompanied by reasonable supporting documentation. The rights provided in this Section 35.A shall be non-transferable (except with respect to a Permitted Transferee) unless otherwise agreed by Landlord in writing in its sole discretion.

B. **Monument Signage.**

1. So long as (a) Tenant is not in default beyond applicable notice and cure periods under the terms of the Lease; and (b) Tenant has not assigned this Lease (other than to a Permitted Transferee) or sublet greater than sixty-six percent (66%) of the Building, if Landlord, in its sole discretion, erects a shared monument sign for the Project (a "Project Monument Sign") or a monument sign dedicated to the Building (a "Building Monument Sign") and names of tenants are listed on any such Monument Sign (as defined below), Tenant shall have the right to have its name listed on such Monument Sign, subject to the terms of this Section. The Building Monument Sign and/or the Project Monument Sign may be referred to herein as a "Monument Sign". The design, size and color of Tenant's signage with Tenant's name to be included on the Monument Sign, and the manner in which it is attached to the Monument Sign, shall comply with all applicable Laws and shall be subject to the approval of Landlord (which approval shall not be unreasonably withheld, conditioned or delayed) and any applicable governmental authorities. Landlord shall have the right to require that all names on the Monument Sign be of the same size and style. Tenant must obtain Landlord's written consent to any proposed signage and lettering prior to its fabrication and installation. Tenant's right to place its name on the Monument Sign, and the location of Tenant's name on the Monument Sign, shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant's right to place its name on any Building Monument Sign shall be free of charge during the Term, and Tenant's right to place its name on any Project Monument Sign shall be upon financial terms that are the same as those terms granted to any other tenant of the Project (considering the location and size of the tenant's name on such Project Monument Sign). To obtain Landlord's consent, Tenant shall submit design drawings to Landlord showing the type and sizes of all lettering; the colors, finishes and types of materials used; and (if applicable and Landlord consents in its sole discretion) any provisions for illumination. Although the Monument Sign will be maintained by Landlord, Tenant shall pay its proportionate share of the cost of any maintenance and repair associated with the Monument Sign. In the event that additional names are listed on the Monument Sign, all future costs of maintenance and repair shall be prorated between Tenant and the other parties that are listed on such Monument Sign.

2. Tenant's name on the Monument Sign shall be designed, constructed, installed, insured, maintained, repaired and removed from the Monument Sign all at Tenant's sole risk, cost and expense. Tenant, at its cost, shall be responsible for the maintenance, repair or replacement of Tenant's signage on the Monument Sign, which shall be maintained in a manner reasonably satisfactory to Landlord.

3. If during the Term (and any extensions thereof) (a) Tenant is in default under the terms of this Lease after the expiration of applicable cure periods; (b) Tenant leases less than 66% of the Building; or (c) Tenant assigns this Lease (other than to a Permitted Transferee), then Tenant's rights granted herein will terminate and Landlord may remove Tenant's name from the Monument Sign at Tenant's sole cost and expense and restore the Monument Sign to the condition it was in prior to installation of Tenant's signage thereon,

ordinary wear and tear excepted. The cost of such removal and restoration shall be payable as additional rent within five (5) days of Landlord's demand. Landlord may, at anytime during the Term (or any extension thereof), upon five (5) days prior written notice to Tenant, relocate the position of Tenant's name on the Monument Sign. The cost of such relocation of Tenant's name shall be at the cost and expense of Landlord.

4. The rights provided in this Section 35.B shall be non-transferable (except with respect to a Permitted Transferee) unless otherwise agreed by Landlord in writing in its sole discretion

36. Option to Expand.

A. Grant of Option; Conditions. Tenant shall have the option (the "Expansion Option") to lease the space located on the first floor of the Building containing no less than 10,000 square feet of rentable area located on the first floor of the Building (the "Expansion Space") if:

1. Tenant is not in default under the Lease beyond any applicable notice and cure periods at the time that Landlord receives the Expansion Notice; and

2. Not more than 22,100 rentable square feet of the Premises is sublet at the time Landlord receives the Expansion Notice; and

3. The Lease has not been assigned to any party other than a Permitted Transferee prior to the date that Landlord receives the Expansion Notice; and

4. Tenant has not vacated or abandoned the Premises at the time Landlord receives the Expansion Notice.

Landlord shall deliver written notice (the "Expansion Availability Notice") to Tenant of the availability of the Expansion Space on or before the date that is nine (9) months prior to the anticipated commencement date of such expansion (such date shall sometimes be referred to herein as the "Notice Deadline"), which anticipated commencement date shall occur during the period beginning on the first day of the 36th month of the Term and ending on the last day of the 54th month of the Term. Landlord's Expansion Availability Notice shall advise Tenant of the approximate square footage of the Expansion Space and the terms under which Landlord is prepared to lease such Expansion Space to Tenant for the remainder of the Term, which terms shall include abatement of the first full month's Base Rent and shall reflect the Prevailing Market rate (as defined in Section 33 above); provided, however, that in no event shall the Base Rent rate with respect to the Expansion Space be less than the Base Rent rate then applicable to the original Premises leased hereunder. Tenant may lease such Expansion Space in its entirety only, under such terms, by delivering written notice of exercise to Landlord (the "Expansion Acceptance Notice") within ten (10) days after the date of the Expansion Availability Notice. Tenant's failure to timely deliver an Expansion Acceptance Notice shall be deemed Tenant's waiver of its right to lease the Expansion Space. If Tenant, in its reasonable judgment, determines that the rate set forth in Landlord's Expansion Availability Notice does not accurately reflect the Prevailing Market rate for the Expansion Space, Tenant's Expansion Acceptance Notice shall also include Tenant's written notice of rejection of such Prevailing Market rate. Tenant's failure to include notice of its rejection in its Expansion Acceptance Notice shall be deemed to be an acceptance by Tenant of the Prevailing Market rate designated by Landlord. If Tenant provides Landlord with notice of its rejection of the Prevailing Market rate in a timely manner, Landlord and Tenant shall work together in good faith to determine the Prevailing Market rate for the Expansion Space. If Landlord and Tenant fail to agree upon the Prevailing Market rate within thirty (30) days after the date of the Expansion Acceptance Notice, the parties shall participate in the appraisal process described in Section 33.A.(2) (a).

B. Terms for Expansion Space.

1. The annual Base Rent rate per rentable square foot for the Expansion Space shall be the Prevailing Market rate per rentable square foot for the Expansion Space. Base Rent attributable to the Expansion Space shall be payable in monthly installments in accordance with the terms and conditions of Section 4 of the Lease.

2. Tenant shall pay Additional Rent (i.e. Taxes and Expenses) for the Expansion Space on the same terms and conditions set forth in Section 4 of the Lease, provided that Tenant's Share shall increase appropriately to account for the addition of the Expansion Space, and the manner and method in which Tenant reimburses Landlord for Tenant's share of Taxes and Expenses shall be some of the factors considered in determining the Prevailing Market rate for the Expansion Space.

3. The Expansion Space (which shall include Building standard general office improvements with not more than 35% of the rentable area of such Expansion Space consisting of private offices) shall be accepted by Tenant in its "as-built" condition and configuration existing on the earlier of the date Tenant takes possession of the Expansion Space or as of the date the term for the Expansion Space commences. Landlord shall provide a tenant improvement allowance with respect to the Expansion Space in an amount equal to $7.00 per rentable square foot of such Expansion Space.

4. The term for the Expansion Space shall commence on a date to be provided by Landlord, which date shall occur during the period beginning on the first day of the 36th month of the Term and ending on the last day of the 54th month of the Term, and shall end, unless sooner terminated pursuant to the terms of the Lease, on the Termination Date of the Lease, it being the intention of the parties hereto that the term for the Expansion Space and the Term for the initial Premises shall be coterminous. If Landlord is delayed delivering possession of the Expansion Space due to the holdover or unlawful possession of such space by any party, Landlord shall use reasonable efforts to obtain possession of the space, and the commencement of the term for the Expansion Space shall be postponed until the date Landlord delivers possession of the Expansion Space to Tenant free from occupancy by any party; provided, however, that if Landlord fails to deliver possession of the Expansion Space to Tenant free from occupancy by any party prior to the date that is six (6) months (subject to a day for day extension for Force Majeure delays) following the anticipated commencement date with respect to the Expansion Space as set forth in the Expansion Availability Notice, then Tenant shall have the right, but not the obligation, to terminate the exercise of its Expansion Option by notice given to Landlord on or before the earlier to occur of (i) the date that Landlord delivers the Expansion Space to Tenant and (ii) the date this five (5) business days following the expiration of such six (6) month period, and upon giving of such notice, the Expansion Option shall be deemed to be terminated and shall be null and void and of no force or effect.

5. If the Expansion Option is exercised, the Expansion Space shall be considered Premises, subject to all the terms and conditions of the Lease, except that no allowances, credits, abatements or other concessions (if any) set forth in the Lease for the initial Premises shall apply to the Expansion Space, except as may be specifically provided otherwise in this Expansion Option provision.

6. If, at any time prior to Tenant's exercise of the Expansion Option, Landlord, in Landlord's sole discretion, improves any space located on the first floor of the Building as "spec space" to be offered to third parties for lease, which space may, in Landlord's sole discretion, eventually become a part of the proposed Expansion Space, Landlord shall advise Tenant in writing of its intention to so improve such space. Tenant, within ten (10) days thereafter, may advise Landlord of any preferences Tenant may have with regard to the design and layout of such space. Landlord hereby agrees to use good faith in considering Tenant's preferences; provided, however, that in no event shall Landlord have any obligation to improve the space in accordance with Tenant's preferences, and in no event shall Landlord be liable for Landlord's good faith refusal to incorporate Tenant's preferences into the improvements.

7. In addition, if prior to Tenant's exercise of the Expansion Option, Landlord must remove previously constructed offices and enclosed areas in order to deliver the Expansion Space to Tenant in accordance with Subsection 3 above (i.e., not more than 35% of the rentable area of the Expansion Space shall consist of private offices), Landlord shall use good faith efforts to consider Tenant's preferences before determining which areas of the Expansion Space are to be demolished and restored to an open plan; provided, however, that in no event shall Landlord be obligated to demolish and restore in accordance with Tenant's preferences and in no event shall Landlord be liable for Landlord's refusal to incorporate Tenant's preferences with regard to such demolition and restoration work.

C. Expansion Amendment. If Tenant is entitled to and properly exercises the Expansion Option, Landlord shall prepare and execute an amendment to this Lease (the "Expansion Amendment") to reflect the commencement date of the term for the Expansion Space and the changes in Base Rent, rentable square footage of the Premises, Tenant's Share and other appropriate terms (including, if Tenant's exercise of the Expansion Option results in Tenant leasing the entire Building, any appropriate modifications to reflect a single tenant building). A copy of the Expansion Amendment duly executed by Landlord shall be sent to Tenant within a reasonable time after Landlord's receipt of the Expansion Notice, and Tenant shall execute and return the Expansion Amendment to Landlord within fifteen (15) days thereafter, but, following final determination of the Prevailing Market rate as described herein, an otherwise valid exercise of the Expansion Option shall be fully effective whether or not the Expansion Amendment is executed.

37. Right of First Offer.

A. Grant of Option; Conditions. Tenant shall have the ongoing right of first offer (the "Right of First Offer") with respect any space in the Building (each such space, a "Potential Offering Space"). Tenant's Right of First Offer shall be exercised as follows: at any time after Landlord has determined that any Potential Offering Space has become Available (defined below), but prior to leasing such Potential Offering Space to a party other than any existing tenant thereof, Landlord shall advise Tenant (the "Advice") of the terms under which Landlord is prepared to lease such Potential Offering Space (an "Offering Space") to Tenant for the remainder of the Term, which terms shall reflect the Prevailing Market rate for such Offering Space as reasonably determined by Landlord and which term shall reflect a term of not less than five (5) years (except as set forth in Section 37.B below). For purposes hereof, a Potential Offering Space shall be deemed to become "Available" at any time after the date that is one (1) year following the Commencement Date (the "ROFO First Available Date"), except that if (a) such Potential Offering Space is under lease to a third party as of the ROFO First Available Date (an "Existing Tenant"), or (b) a bona fide lease or letter of intent with respect to such Offering Space is on the ROFO First Available Date being negotiated by Landlord on an arms-length basis with a bona fide third party prospective tenant or tenants (a "Prospective Tenant"), then such Potential Offering Space shall be deemed to become Available when Landlord has determined that (i) the Existing Tenant of such Potential Offering Space will not extend or renew the term of its lease, or enter into a new lease, for such Potential Offering Space, or (ii) any Prospective Tenant will not enter into a lease for such Potential Offering Space. Except as provided in the immediately preceding sentence, Tenant's Right of First Offer shall be superior to any other rights granted to tenants at the Project after the date hereof. Tenant may lease any Offering Space in its entirety only, under such terms, by delivering written notice of exercise to Landlord (the "Notice of Exercise") within ten (10) days after the date of the Advice, except that Tenant shall have no such Right of First Offer and Landlord need not provide Tenant with an Advice with respect to any Potential Offering Space, if:

1. Tenant is in default under the Lease beyond any applicable notice and cure periods at the time that Landlord would otherwise deliver the Advice; or

2. More than 22,100 rentable square feet of the Premises is sublet at the time Landlord would otherwise deliver the Advice; or

3. The Lease has been assigned to any party other than a Permitted Transferee prior to the date Landlord would otherwise deliver the Advice; or

4. Subject to Section 37.A.2 above, Tenant is not occupying the Premises on the date Landlord would otherwise deliver the Advice.

B. Terms for Offering Space.

1. Provided that Tenant exercises its Right of First Offer with respect to any applicable Offering Space, the Offering Space term shall commence upon the commencement date stated in the Advice and thereupon such Offering Space shall be considered a part of the Premises, provided that all of the terms stated in the Advice shall govern Tenant's leasing of the Offering Space and only to the extent that they do not conflict with the Advice, the terms and conditions of this Lease shall apply to the Offering Space.

2. Tenant shall pay Base Rent and Additional Rent for the Offering Space in accordance with the terms and conditions of the Advice, which terms and conditions shall reflect the Prevailing Market rate for the Offering Space as determined in Landlord's reasonable judgment.

3. The Offering Space (including improvements and personalty, if any) shall be accepted by Tenant in its condition and as-built configuration existing on the earlier of the date Tenant takes possession of the Offering Space or as of the date the term for such Offering Space commences, unless the Advice specifies any work to be performed by Landlord in the Offering Space, in which case Landlord shall perform such work in the Offering Space. If Landlord is delayed delivering possession of the Offering Space due to the holdover or unlawful possession of such space by any party, Landlord shall use reasonable efforts to obtain possession of the space, and the commencement of the term for the Offering Space shall be postponed until the date Landlord delivers possession of the Offering Space to Tenant free from occupancy by any party; provided, however, that if Landlord fails to deliver possession of the Offering Space within six (6) months (subject to a day for day extension for Force Majeure delays) after the term commencement date therefor set forth in the Advice, then Tenant shall have the right, but not the obligation, to terminate its Right of First Offer with respect to the Offering Space by written notice given to Landlord on or before the earlier to occur of (i) the date of delivery of the Offering Space to Tenant and (ii) the date this five (5) business days following the expiration of such six (6) month period, and upon the exercise of any such right to terminate, the Right of First Offer shall be deemed to be null and void with respect to the Offering Space (but shall continue in full force and effect with respect to any future Potential Offering Space).

4. Notwithstanding anything to the contrary in this Section 37, if the Offering Space is Available (a) and there are three (3) years or more then remaining in the Term, the Offering Space Term shall be co-terminous with the then remaining Term of the Lease with respect to the Premises (and Tenant shall not be obligated to exercise any Renewal Option then remaining); or (b) within three (3) years prior to the expiration of the Term, then Tenant may exercise its Right of First Offer only if Tenant either (i) if Tenant has a remaining Renewal Option to renew the Term of this Lease, Tenant simultaneously exercises such Renewal Option (and the Notice of Exercise shall so state) to extend the Term of the Lease with respect to the Premises, by simultaneously exercising the Renewal Option in accordance with Section 33 above (notwithstanding the time frame set forth in Section 33.A.1 with regard to Tenant's exercise of the Renewal Option) and the Term of Lease with respect to the Premises shall be co-terminous with the Offering Space Term, or (ii) if Tenant has no remaining Renewal Option at the time it exercises its Right of First Offer, agrees that the Offering Space Term shall not be for a period that is less than sixty (60) full calendar months.

C. Termination of Right of First Offer. The rights of Tenant hereunder with respect to any Potential Offering Space in any particular instance in which such Potential Offering Space becomes Available shall terminate on the earlier to occur of: (i) Tenant's failure to exercise its Right of First Offer with respect to such Potential Offering Space within the ten (10) day period provided in Section A above; and (ii) the date Landlord would have provided Tenant an Advice for such Potential Offering Space if Tenant had not been in violation of

one or more of the conditions set forth in Section A above. In addition, if Landlord provides Tenant with an Advice for any Offering Space that contains expansion rights (whether such rights are described as an expansion option, right of first refusal, right of first offer or otherwise) with respect to any other Potential Offering Space (such other Potential Offering Space subject to such expansion rights is referred to herein as an "Encumbered Potential Offering Space") and Tenant does not exercise its Right of First Offer to lease such Offering Space pursuant to the Advice, Tenant's Right of First Offer with respect to the Encumbered Potential Offering Space shall be subject and subordinate to all such expansion rights contained in the Advice. Notwithstanding the foregoing, if (i) Tenant was entitled to exercise its Right of First Offer, but failed to provide Landlord with an Expansion Acceptance Notice within the five (5) day period provided in paragraph A above, and (ii) Landlord does not enter into a lease for the Offering Space with a third party within a period of six (6) months following the date of the Expansion Acceptance Notice, Tenant shall once again have a Right of First Offer with respect to such Offer Space. In addition, Tenant shall once again have the Right of First Offer with respect to the Offering Space if, within such six (6) month period, Landlord proposes to lease the Offering Space to any third party on economic terms that are substantially different than those set forth in the Expansion Availability Notice. For purposes hereof, the terms offered to a prospect shall be deemed to be substantially the same as those set forth in the Expansion Availability Notice as long as there is no more than a five percent (5%) reduction in the "bottom line" cost per rentable square foot of the Offering Space to a prospective third party tenant when compared with the "bottom line" cost per rentable square foot under the Expansion Availability Notice, considering all of the economic terms of the both deals, respectively, including, without limitation, the net rent, any tax or expense escalation or other financial escalation and any financial concessions.

D. Offering Amendment. If Tenant exercises its Right of First Offer, Landlord shall prepare and execute an amendment to this Lease (the "Offering Amendment") adding the Offering Space to the Premises on the terms set forth in the Advice and reflecting the changes in the Base Rent, rentable square footage of the Premises, Tenant's Share and other appropriate terms (including, if Tenant's exercise of the applicable Right of First Offer results in Tenant leasing the entire Building, any appropriate modifications to reflect a single tenant building). A copy of the Offering Amendment duly executed by Landlord shall be sent to Tenant within a reasonable time after Landlord's receipt of the Notice of Exercise executed by Tenant, and Tenant shall execute and return the Offering Amendment to Landlord within fifteen (15) days thereafter, but an otherwise valid exercise of the Right of First Offer shall be fully effective whether or not the Offering Amendment is executed.

38. Roof Space.

A. Tenant shall have the right to lease space on the roof of the Building for the purpose of installing (in accordance with Section 9.C of the Lease), operating and maintaining a thirty-one (31) inch dish/antenna or other communication device approved by the Landlord (the "Dish/Antenna"), free of monthly rental charge during the initial Term. The exact location of the space on the roof to be leased by Tenant shall be designated by Landlord in its reasonably discretion and shall not exceed thirty-six (36) square feet (the "Roof Space"). Landlord reserves the right to relocate the Roof Space as reasonably necessary during the Term, provided, however, that, if Landlord relocates the Roof Space, Landlord shall be solely responsible for all costs and expenses associated with the removal, relocation and reinstallation of any Dish/Antenna and associated lines, pipes, cables and appurtenances. Landlord's designation shall take into account Tenant's use of the Dish/Antenna. Notwithstanding the foregoing, Tenant's right to install the Dish/Antenna shall be subject to the approval rights of Landlord and Landlord's architect and/or engineer with respect to the plans and specifications of the Dish/Antenna, the manner in which the Dish/Antenna is attached to the roof of the Building and the manner in which any cables are run to and from the Dish/Antenna, which approvals shall not be unreasonably withheld, conditioned or delayed. The precise specifications and a general description of the Dish/Antenna along with all documents Landlord reasonably requires to review the installation of the Dish/Antenna (the "Plans and Specifications") shall be submitted to Landlord for Landlord's written approval (not to be unreasonably withheld, conditioned or delayed) no later than twenty (20) days before Tenant commences to install the Dish/Antenna. Tenant shall be solely responsible for obtaining all necessary governmental and regulatory approvals and for the cost of installing, operating, maintaining and removing the Dish/Antenna. Tenant shall notify Landlord upon

completion of the installation of the Dish/Antenna. If Landlord determines in its reasonable discretion that the Dish/Antenna equipment does not comply with the approved Plans and Specifications, that the Building has been damaged during installation of the Dish/Antenna or that the installation was defective, Landlord shall notify Tenant of any noncompliance or detected problems and Tenant shall cure the defects as promptly as reasonably practicable. If the Tenant fails to cure the defects as promptly as reasonably practicable, Landlord shall have the right to cure the same and Tenant shall pay to Landlord upon demand (accompanied by reasonable supporting documentation) the cost actually paid by Landlord of correcting any defects and repairing any damage to the Building caused by such installation. If at the time Landlord approves the plans and specifications of the Dish/Antenna, Landlord, in its reasonable discretion, deems it necessary, then Tenant shall provide and install, at Tenant's sole cost and expense, such appropriate aesthetic screening, reasonably satisfactory to Landlord, for the Dish/Antenna (the "Aesthetic Screening").

B. Landlord agrees that Tenant, upon reasonable prior written notice to Landlord, shall have access to the roof of the Building and the Roof Space for the purpose of installing, maintaining, repairing and removing the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, all of which shall be performed by Tenant or Tenant's authorized representative or contractors, which shall be reasonably approved by Landlord, at Tenant's sole cost and risk. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Tenant, FCC (defined below) inspectors, or persons under their direct supervision will be permitted to have access to the roof of the Building and the Roof Space to the extent required to comply with applicable laws, codes, rules and regulations. Tenant further agrees to exercise firm control over the people requiring access to the roof of the Building and the Roof Space on behalf of Tenant in order to keep to a minimum the number of people having access to the roof of the Building and the Roof Space and the frequency of their visits.

C. It is further understood and agreed that the installation, maintenance, operation and removal of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, is not permitted to damage the Building or the roof thereof, or unreasonably interfere with the use of the Building and roof by Landlord. Tenant agrees to be responsible for any damage caused to the roof or any other part of the Building, which may be caused by Tenant or any of its agents or representatives.

D. Tenant agrees to install only equipment of types and frequencies which will not cause unreasonable interference to Landlord or other tenants or licensees of the Project. In the event Tenant's equipment causes such interference, Tenant and Landlord shall reasonably cooperate to determine what steps are reasonably necessary to eliminate the interference.

E. Tenant shall, at its sole cost and expense, and at its sole risk, install, operate and maintain the Dish/Antenna in a good and workmanlike manner, and in compliance with all applicable Building, electric, communication, and safety codes, ordinances, standards, regulations and requirements, now in effect or hereafter promulgated, of the Federal Government, including, without limitation, the Federal Communications Commission (the "FCC"), the Federal Aviation Administration ("FAA") or any successor agency of either the FCC or FAA having jurisdiction over radio or telecommunications, and of the state, city and county in which the Building is located. Under this Lease, the Landlord and its agents assume no responsibility for the licensing, operation and/or maintenance of Tenant's equipment. Tenant has the responsibility of carrying out the terms of its FCC license in all respects. The Dish/Antenna shall be connected to Landlord's power supply in strict compliance with all applicable Building, electrical, fire and safety codes. Neither Landlord nor its agents shall be liable to Tenant for any stoppages or shortages of electrical power furnished to the Dish/Antenna or the Roof Space because of any act, omission or requirement of the public utility serving the Building, or the act or omission of any other tenant, invitee or licensee or their respective agents, employees or contractors, or for any other cause beyond the reasonable control of Landlord, and Tenant shall not be entitled to any rental abatement for any such stoppage or shortage of electrical power. Neither Landlord nor its agents shall have any responsibility or liability for the conduct or safety of any of Tenant's representatives, repair, maintenance and engineering personnel while in or on any part of the Building or the Roof Space, except to the extent of any injury arising due to the willful misconduct or gross negligence of Landlord or its employees, agents or independent contractors.

F. The Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, shall remain the personal property of Tenant, and shall be removed by Tenant at its own expense at the expiration or earlier termination of this Lease or Tenant's right to possession hereunder. Tenant shall repair any damage caused by such removal, including the patching of any holes to match, as closely as reasonably possible, the color surrounding the area where the equipment and appurtenances were attached. Tenant agrees to maintain all of the Tenant's equipment placed on or about the roof or in any other part of the Building in proper operating condition and maintain same in satisfactory condition as to appearance and safety in Landlord's reasonable discretion. Such maintenance and operation shall be performed in a manner to avoid any unreasonable interference with any other tenants or Landlord. Tenant agrees that at all times during the Term, it will keep the roof of the Building and the Roof Space free of all trash or waste materials produced by Tenant or Tenant's agents, employees or contractors.

G. In light of the specialized nature of the Dish/Antenna, Tenant shall be permitted to utilize the services of its choice for installation, operation, removal and repair of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, subject to the reasonable approval of Landlord. Notwithstanding the foregoing, Tenant must provide Landlord with prior written notice of any such installation, removal or repair and coordinate such work with Landlord in order to avoid voiding or otherwise adversely affecting any warranties granted to Landlord with respect to the roof. If necessary, under the terms of the roof warranty, Tenant, at its sole cost and expense, shall retain any contractor having a then existing warranty in effect on the roof to perform such work (to the extent that it involves the roof), or, at Tenant's option, to perform such work in conjunction with Tenant's contractor. In the event the Landlord contemplates roof repairs or maintenance that could affect Tenant's Dish/Antenna, or which may result in an interruption of the Tenant's telecommunication service, Landlord shall formally notify Tenant at least thirty (30) days in advance (except in cases of an emergency) prior to the commencement of such contemplated work in order to allow Tenant to make other arrangements for such service.

H. Tenant shall not allow any provider of telecommunication, video, data or related services ("Communication Services") to locate any equipment on the roof of the Building or in the Roof Space for any purpose whatsoever, nor may Tenant use the Roof Space and/or Dish/Antenna to provide Communication Services to an unaffiliated tenant, occupant or licensee of another building, or to facilitate the provision of Communication Services on behalf of another Communication Services provider to an unaffiliated tenant, occupant or licensee of the Building or any other building.

I. Tenant acknowledges that Landlord may at some time establish a standard license agreement (the "License Agreement") with respect to the use of roof space by tenants of the Building. Tenant, upon request of Landlord, shall enter into such License Agreement with Landlord provided that such agreement is commercially reasonable and does not materially alter the rights of Tenant hereunder with respect to the Roof Space.

J. Tenant specifically acknowledges and agrees that the terms and conditions of Section 14 of the Lease (Indemnity and Waiver of Claims) shall apply with full force and effect to the Roof Space and any other portions of the roof accessed or utilized by Tenant, its representatives, agents, employees or contractors.

K. If Tenant defaults under any of the terms and conditions of this Section or the Lease, and Tenant fails to cure said default within the time allowed by Section 19 of the Lease, Landlord shall be permitted to exercise all remedies provided under the terms of the Lease, including removing the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, and restoring the Building and the Roof Space to the condition that existed prior to the installation of the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any. If Landlord removes the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, as a result of an uncured default, Tenant shall be liable for all costs and expenses Landlord incurs in removing the Dish/Antenna, the appurtenances and the Aesthetic Screening, if any, and repairing any damage to the Building, the roof of the Building and the Roof Space caused by the installation, operation or maintenance of the Dish/Antenna, the appurtenances, and the Aesthetic Screening, if any.

39. Confidentiality

A. Neither party will, without the prior written consent of the other party, disclose any Confidential Information of the other party to any third party, except as expressly provided herein. Information will be considered "Confidential Information" of a party if either (i) it is disclosed by the party to the other party in tangible form and is conspicuously marked "Confidential", "Proprietary" or the like; or (ii) contains the disclosing party's customer lists, customer information, technical information, or information regarding the disclosing party's business planning or business operations, and any other information that is designated in writing by Tenant as "Confidential" information.

B. Other than the terms and conditions of this Lease, information will not be deemed Confidential Information hereunder if such information (i) is known on a non-confidential basis to the receiving party prior to receipt from the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party on a non-confidential basis directly or indirectly from a third party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except (a) through a breach of the Lease by the receiving party, or (b) in violation of any confidentiality agreement held for the benefit of the non-disclosing party; or (iv) is independently developed by the receiving party.

C. Each party will secure and protect the Confidential Information of the other party in a manner consistent with the steps taken to protect its own trade secrets and confidential information, but not less than a reasonable degree of care. Neither party shall engage in any securities trading which is any manner implicated by Confidential Information of the other party hereto. Each party may disclose the other party's Confidential Information where (i) the disclosure is required by applicable law or regulation or by an order of a court or other governmental body having jurisdiction after giving reasonable notice to the other party with, to the extent practicable, adequate time for such other party to seek a protective order; (ii) the disclosure is advisable under any applicable securities laws regarding public disclosure of business information; or (iii) the disclosure is reasonably necessary (a) to fulfill the disclosing party's obligations hereunder and such disclosure is to that party's or its Affiliates' employees, officers, directors, attorneys, accountants, and other advisors (each, a "Permitted Party") or, (b) with respect of any financial information of Tenant, is reasonably necessary in the ordinary course of Landlord's business to disclose to a Permitted Party or in connection with a proposed sale or transfer of the Building by Landlord or to an investor of Landlord or an Affiliate, or any lender or proposed lender of Landlord or any Affiliate, so long as in all cases the disclosure is no broader than reasonably necessary and the disclosing party notifies the recipient of the confidential nature of the information disclosed. Notwithstanding anything to the contrary contained in this Section 39 or in Section 11 of the Lease, in no event shall Landlord or any Landlord Related Parties be liable for injury or damage to or interference with Tenant's business (including, without limitation, loss of profits or other revenues, loss of business opportunity, loss of goodwill or loss of use) or any other consequential, special or indirect damages in connection with the failure of any third party to whom Landlord discloses Confidential Information pursuant to clause (iii) above to comply with the terms hereof, provided that Landlord has obtained a Confidentiality Agreement consistent with the terms of this Section 39 from such third party for the benefit of Tenant, in which event Tenant shall look solely to such third party in the event of an unauthorized disclosure by such third party.

40. Bicycle Storage Area.

Subject to the terms of this Article 40, Tenant may install a bicycle storage area to store bicycles used by Tenant's employees located in an area approved by Landlord that is within reasonable walking distance of the Building (which approval shall not be unreasonably withheld, conditioned or delayed) (the "Storage Area") and otherwise in accordance with the terms of Article 9 of this Lease (including, without limitation, designating such Storage Area as a Required Removable). Tenant shall not store any items other than bicycles and related bicycle

equipment in the Storage Area, nor shall Tenant store anything that is unsafe or otherwise may create a hazardous condition, or that may increase Landlord's insurance rates, or cause a cancellation or modification of Landlord's insurance coverage. Landlord shall not be liable for any theft or damage to any bicycles stored in the Storage Area, it being understood that Tenant is using the Storage Area at its own risk. Tenant shall be responsible for maintaining the Storage Area at Tenant's sole cost and expense. Upon expiration or earlier termination of the Term, Tenant shall completely vacate and surrender the Storage Area to Landlord, empty of all stored items placed therein by or on behalf of Tenant. All terms and provisions of this Lease shall be applicable to the Storage Area, including, without limitation, Articles 14 (Indemnification), and 15 (Insurance), except that Landlord need not supply any services to the Storage Area and the Storage Area shall not be part of the "Premises" for purposes of calculating the rentable square footage of the Premises or Tenant's Share. Tenant agrees that Landlord shall not be liable therefor and that the availability or non-availability of the Storage Area as a result of any applicable Laws and Tenant's right to use the Storage Area shall not affect any of Tenant's other obligations under this Lease.

41. Entire Agreement.

This Lease, including the following exhibits and attachments which are hereby incorporated into and made a part of this Lease, constitute the entire agreement between the parties and supersede all prior agreements and understandings related to the Premises, including all lease proposals, letters of intent and other documents: **Exhibit A** (Outline and Location of Premises), **Exhibit B** (Building Rules and Regulations), **Exhibit C** (Commencement Letter), **Exhibit D** (Work Letter), **Exhibit E** (Expenses and Taxes), **Exhibit F** (Parking Agreement) and **Exhibit G** (Form of Confidentiality Agreement).

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

LANDLORD:

LOCON SAN MATEO, LLC,
a Delaware limited liability company

By: /s/ Mike L. Sanford
Name: Mike L. Sanford
Title: SVP

TENANT:

AKAMAI TECHNOLOGIES, INC.,
a Delaware corporation

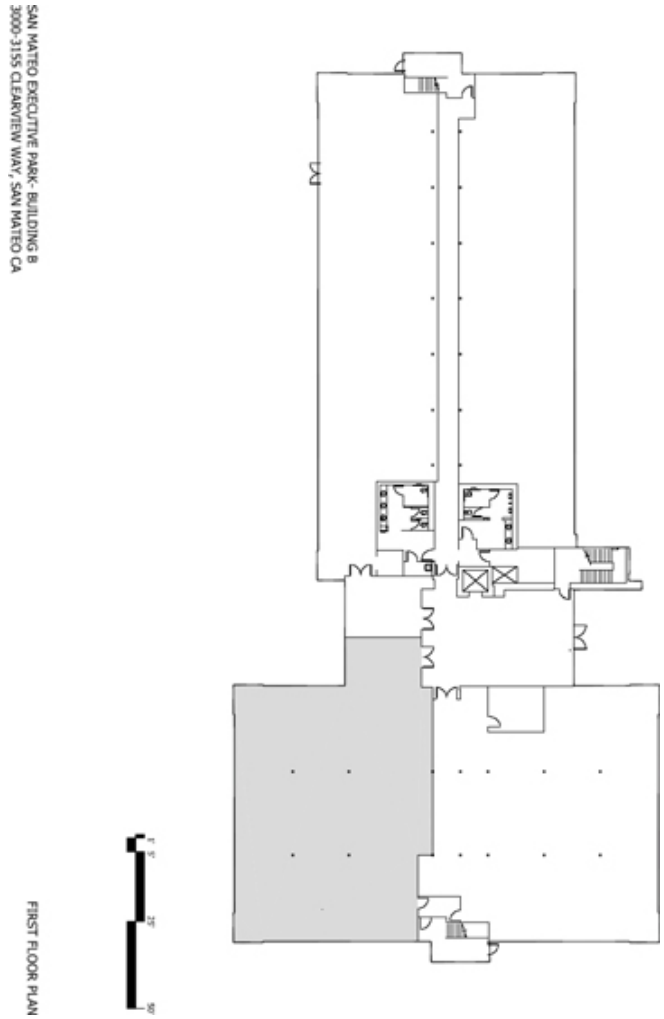
By: /s/ Paul Sagan
Name: Paul Sagan
Title: President & CEO

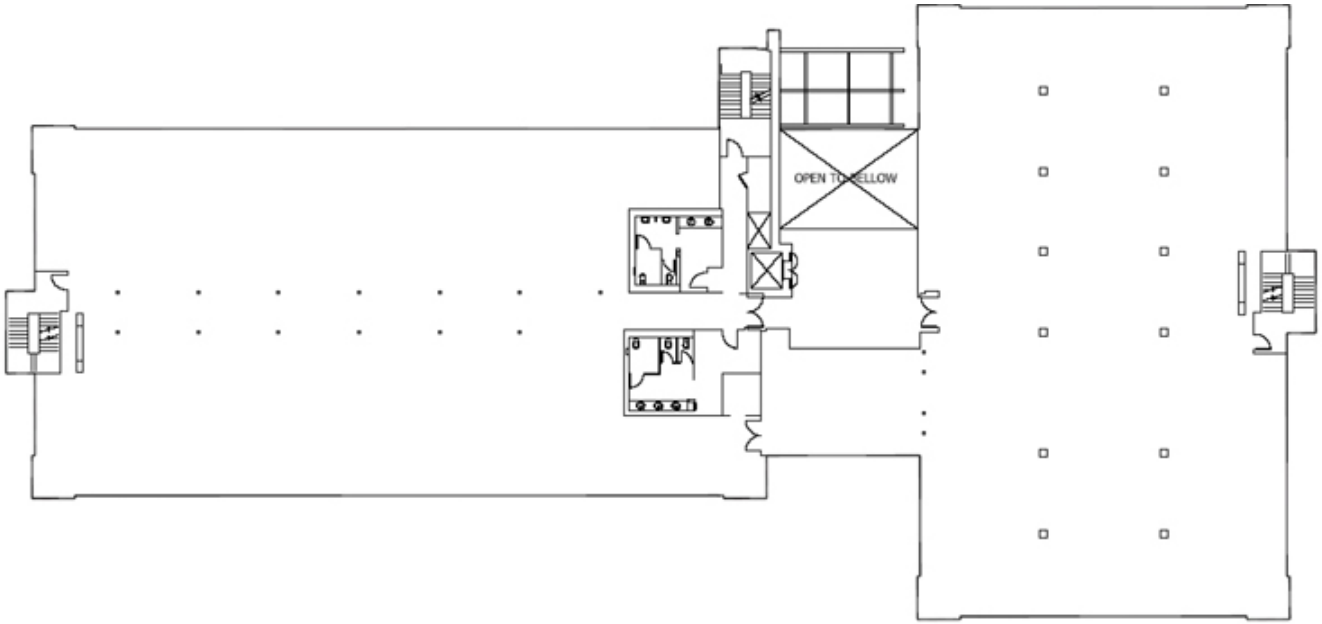
By: /s/ JD Sherman
Name: JD Sherman
Title: CFO

EXHIBIT A

OUTLINE AND LOCATION OF PREMISES

This Exhibit is attached to and made a part of the Lease by and between **LOCON SAN MATEO, LLC, a Delaware limited liability company** ("Landlord") and **AKAMAI TECHNOLOGIES, INC., a Delaware corporation** ("Tenant") for space in the Building located at 3125 Clearview Way, San Mateo, California.





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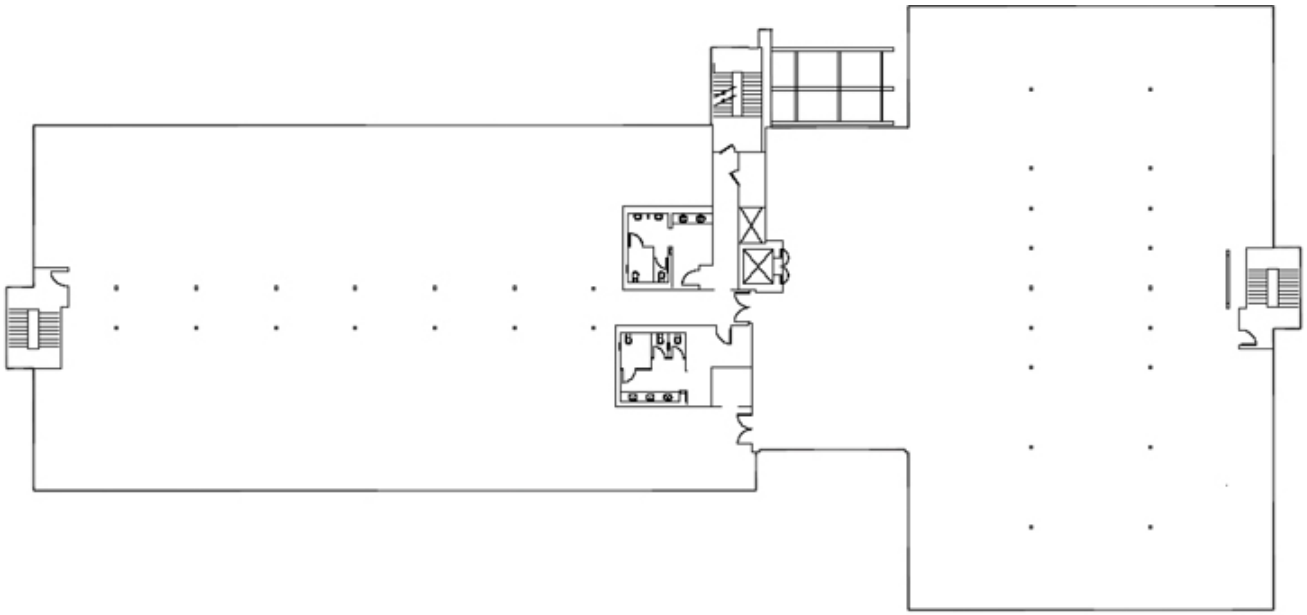
SAN MATEO EXECUTIVE PARK- BUILDING B
3000-3155 CLEARVIEW WAY, SAN MATEO CA

SECOND FLOOR PLAN



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1' 5' 25' 50'

SAN MATEO EXECUTIVE PARK- BUILDING B
3000-3155 CLEARVIEW WAY, SAN MATEO CA

THIRD FLOOR PLAN

EXHIBIT A-1

SITE PLAN

This Exhibit is attached to and made a part of the Lease by and between **LOCON SAN MATEO, LLC, a Delaware limited liability company** ("Landlord") and **AKAMAI TECHNOLOGIES, INC., a Delaware corporation** ("Tenant") for space in the Building located at 3125 Clearview Way, San Mateo, California.

EXHIBIT B

BUILDING RULES AND REGULATIONS

This Exhibit is attached to and made a part of the Lease by and between **LOCON SAN MATEO, LLC, a Delaware limited liability company** ("Landlord") and **AKAMAI TECHNOLOGIES, INC., a Delaware corporation** ("Tenant") for space in the Building located at 3125 Clearview Way, San Mateo, California.

The following rules and regulations shall apply, where applicable, to the Premises, the Building, the parking facility (if any), the Property, the Project and the appurtenances. Capitalized terms have the same meaning as defined in the Lease.

1. Sidewalks, doorways, vestibules, halls, stairways and other similar areas shall not be obstructed by Tenant or used by Tenant for any purpose other than ingress and egress to and from the Premises. No rubbish, litter, trash, or material shall be placed, emptied, or thrown in those areas. At no time shall Tenant permit Tenant's employees to loiter in Common Areas or elsewhere about the Building, Property or Project.

2. Plumbing fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or placed in the fixtures or appliances. Damage resulting to fixtures or appliances by Tenant, its agents, employees or invitees, shall be paid for by Tenant, and Landlord shall not be responsible for the damage.

3. No signs, advertisements or notices shall be painted or affixed to windows, doors or other parts of the Building or Project, except those of such color, size, style and in such places as are first approved in writing by Landlord, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, that such approval shall not be required for any of the foregoing items that are not visible from the Common Areas or the exterior of the Building. All tenant identification and suite numbers at the entrance to the Premises shall be installed by Landlord, at Tenant's cost and expense, using the standard graphics for the Building.

4. Landlord may provide and maintain in the first floor (main lobby) of the Building an alphabetical directory board or other directory device listing tenants, and no other directory shall be permitted unless previously consented to by Landlord in writing. Notwithstanding the foregoing, subject to the terms of Section 9 of the Lease, Tenant may install one (1) thirty-six inch television in the main lobby of the Building adjacent to Tenant's entry doors to the Premises, for the purpose of displaying Akamai promotional items and welcome messages to customers or visitors of Tenant. If Tenant desires to install a television that exceeds thirty-six (36) inches, Tenant shall first obtain the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant, at Tenant's sole cost, shall be responsible for maintaining and repairing such television and shall remove the television (and repair any damage resulting therefrom) at the expiration or earlier termination of the Lease.

5. Tenant shall not place any lock(s) on any door in the Premises, Building or Project without Landlord's prior written consent and Landlord shall have the right to retain at all times and to use keys to all locks within and into the Premises. A reasonable number of keys to the locks on the entry doors in the Premises shall be furnished by Landlord to Tenant at Tenant's cost, and Tenant shall not make any duplicate keys. All keys shall be returned to Landlord at the expiration or early termination of this Lease.

6. All contractors, contractor's representatives and installation technicians performing work to the fire/life safety systems, fire alarm, fire sprinkler, security, mechanical and electrical systems in the Building or Project shall be subject to Landlord's prior approval (which shall not be unreasonably withheld, conditioned or delayed) and shall be required to comply with Landlord's standard rules, regulations, policies and procedures, which may be revised from time to time. The rules and regulations shall be generally applicable, and generally applied in the same manner, to all tenants of the Building.

7. Movement in or out of the Building or the Project of furniture or office equipment, or dispatch or receipt by Tenant of merchandise or materials requiring the use of elevators, stairways, lobby areas or loading dock areas, shall be restricted to hours reasonably designated by Landlord. Tenant shall obtain Landlord's prior approval (which shall not be unreasonably withheld, conditioned or delayed) by providing a detailed listing of the activity. If approved by Landlord, the activity shall be under the supervision of Landlord and performed in the manner reasonably required by Landlord. Tenant shall assume all risk for damage to articles moved and injury to any persons resulting from the activity. If equipment, property, or personnel of Landlord or of any other party is damaged or injured as a result of or in connection with the activity, Tenant shall be solely liable for any resulting damage or loss.

8. Landlord shall have the right to approve the weight, size, or location of heavy equipment or articles in and about the Premises (such approval shall not be unreasonably withheld, conditioned or delayed). Damage to the Building or the Project by the installation, maintenance, operation, existence or removal of Tenant's Property shall be repaired at Tenant's sole expense.

9. Corridor doors that open to the Common Areas, when not in use, shall be kept closed.

10. Tenant shall not: (1) make or permit any improper, objectionable or unpleasant noises or odors in the Building or the Project, or otherwise interfere in any way with other tenants or persons having business with them; (2) solicit business or distribute, or cause to be distributed, in any portion of the Building or the Project, handbills, promotional materials or other advertising; or (3) conduct or permit other activities in the Building or the Project that might, in Landlord's sole opinion, constitute a nuisance.

11. No animals, except those assisting handicapped persons, shall be brought into the Building or the Project or kept in or about the Premises.

12. No inflammable, explosive or dangerous fluids or substances shall be used or kept by Tenant in the Premises, the Building, the Property or about the Project, except to the extent small amounts of such substances are customary and necessary for general office purposes. Tenant shall not, without Landlord's prior written consent, use, store, install, spill, remove, release or dispose of, within or about the Premises or any other portion of the Building, the Property or the Project, any asbestos-containing materials or any solid, liquid or gaseous material now or subsequently considered toxic or hazardous under the provisions of 42 U.S.C. Section 9601 et seq. or any other applicable environmental Law which may now or later be in effect. Tenant shall comply with all Laws pertaining to and governing the use of these materials by Tenant, and shall remain solely liable for the costs of abatement and removal.

13. Tenant shall not use or occupy the Premises in any manner or for any purpose which might injure the reputation or impair the present or future value of the Premises, the Building or the Project. Tenant shall not use, or permit any part of the Premises to be used, for lodging, sleeping or for any illegal purpose.

14. Tenant shall not take any action which would violate Landlord's labor contracts (of which Tenant has knowledge) or which would cause a work stoppage, picketing, labor disruption or dispute, or interfere with Landlord's or any other tenant's or occupant's business or with the rights and privileges of any person lawfully in the Building or the Project ("Labor Disruption"). Tenant shall take the actions necessary to resolve the Labor Disruption, and shall have pickets removed and, at the request of Landlord, immediately terminate any work in the Premises that gave rise to the Labor Disruption, until Landlord gives its written consent for the work to resume. Tenant shall have no claim for damages against Landlord or any of the Landlord Parties, nor shall the Commencement Date of the Term be extended as a result of the above actions.

15. Tenant shall not install, operate or maintain in the Premises or in any other area of the Building or the Project, electrical equipment that would overload the electrical system beyond its capacity for proper, efficient

and safe operation as determined solely by Landlord. Tenant shall not furnish cooling or heating to the Premises, including, without limitation, the use of electric or gas heating devices, without Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed). Tenant shall not use more than its proportionate share of telephone lines and other telecommunication facilities available to service the Building or the Project.

16. Bicycles and other vehicles are not permitted inside the Building or on the walkways outside the Building, except in areas designated by Landlord.

17. Landlord may from time to time adopt systems and procedures for the security and safety of the Building, the Property, and the Project, its occupants, entry, use and contents. Tenant, its agents, employees, contractors, guests and invitees shall comply with Landlord's systems and procedures.

18. Landlord shall have the right to prohibit the use of the name of the Building or the Project or any other publicity by Tenant that in Landlord's sole opinion may impair the reputation of the Building or the Project or their desirability. Upon written notice from Landlord, Tenant shall refrain from and discontinue such publicity immediately.

19. Tenant shall not canvass, solicit or peddle in or about the Building, the Property or the Project.

20. Neither Tenant nor its agents, employees, contractors, guests or invitees shall smoke or permit smoking in the Common Areas or the Exterior Common Areas in violation of applicable Law. Landlord shall designate a smoking area in the Common Areas. Landlord shall have the right to designate the Building and/or the Project (including the Premises) as a non-smoking building.

21. Landlord shall have the right to designate and approve standard window coverings for the Premises and to establish reasonable rules to assure that the Building presents a uniform exterior appearance.

22. Deliveries to and from the Premises shall be made only at the times, in the areas and through the entrances and exits designated by Landlord. Tenant shall not make deliveries to or from the Premises in a manner that might interfere with the use by any other tenant of its premises or of the Common Areas, any pedestrian use, or any use which is inconsistent with good business practice.

23. The work of cleaning personnel shall not be hindered by Tenant after 5:30 P.M., and cleaning work may be done at any time when the offices are vacant. Windows, doors and fixtures may be cleaned at any time, provided that such cleaning does not unreasonably interfere with the conduct of Tenant's business in the Premises. Tenant shall provide adequate waste and rubbish receptacles to prevent unreasonable hardship to the cleaning service.

EXHIBIT C

COMMENCEMENT LETTER
(EXAMPLE)

This Exhibit is attached to and made a part of the Lease by and between **LOCON SAN MATEO, LLC, a Delaware limited liability company** ("Landlord") and **AKAMAI TECHNOLOGIES, INC., a Delaware corporation** ("Tenant") for space in the Building located at 3125 Clearview Way, San Mateo, California.

Date _____

Tenant _____

Address _____

_____

_____

Re: Commencement Letter with respect to that certain Lease dated as of the day of , 20 , by and between , as Landlord, and , as Tenant, for rentable square feet on the floor of the Building located at , California.

Dear :

In accordance with the terms and conditions of the above referenced Lease, Tenant accepts possession of the Premises and agrees:

1. The Commencement Date of the Lease is ;

2. The Termination Date of the Lease is .

Please acknowledge your acceptance of possession and agreement to the terms set forth above by signing all 3 counterparts of this Commencement Letter in the space provided and returning 2 fully executed counterparts to my attention.

Sincerely,

_____

Authorized Signatory / Property Manager

Agreed and Accepted:

Tenant: _____

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT D

WORK LETTER

This Exhibit is attached to and made a part of the Lease by and between **LOCON SAN MATEO, LLC, a Delaware limited liability company** ("Landlord") and **AKAMAI TECHNOLOGIES, INC., a Delaware corporation** ("Tenant") for space in the Building located at 3125 Clearview Way, San Mateo, California.

1. Initial Alterations and Allowance.

A. Tenant, following (i) the delivery of the Premises by Landlord with the Initial Landlord Alterations Substantially Complete (i.e., the Delivery Date), and (ii) the full and final execution and delivery of the Lease to which this **Exhibit D** is attached and all prepaid rental, the Security Deposit and insurance certificates required under the Lease, shall have the right to perform alterations and improvements in the Premises (the "Initial Alterations"). Notwithstanding the foregoing, Tenant and its contractors shall not have the right to perform Initial Alterations in the Premises unless and until Tenant has complied with all of the terms and conditions of Section 9 of the Lease, including, without limitation, approval by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed) of the final plans for the Initial Alterations and the contractors to be retained by Tenant to perform such Initial Alterations. Without limiting the foregoing, Tenant hereby agrees that Tenant shall be required to use Landlord's preferred vendors for any work involving the Building systems and/or the Building structure. Tenant shall be responsible for all elements of the design of Tenant's plans (including, without limitation, compliance with law, functionality of design, the structural integrity of the design, the configuration of the premises and the placement of Tenant's furniture, appliances and equipment), and Landlord's approval of Tenant's plans shall in no event relieve Tenant of the responsibility for such design. Landlord's approval of the contractors to perform the Initial Alterations shall not be unreasonably withheld, conditioned or delayed. The parties agree that Landlord's approval of the general contractor to perform the Initial Alterations shall not be considered to be unreasonably withheld if any such general contractor (a) does not have trade references reasonably acceptable to Landlord, (b) does not maintain insurance as required pursuant to the terms of the Lease, (c) does not have the ability to be bonded for the work in an amount of no less than 150% of the total estimated cost of the Initial Alterations, or (d) is not licensed as a contractor in the state/municipality in which the Premises is located. Tenant acknowledges the foregoing is not intended to be an exclusive list of the reasons why Landlord may reasonably withhold its consent to a general contractor.

B. Provided Tenant is not in default beyond applicable notice and cure periods, Landlord agrees to contribute the sum of $2,500,000.00 (i.e., $50.00 per rentable square foot of the Premises) (the "Allowance") toward the cost of performing the Initial Alterations in preparation of Tenant's occupancy of the Premises. The Allowance may only be used for the cost of preparing design and construction documents and mechanical and electrical plans for the Initial Alterations, project management fees, permit fees, signage and for hard costs in connection with the Initial Alterations. The Allowance, less a ten percent (10%) retainage (which retainage shall be payable as part of the final draw), shall be paid to Tenant or, at Landlord's option, to the order of the general contractor that performs the Initial Alterations, in periodic disbursements within forty-five (45) days after receipt of the following documentation: (a) an application for payment and sworn statement of contractor substantially in the form of AIA Document G-702 covering all work for which disbursement is to be made to a date specified therein; (b) a certification from an AIA architect substantially in the form of the Architect's Certificate for Payment which is located on AIA Document G702, Application and Certificate of Payment; (c) contractor's, subcontractor's and material supplier's waivers of liens which shall cover all Initial Alterations for which disbursement is being requested and all other statements and forms required for compliance with the mechanics' lien laws of the state in which the Premises is located, together with all such invoices, contracts, or other supporting data as Landlord or Landlord's Mortgagee may reasonably require; (d) a cost breakdown for each trade or subcontractor performing the Initial Alterations; (e) plans and specifications for the Initial Alterations, together with a certificate from an AIA architect that such plans and specifications comply in all material respects with all laws affecting the Building, Property and Premises; (f) copies of all construction contracts for the Initial Alterations, together with copies of all

change orders, if any; and (g) a request to disburse from Tenant containing an approval by Tenant of the work done and a good faith estimate of the cost to complete the Initial Alterations. Upon completion of the Initial Alterations, and prior to final disbursement of the Allowance, Tenant shall furnish Landlord with: (i) general contractor and architect's completion affidavits; (ii) full and final waivers of lien; (iii) receipted bills covering all labor and materials expended and used; (iv) as-built plans of the Initial Alterations; and (v) the certification of Tenant and its architect that the Initial Alterations have been installed in a good and workmanlike manner substantially in compliance with the approved plans, and with applicable laws, codes and ordinances. In no event shall Landlord be required to disburse the Allowance more than one time per month. If the Initial Alterations exceed the Allowance, Tenant shall be entitled to the Allowance in accordance with the terms hereof, but each individual disbursement of the Allowance shall be disbursed in the proportion that the Allowance bears to the total cost for the Initial Alterations, less the ten percent (10%) retainage referenced above. Notwithstanding anything herein to the contrary, Landlord shall not be obligated to disburse any portion of the Allowance during the continuance of an uncured default under the Lease, and Landlord's obligation to disburse shall only resume when and if such default is cured.

C. In no event shall the Allowance be used for the purchase of equipment, furniture or other items of personal property of Tenant. If Tenant does not submit a request for payment of the entire Allowance to Landlord in accordance with the provisions contained in this **Exhibit D** by the date (the "Allowance Deadline") that is the six months after the Commencement Date (subject to a day for day extension if Tenant is unable to request an Allowance disbursement due to an event of Force Majeure), any unused amount shall accrue to the sole benefit of Landlord, it being understood that Tenant shall not be entitled to any credit, abatement or other concession in connection therewith; provided, however, that Tenant shall have an additional six (6) month period following the Allowance Deadline to submit a request for payment of not more than 10% of the Allowance (to the extent applicable), which six month period shall be extended on a day for day basis if Tenant is prevented from requesting such remaining portion of the Allowance as a result of an event of Force Majeure. Tenant shall be responsible for all applicable state sales or use taxes, if any, payable in connection with the Initial Alterations and/or Allowance. Landlord shall be entitled to deduct from the Allowance an amount equal to Landlord's reasonable, out-of-pocket costs for engaging third party engineers, architects and other consultants to review Tenant's plans for the Initial Alterations; provided, however, that Landlord shall not be entitled to any supervisory or construction management fee of charge.

D. Landlord shall provide Tenant with an allowance (the "Space Planning Allowance") in an amount not to exceed $7,500.00 (i.e. a sum equal to Fifteen Cents ($0.15) per rentable square foot in the Premises) to be applied toward preparation of the initial space plan for the Initial Alterations in the Premises (the "Space Planning Costs"). Landlord shall disburse the Space Planning Allowance, or applicable portion thereof, to Tenant within forty-five (45) days after receipt of paid invoices from Tenant with respect to Tenant's actual Space Planning Costs. However, in no event shall Landlord have any obligation to disburse any portion of the Space Planning Allowance after the date which is three (3) months after the Commencement Date.

2. Landlord Work.

A. Landlord, at its sole cost and expense (subject to the terms and provisions of Section 2.B below) shall (if the same have not been previously completed) perform certain "warm shell" improvements to the Premises (i) in accordance with the following work list (the "**Initial Landlord Alterations**"), and (ii) as described on Schedule 1 attached hereto (the "**Second Phase Landlord Alterations**"), in each case using Building standard methods, materials and finishes. The improvements not completed and to be performed in accordance with the work list below (the "**Work List**") and in accordance with Schedule 1 to this **Exhibit D** are collectively hereinafter referred to as the "**Landlord Work**". Landlord shall enter into a direct contract for the Landlord Work with a general contractor selected by Landlord. In addition, Landlord shall have the right to select and/or approve of any subcontractors used in connection with the Landlord Work.

WORK LIST (INITIAL LANDLORD ALTERATIONS)

1. Complete any interior soft demolition, including removal of demolition spoils.

2. Install planned insulation within the Premises.

3. Floor area within the Premises shall be broom swept condition ready for layout and framing.

4. Building electrical system shall be ready to accommodate temporary lighting and power.

B. All work and upgrades, other than Landlord Work, subject to Landlord's approval, shall be at Tenant's sole cost and expense, plus any applicable state sales or use tax thereon, payable upon demand as Additional Rent. If Landlord is delayed in the performance of the Landlord Work, or any portion thereof, by any Tenant Delay (as defined in the Lease), the Landlord Work (or such portion thereof) shall be deemed to be Substantially Complete on the date that Landlord could reasonably have been expected to Substantially Complete the Landlord Work absent any Tenant Delay. Tenant shall be responsible for any Tenant Delay in completion of the Premises resulting from any such other work and upgrades requested or performed by Tenant.

C. Landlord's supervision or performance of any work for or on behalf of Tenant shall not be deemed to be a representation by Landlord that the improvements constructed will be adequate for Tenant's use. Landlord and Tenant agree to cooperate with each other in order to enable the Landlord Work to be performed in a timely manner. Notwithstanding anything herein to the contrary, any delay in the completion of the Landlord Work or inconvenience suffered by Tenant during the performance of the Landlord Work shall not subject Landlord to any liability for any loss or damage resulting therefrom or entitle Tenant to any credit, abatement or adjustment of Rent or other sums payable under the Lease, except as otherwise provided in the Lease.

E. Notwithstanding the foregoing, Landlord shall be responsible for patent and latent defects in the Landlord Work of which Tenant notifies Landlord within twelve (12) months from the Substantial Completion of the Landlord Work. To the extent that the correction of such defects is covered under valid and enforceable warranties given Landlord by contractors or subcontractors performing the Landlord Work, Landlord shall pursue such claims directly or, to the extent that any such warranties apply solely to the Premises, assign any such warranties to Tenant for enforcement.

3. Miscellaneous.

A. Landlord and Tenant agree to cooperate with each other in order to enable the Landlord Work to be performed in a timely manner and with as little inconvenience to the performance of the Initial Alterations by Tenant as is reasonably possible. In no event shall the construction of the Initial Alterations cause a dangerous situation for Landlord in the performance of the Landlord Work, Tenant or their respective contractors or employees, or unreasonably hamper or otherwise prevent Landlord from proceeding with the completion of the Landlord Work at the earliest possible date.

B. Except as expressly provided in the Lease and this **Exhibit D**, Tenant agrees to accept the Premises in its "as-is" condition and configuration, it being agreed that Landlord shall not be required to perform any work or, except as provided above with respect to the Landlord Work, the Allowance and the Space Planning Allowance, incur any costs in connection with the construction or demolition of any improvements in the Premises.

C. This **Exhibit D** shall not be deemed applicable to any additional space added to the Premises at any time or from time to time, whether by any options under the Lease or otherwise, or to any portion of the original Premises or any additions to the Premises in the event of a renewal or extension of the original Term of the Lease, whether by any options under the Lease or otherwise, unless expressly so provided in the Lease or any amendment or supplement to the Lease.

SCHEDULE 1 TO EXHIBIT D

SECOND PHASE LANDLORD ALTERATIONS (Base Building Shell)

The following shall be completed by Landlord on or before the Commencement Date, per applicable local building code, and subject to necessary or desirable modifications, as deemed necessary in Landlord's discretion for the overall integrity and design of the Building, provided that all Landlord Work shall remain reasonably consistent with the Class A nature of the Building:

1. Water-tight, Title 24 Compliant Shell with perimeter insulation installed below the window sill and perimeter interior walls taped and sanded to type IV finish ready for paint or wall-covering.
2. Ground Floor Lobby with Class A finishes per Landlord's specifications.
3. Complete, operational elevator system and finished elevator cabs per Landlord's specifications.
4. Base Building exit stairs, including painted walls, hand rails, and appropriate lighting and signage as required by applicable code. Demising walls framed and open on Premises side.
5. Base Building mechanical system distributed via stub-outs to each floor. The air conditioning system consists of a penthouse mounted built-up system including cooling towers, chillers, and pumps. The heating system will be supported with a penthouse mounted hot water boiler with vertical hot water loop valved to each floor. The mechanical systems will be controlled via a web based, Direct Digital Controls (DDC) system.
6. Base Building telephone room at the ground floor main point of entry (MPOE) with riser capacity to connect to telephone closets on each floor.
7. Base Building restrooms including fixture counts required by code and Class A finishes per Landlord's specifications.
8. Base Building Electrical Power System (480/277V/1600A) with standard vertical power distribution to floor distribution panels in electrical closets on each floor.
9. Base Building fire sprinklers (light hazard distribution).
10. Base Building Fire/Life-Safety System, including all devices required by code for Base Building Shell, with additional addressable points available for Tenant use.
11. Surface parking and required signage for same.
12. Site landscaping and lighting.
13. Horizontal window blinds at all exterior windows.
14. Roof screens around rooftop equipment as required by code (except to the extent required as a result of the installation of Tenant's Dish/Antenna pursuant to Section 38 of the Lease).

EXHIBIT E

EXPENSES AND TAXES

This Exhibit is attached to and made a part of the Lease by and between **LOCON SAN MATEO, LLC, a Delaware limited liability company** ("Landlord") and **AKAMAI TECHNOLOGIES, INC., a Delaware corporation** ("Tenant") for space in the Building located at 3125 Clearview Way, San Mateo, California.

a. Landlord shall provide Tenant with a good faith estimate of the total amount of Expenses and Taxes for each calendar year (or applicable portion thereof, if the first Lease Year of the Term does not constitute a full calendar year) during the Term. On or before the first day of each month, Tenant shall pay to Landlord a monthly installment equal to one-twelfth ($1/12^{th}$) of Tenant's Share of Landlord's estimate of the total amount of Expenses and Taxes, which initial monthly sum is defined in Section 1.D. above as the "Tenant's Monthly Expense and Tax Payment". Tenant's Monthly Expense and Tax Payment shall be prorated for any partial month in which the Rent Commencement Date or the last day of the Term occurs. If Landlord determines that its good faith estimate was incorrect by a material amount, Landlord may provide Tenant with a revised estimate. After its receipt of the revised estimate, Tenant's Monthly Expense and Tax Payment shall be based upon the revised estimate. If Landlord does not provide Tenant with an estimate of the total amount of Expenses and Taxes by January 1 of a calendar year, Tenant shall continue to pay monthly installments based on the previous year's estimate until Landlord provides Tenant with the new estimate. Upon delivery of the new estimate, an adjustment shall be made for any month for which Tenant paid monthly installments based on the previous year's estimate. Tenant shall pay Landlord the amount of any underpayment within thirty (30) days after receipt of the new estimate. Any overpayment shall be refunded to Tenant within thirty (30) days or credited against the next due future installment(s) of Additional Rent.

B. As soon as is practical following the end of each calendar year, Landlord shall furnish Tenant with a statement of the actual amount of Expenses and Taxes for the prior calendar year and Tenant's Share of the actual amount of Expenses and Taxes for the prior calendar year. If the estimated amount of Expenses and Taxes for the prior calendar year is more than the actual amount of Expenses and Taxes for the prior calendar year, Landlord shall apply any overpayment by Tenant against Additional Rent due or next becoming due, provided if the Term expires before the determination of the overpayment, Landlord shall refund any overpayment to Tenant within forty-five (45) days after first deducting the amount of Rent due. If the estimated amount of Expenses and Taxes for the prior calendar year is less than the actual amount of Expenses and Taxes for such prior year, Tenant shall pay Landlord, within thirty (30) days after its receipt of the statement of Expenses and Taxes, any underpayment for the prior calendar year.

C. Expenses Defined. "Expenses" means the sum of (i) all reasonable, direct and indirect costs and expenses incurred in each calendar year in connection with operating, maintaining, repairing, and managing the Building and the Property (including any reasonable costs and expenses in connection with operating, maintaining, repairing and managing the Exterior Common Areas located on the Property to the extent such costs and expenses are not deemed to be costs and expenses of the Project as a whole); provided however, in no event shall the management fees for the Project (expressed as a percentage of gross receipts for the Project) exceed 3% of such gross receipts and provided, further, that if (following Tenant's exercise of the Expansion Option and Right of First Offer set forth in the Lease) Tenant shall lease and occupy the entire Building, the management fees for the Project (expressed as a percentage of gross receipts for the Project) shall not exceed 2% of such gross receipts; and (ii) the Building's, the Property's and the Landlord's allocable percentage of (a) all reasonable, direct and indirect costs of operating, maintaining, repairing and managing the Project (including any costs and expenses in connection with operating, maintaining, repairing and managing the Exterior Common Areas located on the Project to the extent such costs and expenses are not specifically allocated to and payable by individual buildings within the Project), and (b) all costs, fees or other amounts payable to any association established for the benefit of the Project, including, but not limited to:

1. Labor costs, including, wages, salaries, bonuses, social security and employment taxes, medical and other types of insurance, uniforms, training, and retirement and pension plans.

2. Management fees (not to exceed the percentages set forth above), the cost of equipping and maintaining a management office, accounting and bookkeeping services, legal fees not attributable to leasing or collection activity, and other administrative costs. Landlord, by itself or through an affiliate, shall have the right to directly perform or provide any services under this Lease (including management services), provided that the cost of any such services shall not exceed the cost that would have been incurred had Landlord entered into an arms-length contract for such services with an unaffiliated entity of comparable skill and experience.

3. The cost of services, including amounts paid to service providers and the rental and purchase cost of parts, supplies, tools and equipment; provided however, if any such parts, supplies, tools or equipment would be deemed a capital expenditure under generally accepted accounting principles, then the determination of whether the rental or purchase cost of such item may be properly included in Expenses shall be governed by the terms of Section C.6 below.

4. Premiums and deductibles paid by Landlord for insurance, including workers compensation, fire and extended coverage, earthquake, terrorism, general liability, rental loss, elevator, boiler and other insurance customarily carried from time to time by owners of comparable office buildings.

5. Electrical Costs (defined below) and charges for water, gas, steam and sewer, but excluding those charges for which Landlord is reimbursed by tenants and further excluding those charges paid directly by Tenant or any other tenant or occupant to the electricity service provider. “Electrical Costs” means: (a) charges paid by Landlord for electricity; and (b) costs incurred in connection with an energy management program for the Building, the Property or the Project. Electrical Costs shall be adjusted as follows: (i) amounts received by Landlord as reimbursement for above standard electrical consumption shall be deducted from Electrical Costs; (ii) the cost of electricity incurred to provide overtime HVAC to specific tenants (as reasonably estimated by Landlord) shall be deducted from Electrical Costs; and (iii) if Tenant is billed directly for the cost of building standard electricity to the Premises as a separate charge in addition to Base Rent, the cost of electricity to individual tenant spaces in the Building shall be deducted from Electrical Costs.

6. The amortized cost of capital improvements (as distinguished from replacement parts or components installed in the ordinary course of business) made to the Building, Property or Project which are: (a) performed primarily to reduce operating expense costs or otherwise improve the operating efficiency of the Building, Property or Project; or (b) required to comply with any Laws that are enacted, or first interpreted to apply to the Building, Property or Project, after the date of this Lease. The cost of capital improvements shall be amortized by Landlord over the useful life of the improvement, as reasonably determined by Landlord. The amortized cost of capital improvements may, at Landlord’s option, include actual or imputed interest at the rate that Landlord would reasonably be required to pay to finance the cost of the capital improvement.

7. Any fees, costs and expenses relating to operating, managing, owning, repairing and maintaining any fitness center(s), conference center(s), concierge services, or other amenities (if any) in the Project (except to the extent Landlord charges a separate fee for the use of any such centers, services or amenities).

Notwithstanding the foregoing, for purposes of computing Tenant’s Share of Expenses, the Controllable Expenses (hereafter defined) shall not increase by more than 3% per calendar year on a compounding and cumulative basis over the course of the Term. In other words, Controllable Expenses for the second Lease year of the Term shall not exceed 103% of the Controllable Expenses for the first Lease year of the Term. Controllable Expenses for the third Lease year of the Term shall not exceed 103% of the limit on Controllable Expenses for the second Lease year of the Term, etc. By way of illustration, if Controllable Expenses were $10.00 per rentable square foot for the first Lease year of the Term, then Controllable Expenses for the second Lease year shall not exceed $10.30 per rentable square foot, and Controllable Expenses for the third Lease year of the term shall not

exceed $10.61 per rentable square foot (whether or not actual Controllable Expenses were less than, equaled or exceeded the limit on Controllable Expenses the prior year). “Controllable Expenses” shall mean all Expenses exclusive of the cost of insurance, utilities, and taxes.

If Landlord incurs Expenses for the Building, the Property or the Project together with one or more other buildings or properties, whether pursuant to a reciprocal easement agreement, common area agreement or otherwise, the shared costs and expenses shall be equitably prorated and apportioned between the Building, the Property and the Project and the other buildings or properties. Landlord agrees to act in a commercially reasonable manner in incurring Expenses, taking into consideration the class and the quality of the Building. Expenses shall not include: the cost of capital improvements (except as set forth above); depreciation; interest (except as provided above for the amortization of capital improvements); principal payments of mortgage and other non-operating debts of Landlord; the cost of repairs or other work to the extent Landlord is reimbursed by insurance or condemnation proceeds; costs in connection with leasing space in the Building, including brokerage commissions; lease concessions, including rental abatements and construction allowances, granted to specific tenants; costs incurred in connection with the sale, financing or refinancing of the Building; fines, interest and penalties incurred due to the late payment of Taxes (defined in Section 4.D) or Expenses; organizational expenses associated with the creation and operation of the entity which constitutes Landlord; or any penalties or damages that Landlord pays to Tenant under this Lease or to other tenants in the Building under their respective leases. The following are also excluded from Expenses:

(a) Sums (other than management fees, it being agreed that the management fees included in Expenses are as described in Section C.2 above) paid to subsidiaries or other affiliates of Landlord for services on or to the Building and/or Premises, but only to the extent that the costs of such services exceed the competitive cost for such services rendered by persons or entities of similar skill, competence and experience.

(b) Attorney’s fees and other expenses incurred in connection with negotiations or disputes with prospective tenants or tenants or other occupants of the Building.

(c) Ground lease rental.

(d) Advertising and promotional expenditures.

(e) Fines, costs or penalties incurred as a result and to the extent of a violation by Landlord of any applicable Laws.

(f) Any fines, penalties or interest resulting from the gross negligence or willful misconduct of Landlord.

(g) The cost of testing, remediation or removal of “Hazardous Materials” in the Building or on the Project required by Laws; provided however, that with respect to the testing, remediation or removal of any material or substance which, as of the Commencement Date was not considered, as a matter of Law, to be a Hazardous Material, but which is subsequently determined to be a Hazardous Material as a matter of law, the cost thereof may be included in Expenses for the Property.

(h) Landlord’s charitable and political contributions.

(i) Executive salaries for personnel above the level of property manager; provided that if any employee performs services in connection with the Building and other buildings, costs associated with such employee may be proportionately included in Expenses based on the percentage of time such employee spends in connection with the operation, maintenance and management of the Building.

(j) Legal, auditing, consulting and professional fees and other costs (other than those legal, auditing, consulting and professional fees and other costs incurred in connection with the normal and routine maintenance and operation of the Property (which shall exclude the attorneys' fees and other costs described in subclause (b) above)).

(k) Costs incurred by Landlord for the repair of damage to the Building, to the extent that Landlord is reimbursed for such costs by insurance proceeds, contractor warranties, guarantees, judgments or other third party sources.

(l) Except as specifically provided above in Section C.6 above, any capital improvement costs.

If the Building is not at least 95% occupied during any calendar year or if Landlord is not supplying services to at least 95% of the total rentable square footage of the Building at any time during a calendar year, Expenses shall, at Landlord's option, be determined as if the Building had been 95% occupied and Landlord had been supplying services to 95% of the rentable square footage of the Building during that calendar year. The extrapolation of Expenses under this Section shall be performed by appropriately adjusting the cost of those components of Expenses that are impacted by changes in the occupancy of the Building.

D. Taxes Defined. "Taxes" shall mean: (1) all real estate taxes and other assessments on the Building and/or Property, and the Building's and Property's share of such taxes relating to the Project, including, but not limited to, assessments for special improvement districts and building improvement districts, taxes and assessments levied in substitution or supplementation in whole or in part of any such taxes and assessments and the Building's and Property's share of any real estate taxes and assessments under any reciprocal easement agreement, common area agreement or similar agreement as to the Building, Property and/or Project; (2) all personal property taxes for property that is owned by Landlord and used in connection with the operation, maintenance and repair of the Building, Property or the Project; and (3) all reasonable, out of pocket costs and fees incurred in connection with seeking reductions in any tax liabilities described in (1) and (2), including, without limitation, any reasonable, out of pocket costs incurred by Landlord for compliance, review and appeal of tax liabilities. Without limitation, Taxes shall not include any income, capital levy, franchise, capital stock, documentary transfer, business association, gift, estate or inheritance tax. If an assessment is payable in installments, Taxes for the year shall include the amount of the installment and any interest due and payable during that year. For all other real estate taxes, Taxes for that year shall, at Landlord's election, include either the amount accrued, assessed or otherwise imposed for the year or the amount due and payable for that year, provided that Landlord's election shall be applied consistently throughout the Term. If a change in Taxes is obtained for any year of the Term, then Taxes for that year will be retroactively adjusted and Landlord shall provide Tenant with a credit, if any, based on the adjustment.

E. Audit Rights. Tenant may, within twelve (12) months after receiving Landlord's statement of Expenses (but not more frequently than once per twelve (12) month period during the Term), give Landlord written notice ("Review Notice") that Tenant intends to review Landlord's records of the Expenses for that calendar year. Within a reasonable time after receipt of the Review Notice, Landlord shall make all pertinent records available for inspection that are reasonably necessary for Tenant to conduct its review. If any records are maintained at a location other than the office of the Building, Tenant may either inspect the records at such other location or pay for the reasonable cost of copying and shipping the records. If Tenant retains an agent to review Landlord's records, the agent must be with a licensed CPA firm. Tenant shall be solely responsible for all costs, expenses and fees incurred for the audit. However, notwithstanding the foregoing, if Landlord and Tenant determine that Expenses for the Building for the year in question were less than stated by more than 5%, Landlord, within thirty (30) days after its receipt of paid invoices therefor from Tenant, shall reimburse Tenant for the reasonable amounts paid by Tenant to third parties in connection with such review by Tenant. Within ninety (90) days after the records are made available to Tenant, Tenant shall have the right to give Landlord written notice (an "Objection Notice") stating in reasonable detail any objection to Landlord's statement of

Expenses for that year. If Tenant fails to give Landlord an Objection Notice within the ninety (90) day period or fails to provide Landlord with a Review Notice within the twelve (12) month period described above, Tenant shall be deemed to have approved Landlord's statement of Expenses and shall be barred from raising any claims regarding the Expenses for that year. If Tenant provides Landlord with a timely Objection Notice, Landlord and Tenant shall work together in good faith to resolve any issues raised in Tenant's Objection Notice. If Landlord and Tenant determine that Expenses for the calendar year are less than reported, Landlord shall provide Tenant with a credit against the next installment of Rent in the amount of the overpayment by Tenant. Likewise, if Landlord and Tenant determine that Expenses for the calendar year are greater than reported, Tenant shall pay Landlord the amount of any underpayment within thirty (30) days. The records obtained by Tenant shall be treated as confidential. In no event shall Tenant be permitted to examine Landlord's records or to dispute any statement of Expenses unless Tenant has paid and continues to pay all Rent when due.

EXHIBIT F

PARKING AGREEMENT

This Exhibit is attached to and made a part of the Lease by and between **LOCON SAN MATEO, LLC, a Delaware limited liability company** ("Landlord") and **AKAMAI TECHNOLOGIES, INC., a Delaware corporation** ("Tenant") for space in the Building located at 3125 Clearview Way, San Mateo, California.

1. The capitalized terms used in this Parking Agreement shall have the same definitions as set forth in the Lease to the extent that such capitalized terms are defined therein and not redefined in this Parking Agreement. In the event of any conflict between the Lease and this Parking Agreement, the latter shall control.

2. Landlord hereby grants to Tenant and persons designated by Tenant a license to use one hundred fifty-five (155) non-reserved parking spaces (based upon a ratio of 3.1 parking spaces per 1,000 square feet of rentable area of the Premises) and zero (0) reserved parking spaces in the surface parking lot servicing the Building ("Parking Facility"). The number of parking spaces available for Tenant's use shall increase proportionately (based upon a ratio of 3.1 parking spaces per 1,000 square feet of rentable area of the Premises) if, during the Term of the Lease, the rentable area of the Premises increases due to Tenant's exercise of its Expansion Option and/or its Right of First Offer (as such terms are defined in the Lease). The term of such license shall commence on the Commencement Date under the Lease and shall continue until the earlier to occur of the Termination Date under the Lease, the sooner termination of the Lease, or Tenant's abandonment of the Premises thereunder. During the term of this license, Tenant's use of the Parking Facility shall be free of monthly parking charge. Tenant may, from time to time request additional parking spaces, and if Landlord shall provide the same, such parking spaces shall be provided and used on a month-to-month basis, and otherwise on the foregoing terms and provisions, and at such prevailing monthly parking charges as shall be established from time to time.

3. Tenant shall at all times comply with all applicable ordinances, rules, regulations, codes, laws, statutes and requirements of all federal, state, county and municipal governmental bodies or their subdivisions respecting the use of the Parking Facility. Landlord reserves the right to adopt, modify and enforce reasonable rules ("Rules") governing the use of the Parking Facility from time to time including any key-card, sticker or other identification or entrance system and hours of operation, provided that the same re given to Tenant in writing prior to there effect and are generally applicable, and generally applied in the same manner, to all tenants of the Building. The Rules set forth herein are currently in effect. Landlord may refuse to permit any person who violates such Rules to park in the Parking Facility, and any violation of the Rules shall subject the car to removal from the Parking Facility.

4. Unless specified to the contrary above, the parking spaces hereunder shall be provided on a non-designated "first-come, first-served" basis. Tenant acknowledges that Landlord has no liability for claims arising through acts or omissions of any independent operator of the Parking Facility. Landlord shall have no liability whatsoever for any damage to items located in the Parking Facility, nor for any personal injuries or death arising out of any matter relating to the Parking Facility, and in all events, Tenant agrees to look first to its insurance carrier and to require that Tenant's employees look first to their respective insurance carriers for payment of any losses sustained in connection with any use of the Parking Facility. Landlord and Tenant each hereby waives on behalf of its insurance carriers all rights of subrogation against the other party and the other party's agents with respect to the Parking Facility. Landlord reserves the right to assign specific parking spaces, and to reserve parking spaces for visitors, small cars, handicapped persons and for other tenants, guests of tenants or other parties, which assignment and reservation or spaces may be relocated as determined by Landlord from time to time, and Tenant and persons designated by Tenant hereunder shall not park in any location designated for such assigned or reserved parking spaces. Tenant acknowledges that the Parking Facility may be closed entirely or in part in order to make repairs or perform maintenance services, or to alter, modify, re-stripe or renovate the Parking Facility, or if required by casualty, strike, condemnation, act of God, governmental law or requirement or other reason beyond the operator's reasonable control. In such event, Landlord shall refund any prepaid parking fee hereunder, prorated on a per diem basis.

5. If Tenant shall default beyond applicable notice and cure periods under this Parking Agreement, the operator shall have the right to remove from the Parking Facility any vehicles hereunder which shall have been involved or shall have been owned or driven by parties involved in causing such default, without liability therefor whatsoever. In addition, if Tenant shall default under this Parking Agreement, Landlord shall have the right to cancel this Parking Agreement on ten (10) days' written notice, unless within such ten (10) day period, Tenant cures such default (which ten (10) day cure period shall, for non-monetary defaults, be extended one day for each day that Tenant is prevented from completing its cure due to events of Force Majeure, provided that Tenant is diligently prosecuting its cure to completion). If Tenant defaults with respect to the same term or condition under this Parking Agreement more than three (3) times during any twelve (12) month period, and Landlord notifies Tenant thereof promptly after each such default, the next default of such term or condition during the succeeding twelve (12) month period, shall, at Landlord's election, constitute an incurable default. Such cancellation right shall be cumulative and in addition to any other rights or remedies available to Landlord at law or equity, or provided under the Lease (all of which rights and remedies under the Lease are hereby incorporated herein, as though fully set forth). Any default by Tenant under the Lease shall be a default under this Parking Agreement, and any default under this Parking Agreement shall be a default under the Lease.

RULES

(i) Tenant shall have access to the Parking Facility on a 24-hour basis, seven (7) days a week, subject to the other terms of this Parking Agreement; provided, however, that Landlord shall have the right to temporarily change such access hours so long as Landlord uses commercially reasonable efforts to minimize disruption to Tenant's business. Tenant shall not store or permit its employees to store any automobiles in the Parking Facility without the prior written consent of the operator. Except for emergency repairs, Tenant and its employees shall not perform any work on any automobiles while located in the Parking Facility, or on the Property. If it is necessary for Tenant or its employees to leave an automobile in the Parking Facility overnight for more than one night, Tenant shall provide the operator with prior notice thereof designating the license plate number and model of such automobile.

(ii) Cars must be parked entirely within the stall lines painted on the floor, and only small cars may be parked in areas reserved for small cars.

(iii) All directional signs and arrows must be observed.

(iv) The speed limit shall be five (5) miles per hour.

(v) Parking spaces reserved for handicapped persons must be used only by vehicles properly designated.

(vi) Parking is prohibited in all areas not expressly designated for parking, including without limitation:

(a) Areas not striped for parking

(b) aisles

(c) where "no parking" signs are posted

(d) ramps

(e) loading zones

(vii) Parking stickers, key cards or any other devices or forms of identification or entry supplied by the operator shall remain the property of the operator. Such device must be displayed as requested and may not be mutilated in any manner. The serial number of the parking identification device may not be obliterated. Parking passes and devices are not transferable and any pass or device in the possession of an unauthorized holder will be void.

(viii) Monthly fees (if any) shall be payable in advance prior to the first day of each month. Failure to do so after five (5) business days' written notice will cancel Tenant's parking privileges (but not the entire Parking Agreement) with respect to the subject parking space(s) and a charge at the prevailing daily parking rate will be due. No deductions or allowances from the monthly rate will be made for days on which the Parking Facility is not used by Tenant or its designees.

(ix) Parking Facility managers or attendants are not authorized to make or allow any exceptions to these Rules.

(x) Every parker is required to park and lock his/her own car.

(xi) Loss or theft of parking pass, identification, key cards or other such devices must be reported to Landlord and to the Parking Facility manager promptly. Any parking devices reported lost or stolen found on any authorized car will be confiscated and the illegal holder will be subject to prosecution. Lost or stolen passes and devices found by Tenant or its employees must be reported to the office of the Parking Facility promptly.

(xii) Washing, waxing, cleaning or servicing of any vehicle by the customer and/or his agents is prohibited. Parking spaces may be used only for parking automobiles.

(xiii) Tenant agrees to acquaint all persons to whom Tenant assigns a parking space with these Rules.

6. TENANT ACKNOWLEDGES AND AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, LANDLORD SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE TO TENANT OR TENANT'S PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY LOSS OR DAMAGE TO TENANT'S AUTOMOBILE OR THE CONTENTS THEREOF DUE TO THEFT, VANDALISM OR ACCIDENT) ARISING FROM OR RELATED TO TENANT'S USE OF THE PARKING FACILITY OR EXERCISE OF ANY RIGHTS UNDER THIS PARKING AGREEMENT, WHETHER OR NOT SUCH LOSS OR DAMAGE RESULTS FROM LANDLORD'S ACTIVE NEGLIGENCE OR NEGLIGENT OMISSION. THE LIMITATION ON LANDLORD'S LIABILITY UNDER THE PRECEDING SENTENCE SHALL NOT APPLY HOWEVER TO LOSS OR DAMAGE ARISING DIRECTLY FROM LANDLORD'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

7. Without limiting the provisions of Paragraph 6 above, Tenant hereby voluntarily releases, discharges, waives and relinquishes any and all actions or causes of action for personal injury or property damage occurring to Tenant arising as a result of parking in the Parking Facility, or any activities incidental thereto, wherever or however the same may occur, and further agrees that Tenant will not prosecute any claim for personal injury or property damage against Landlord or any of its officers, agents, servants or employees for any said causes of action. It is the intention of Tenant by this instrument, to exempt and relieve Landlord from liability for personal injury or property damage caused by negligence (but not active negligence or willful misconduct).

8. The provisions of Section 21 of the Lease are hereby incorporated by reference as if fully recited.

Tenant acknowledges that Tenant has read the provisions of this Parking Agreement, has been fully and completely advised of the potential dangers incidental to parking in the Parking Facility and is fully aware of the legal consequences of agreeing to this instrument.

EXHIBIT G

FORM OF CONFIDENTIALITY AGREEMENT

This Exhibit is attached to and made a part of the Lease by and between **LOCON SAN MATEO, LLC, a Delaware limited liability company** ("Landlord") and **AKAMAI TECHNOLOGIES, INC., a Delaware corporation** ("Tenant") for space in the Building located at 3125 Clearview Way, San Mateo, California.

[SEE ATTACHED PAGE]

MUTUAL NON-DISCLOSURE AGREEMENT

Agreement dated _____, 20__, between Akamai Technologies, Inc., a Delaware corporation, and _____, a _____ corporation.

1. Background. Akamai Technologies, Inc. and _____ intend to engage in discussion and negotiations concerning the establishment of a business relationship between them. In the course of such discussions and negotiations, it is anticipated that either party may disclose or deliver to the other party certain trade secrets or confidential or proprietary information for the purpose of enabling the parties to evaluate the feasibility of such business relationship. The parties have entered into this Agreement in order to assure the confidentiality of such trade secrets and confidential or proprietary information in accordance with the terms of this Agreement. As used in this Agreement, the party disclosing Proprietary Information (as defined below) is referred to as the "Disclosing Party"; the party receiving such Proprietary Information is referred to as the "Receiving Party".

2. Proprietary Information. As used in this Agreement, the term "Proprietary Information" shall mean all information about either party's business, business plans, customers, strategies, trade secrets, operations, records, finances, assets, technology, data and information that reveals the processes, methodologies, technology or know how by which either party's existing or future products, services, applications and methods of operation are developed, conducted or operated and other confidential or proprietary information designated as such in writing by the Disclosing Party, whether by letter or by the use of an appropriate proprietary stamp or legend, prior to or at the time any such trade secret or confidential or proprietary information is disclosed by the Disclosing Party to the Receiving Party or is orally or visually disclosed to the Receiving Party by the Disclosing Party. Information that is orally or visually disclosed to the Receiving Party by the Disclosing Party, or is disclosed in writing without an appropriate letter, proprietary stamp or legend, shall constitute Proprietary Information if (i) it would be apparent to a reasonable person, familiar with the Disclosing Party's business and the industry in which it operates, that such information is of a confidential or proprietary nature the maintenance of which is important to the Disclosing Party or if (ii) the Disclosing Party, within thirty (30) days after such disclosure, delivers to the Receiving Party a written document or documents describing such information and referencing the place and date of such oral, visual or written disclosure and the names of the employees or officers of the Receiving Party to whom such disclosure was made.

3. Disclosure of Proprietary Information. The Receiving Party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) to any person outside its organization, any Proprietary Information. The Receiving Party and its personnel shall use such Proprietary Information only for the purpose for which it was disclosed and shall not use or exploit such Proprietary Information for its own benefit or the benefit of another without the prior written consent of the Disclosing Party. Without limitation of the foregoing, the Receiving Party shall not cause or permit reverse engineering of any Proprietary Information or accompilation or disassembly of any software programs which are part of the Proprietary Information received by it under this Agreement and shall disclose Proprietary Information only to persons within its organization who have a need to know such Proprietary Information in the course of the performance of their duties and who are bound by a written agreement, enforceable by the Disclosing Party, to protect the confidentiality of such Proprietary Information. The Receiving Party shall adopt and maintain programs and procedures that are reasonably calculated to protect the confidentiality of Proprietary Information and shall be responsible to the Disclosing Party for any disclosure or misuse of Proprietary Information, which results from a failure to comply with this provision. The Receiving Party shall be fully responsible for any breach of this Agreement by its agents, representatives and employees. The Receiving Party will promptly report to the Disclosing Party any actual or suspected violation of the terms of this Agreement and will take all reasonable further steps requested by the Disclosing Party to prevent, control or remedy any such violation.

4. Limitation on Obligations. The obligations of the Receiving Party specified in Section 3 above shall not apply, and the Receiving Party shall have no further obligations, with respect to any Proprietary Information to the extent Receiving Party can demonstrate, by clear and convincing evidence, that such Proprietary Information: (a) was generally known to the public at the time of disclosure or has become generally known through no breach of an agreement with or a duty owed to the Disclosing Party; (b) was in the Receiving Party's possession at the time of disclosure other than as a result of Receiving Party's breach of any legal obligation; (c) becomes known to the Receiving Party through disclosure by sources other than the Disclosing Party having the legal right to disclose such Proprietary Information; or (d) is independently developed by the Receiving Party without reference to or reliance upon the Proprietary Information. In the event of a disputed disclosure, the Receiving Party shall bear the burden of proof of demonstrating that the information falls under one of the above exceptions. Receiving Party may disclose Proprietary Information if and to the extent required by applicable laws, governmental or regulatory regulations, or proper legal or governmental authority; provided that the Receiving Party provides prior written notice of such disclosure to the Disclosing Party and Receiving Party takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

5. Ownership of Proprietary Information. The Receiving Party agrees that the Disclosing Party is and shall remain the exclusive owner of the Proprietary Information and all patent, copyright, trade secret, trademark and other intellectual property rights therein. No license or conveyance of any such rights to the Receiving Party is granted or implied under this Agreement.

6. Return of Documents. The Receiving Party shall, upon the termination of this Agreement or the request of the Disclosing Party, return to the Disclosing Party all drawings, documents, and other tangible manifestations of Proprietary Information received by the Receiving Party pursuant to this Agreement (and all copies and reproductions thereof).

7. Term and Termination. Each Party has a right to terminate the Agreement upon written notice to the other Party. Upon termination of the Agreement by any of the Parties, no Party has any further obligation or liability to the other Party other than the continuing obligation of confidentiality hereunder. The provisions of this Agreement shall continue with respect to the confidentiality of the respective item of the Proprietary Information until the earlier of: (i) the expiration of the Disclosing Party's ownership rights in this respective item of Proprietary Information; (ii) the occurrence of any of the events set forth in (a) through (d) of paragraph four, or (iii) a period of five (5) years from the date of disclosure of the applicable Proprietary Information.

8. Miscellaneous. This Agreement (a) supersedes all prior agreements, written or oral, between the Disclosing Party and the Receiving Party relating to the subject matter of this Agreement, (b) may not be modified, amended or discharged, in whole or in part, except by an agreement in writing signed by the Disclosing Party and the Receiving Party, (c) will be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, and (d) shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts. The provisions of this Agreement are necessary for the protection of the business and goodwill of the Disclosing Party and are considered by the Receiving Party to be reasonable for such purpose. The Receiving Party agrees that any breach of this Agreement will cause the Disclosing Party substantial and irreparable damages and, therefore, in the event of any such breach, in addition to other remedies that may be available, the Disclosing Party shall have the right to seek specific performance and other injunctive and equitable relief.

EXECUTED, by a duly authorized representative, as a sealed instrument as of the day and year first set forth above.

AKAMAI TECHNOLOGIES, INC.

By: _____

Name: _____

Title: _____

Date: _____

_____

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT H

HYPOTHETICAL CALCULATION OF ACCELERATION FEE

This Exhibit is attached to and made a part of the Lease by and between **LOCON SAN MATEO, LLC, a Delaware limited liability company** ("Landlord") and **AKAMAI TECHNOLOGIES, INC., a Delaware corporation** ("Tenant") for space in the Building located at 3125 Clearview Way, San Mateo, California.

Akamai Lease Termination Fee Formula
3/11/2008

Cost	100% Costs	29.41% Unamortized at 60 mo.
Brokerage Fees:	$ 612,500	$ 180,136
Tenant Improvements:	$ 2,500,000	$ 735,250
Landlord Transaction Costs:	$ 3,112,500	$ 915,386

Effective Rent Calculation	84 Mo. Term	60 Mo. Term
Effective Difference:	$ 3.40	$ 3.25
Difference in Effective Rents:	$ 0.15	
Over 60 Mo.:	$ 8.79	
x 50,000 SF:	$ 439,375	

Tenant Lease Termination Fee:

Unamortized Fees:	$ 180,136
Unamortized TI's:	$ 735,250
Effective Rent Difference:	$ 439,375
Tenant Lease Termination Fee:	**$ 1,354,761**

EXHIBIT I

LIST OF PERSONAL PROPERTY

This Exhibit is attached to and made a part of the Lease by and between **LOCON SAN MATEO, LLC, a Delaware limited liability company** ("Landlord") and **AKAMAI TECHNOLOGIES, INC., a Delaware corporation** ("Tenant") for space in the Building located at 3125 Clearview Way, San Mateo, California.

1. Security systems; CCTV cameras, card readers, DVR's.
2. A/V Equipment; wall mounted plasma screens, ceiling mounted projectors, wall mounted projection screens.
3. Break Rooms; refrigerators, microwaves, water coolers.
4. Furniture; all free standing office furniture and the systems furniture (even if wall mounted)
5. Server Room/IDF Rooms/NOC; equipment racks, all network and voice equipment (even if wall mounted)
6. Antennas

Exhibit 10.29

AKAMAI TECHNOLOGIES, INC.
8 Cambridge Center
Cambridge, MA 02142

December 31, 2008

Mr. Paul Sagan
5 Sunset Ridge
Lexington, MA 02421

Re: Amendment to Employment Agreement

Dear Paul:

In accordance with Section 9 of your January 4, 2005 Employment Agreement with Akamai Technologies, Inc. (the "Company"), the following sets forth an amendment thereto.

1. Section 5A is hereby amended by adding the following sentence to the end thereof: "The Gross-Up Payment shall be paid to the Executive as soon as practicable following the determination of liability but in any event no later than the end of the taxable year next following the taxable year in which the Executive remits the taxes related to the Gross-Up Payment."

2. The seventh paragraph of Section 5 is hereby amended by amending the parenthetical defining "long term disability" to read as follows: "(as that term is defined in the Company's then-current long term disability plan, provided you are disabled as defined in Section 409A(a)(2)(C) of the Code of 1986, as amended and the applicable Treasury Regulations)".

3. Section 5 is hereby further amended by deleting the last sentence of the seventh paragraph and the first sentence of the eighth paragraph

4. Section 5 is hereby further amended by adding the following paragraph to the end thereof: "Any payments or benefits to be paid under this Section 5 shall be paid within sixty (60) days after the your termination, provided you (or, in the event of your death, an authorized representative of your estate) have executed the Company's separation agreement, including a release, which is in substantially the same form as the attached and such agreement has become enforceable; provided that if such the last day of such sixty day period occurs in the calendar year after the calendar year of termination, the payments and benefits shall be made no earlier than January 1 of such subsequent calendar year. Any payments under this paragraph 5 (or any other payments to be made to you under any other agreement with the Company on the account of your termination of employment) shall also be subject to Appendix A attached hereto."

Except as set forth herein, the terms of the Employment Agreement, as previously amended, remain in full force and effect, without amendment. Please sign below to indicate your acceptance of the terms of this amendment to your Employment Agreement.

Very truly yours,

AKAMAI TECHNOLOGIES, INC.

By: /s/ Melanie Haratunian
Melanie Haratunian
Senior Vice President and General Counsel

I accept the foregoing amendment to my Employment Agreement with the Company.

/s/ Paul Sagan
Paul Sagan

Date: December 31, 2008

APPENDIX A

PAYMENTS SUBJECT TO SECTION 409A

1. Subject to this Appendix A, payments or benefits under Section 5 of this Agreement (or other payments referenced in the last paragraph of Section 5) shall begin only upon the date of your "separation from service" (determined as set forth below) which occurs on or after the termination of your employment. The following rules shall apply with respect to distribution of the payments and benefits, if any, to be provided to you under Section 5 (or other payments referenced in the last paragraph of Section 5), as applicable:

A. It is intended that each installment of the payments and benefits provided or referenced under Section 5 of this Agreement shall be treated as a separate "payment" for purposes of Section 409A of the Code and the guidance issued thereunder ("Section 409A"). Neither the Company nor you shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A.

B. If, as of the date of your "separation from service" from the Company, you are not a "specified employee" (within the meaning of Section 409A), then each installment of the payments and benefits shall be made on the dates and terms set forth in Section 5 of this Agreement (or other applicable agreement).

C. If, as of the date of your "separation from service" from the Company, you are a "specified employee" (within the meaning of Section 409A), then:

(i) Each installment of the payments and benefits due under Section 5 of this Agreement (and other applicable agreements) that, in accordance with the dates and terms set forth therein, will in all circumstances, regardless of when the separation from service occurs, be paid within the period of time permitted under Treasury Regulation Section 1.409A-1(b)(4) shall be treated as a short-term deferral within the meaning of such Section to the maximum extent possible; and

(ii) Each installment of the payments and benefits due under Section 5 of this Agreement (and other applicable agreements) that is not described in this Appendix A, 1.C.i. above and that would, absent this subsection, be paid within the six-month period following your "separation from service" from the Company shall not be paid until the date that is six months and one day after such separation from service (or, if earlier, your death), with any such installments that are required to be delayed being accumulated during the six-month period and paid in a lump sum on the date that is six months and one day following your separation from service and any subsequent installments, if any, being paid in accordance with the dates and terms set forth in this Agreement (or other applicable agreement); provided, however, that the preceding provisions of this sentence shall not apply to any installment of payments and benefits if and to the maximum extent that that such installment is deemed to be paid under a separation pay plan that does not provide for a deferral of compensation by reason of the application of Treasury Regulation 1.409A-1(b)(9)(iii) (relating to separation pay upon an involuntary separation from service). Any installments that qualify for the exception under Treasury Regulation Section 1.409A-1(b)(9)(iii) must be paid no later than the last day of your second taxable year following his taxable year in which the separation from service occurs.

(iii) The determination of whether and when your separation from service from the Company has occurred shall be made and in a manner consistent with, and based on the presumptions set forth in, Treasury Regulation Section 1.409A-1(h). Solely for purposes of this Appendix A, 1.C.iii., "Company" shall include all persons with whom the Company would be considered a single employer under Section 414(b) and 414(c) of the Code.

2. All reimbursements and in-kind benefits provided this Agreement shall be made or provided in accordance with the requirements of Section 409A to the extent that such reimbursements or in-kind benefits are subject to Section 409A, including, where applicable, the requirements that (i) any reimbursement is for expenses incurred during the your lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred and (iv) the right to reimbursement is not subject to set off or liquidation or exchange for any other benefit.

Exhibit 10.33

Confidential Materials omitted and filed separately with the
Securities and Exchange Commission. Asterisks denote omissions.

Name: ***Performance Period: FY 2009***
Title:

This 2009 Executive Bonus Plan sets forth your annual compensation for 2009 based on the achievement of certain corporate and individual performance objectives. In order to receive your annual cash incentive bonus, you must be an employee and a member of the Office of the CEO throughout all of 2009 and the corporate and individual objectives must be met, as described more thoroughly below. The Compensation Committee will resolve all questions arising in the administration, interpretation and application of this plan, and the Compensation Committee's determination will be final and binding on all concerned. Where permitted by applicable law, the Compensation Committee reserves the right to modify, at its discretion and at any time, the terms of this plan, including, but not limited to, the performance objectives, targets, and payouts.

Annual Compensation Levels at Target Performance

Base salary:	$_____
Annual cash incentive bonus at target:	$_____
Total Cash Compensation at target:	$_____

Performance Objectives/Targets

Your 2009 cash incentive bonus is comprised of two components: corporate financial performance during Fiscal Year 2009 (80%) (the "Financial Component") and individual 2009 performance goals[1] (20%) (the "MBO Component").

The method for calculating corporate financial performance used to determine the Financial Component is described in the attached Schedule 1. In the event of any question as to whether the components of the Financial Component have been satisfied, the Compensation Committee shall make such determination. The amounts payable to you under the Financial Component are as follows:

Akamai Performance Against Actual % of Targets from Schedule 1[2]	**Amount Payable to You**
91.6% of Target:	50% of Financial Component ($)
96.1% of Target:	85% of Financial Component ($)
100% of Target:	100% of Financial Component ($)
102.6% of Target:	115% of Financial Component ($)
108.4% or greater of Target:	200% of Financial Component ($)

Unless otherwise determined by the Compensation Committee, the Financial Components will not be paid if Akamai fails to achieve at least 91.6% of Targets and the maximum bonus payable is capped at 200% of the Financial Component.

The amount payable under the MBO Component ranges from 0% to 100% of that target ($0 up to $) based on the determination of whether individual objectives have been met by you. The Chief Executive Officer shall make such determination and shall report such determination to the Compensation Committee. The Compensation Committee shall retain the right, exercisable in its discretion, to overrule the determination of the Chief Executive Officer and make an independent and binding determination as to whether you have achieved your individual objectives. Subject to the foregoing, the Chief Executive Officer's determination will be final and binding on all concerned.[3] Performance above the maximum may result in higher reward at the sole discretion of the Compensation Committee.

1 As established by the Chief Executive Officer or, in the case of the CEO, the Compensation Committee.

[2] See Schedule 1 for pro-ration formulas applicable to intermediate percentages not specified below.
[3] In the case of the Chief Executive Officer, the Board of Directors shall make the determination as to whether his individual performance objectives have been met. The determination of the Board of Directors will be final and binding on all concerned.

The payment of any annual incentive bonus will be made within thirty (30) days following the filing of Akamai's SEC 10-K filing for FY 2009 but no later than March 15, 2010.

Acceptance: _____ _____
Date

Approved by: _____ _____
Date

SCHEDULE 1

CORPORATE FINANCIAL PERFORMANCE MEASUREMENT METHODOLOGY

A. Overview; Definitions

The executive shall only be eligible for the corporate performance-based bonus of the salary upon the Company's achievement of certain financial metrics. Such financial metrics are based on target 2009 Revenue of $[**] million and target 2009 Normalized EPS of $[**] per share.

For purposes of this Agreement, such metrics shall have the following meanings:

"Revenue" shall mean the Company's revenue for fiscal year 2009 calculated in accordance with generally accepted accounting principles in the United States of America as reported in the 2009 Financial Statements.

"Normalized EPS" shall mean the Company's annual earnings per diluted share for fiscal year 2009 excluding amortization of intangible assets, equity-related compensation, restructuring charges and benefits, certain gains and losses on equity investments, loss on early extinguishment of debt, utilization of tax NOLs/credits, release of deferred tax asset valuation allowance and similar items excluded by the Company in determining normalized earnings per share in issuing its earnings announcement for fiscal year 2009.

If, on December 31, 2009, the Company is required to make periodic reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Company's consolidated financial statements filed with the Securities and Exchange Commission on Form 10-K shall constitute its "Public Company Financial Statements" and shall apply. If, on December 31, 2009, the Company is not required to make periodic reports under the Exchange Act, the Company's regularly prepared annual audited financial statements prepared by management shall be its "Private Company Financial Statements" and shall apply. The applicable financial statements may be referred to herein as the "2009 Financial Statements."

B. Calculation of Percentages

The Company's Revenue shall be calculated as a percentage of the Company's target revenue for fiscal year 2009 of $[**] million and multiplied by 0.5 (the "Revenue Percentage Component"). The Company's Normalized EPS shall be calculated as a percentage of the Company's target normalized earnings per share for fiscal year 2009 of $[**] and multiplied by 0.5 (the "Normalized EPS Component"). The sum of the Revenue Percentage Component and the Normalized EPS Component shall be the "Actual Percentage of Targets."

C. Bonus Amounts

1. If the Actual Percentage of Targets is equal to any of the percentage amounts set forth on the first page of this Plan, then the Executive shall be entitled to the percentage of the target Financial Component of the bonus set forth opposite such amount.

2. If the Actual Percentage of Targets is greater than 91.6% of Target but less than 108.4% of Target and not equal to any of the percentage amounts set forth on the first page of this Plan (i.e., the actual percentage is between two of the percentages set forth on the first page), then the Executive shall receive a bonus equal to the sum of (i) the bonus set forth opposite the next lowest percentage set forth on the first page plus (ii) an amount equal to (A) the bonus payable at the next higher percentage identified on the first page minus the bonus payable at the next lowest percentage identified on the first page multiplied by (B) a fraction, (y) the numerator of which is the Actual Percentage of Targets minus that next lower percentage and (z) the denominator of which is the next highest percentage minus the next lowest percentage.

As an example, if the Actual Percentage of Targets was 97% and the amount payable at 100% of achievement against target is $100,000, the bonus payable would be equal to: $85,000 + ($90,000—$85,000) X (97.0% – 96.1%/97.4% – 96.1%) = $85,000 + $3,462 = $88,462.

D. Effect of an Acquisition by Akamai

In the event that Akamai enters into an Acquisition Transaction during 2009, then Revenue and Normalized EPS shall be adjusted to give effect to such Acquisition Transaction. An "Acquisition Transaction" means (i) the purchase of more than 50% of the voting power of an entity, (ii) any merger, reorganization, consolidation, recapitalization, business combination, liquidation, dissolution or share exchange involving Akamai and an entity not previously owned by Akamai, or (iii) the purchase or other acquisition (including, without limitation, via license outside of the ordinary course of business or joint venture) of assets that constitute more than 50% of another entity's total assets or assets that account for more than 50% of the consolidated net revenues or net income of such entity.

As soon as practicable following the closing of an Acquisition Transaction, the Compensation Committee shall make a determination of the estimated impact of the Acquisition Transaction on the Company's 2009 Revenue and Normalized EPS. If the Acquisition Transaction is estimated to be accretive, then:

(i) in calculating Revenue for purposes of determining the Revenue Percentage Component, reported Revenue shall be reduced by the amount of estimated revenue contribution from the Acquisition Transaction; and

(ii) in calculating Normalized EPS for purposes of determining the Normalized EPS Percentage Component, Normalized EPS, as calculated based on the 2009 Financial Statements, shall be reduced by the amount of the estimated Normalized EPS contribution from the Acquisition Transaction.

If the Acquisition is estimated to be non-accretive, then:

(iii) in calculating Normalized EPS for purposes of determining the Normalized EPS Percentage Component, Normalized EPS, as calculated based on the 2009 Financial Statements, shall be increased by the amount of the estimated negative Normalized EPS impact from the Acquisition Transaction.

All determinations of the Compensation Committee regarding the estimated impact of an Acquisition Transaction shall be final, binding and non-appealable. The cumulative impact of all Acquisition Transactions shall be set forth in a statement delivered upon payment, if any, of the bonus contemplated by this plan. This plan shall be deemed to be automatically amended, without further action by the Company or the executive, to give effect to any adjustments required by this Section D.

Exhibit 10.34

AKAMAI TECHNOLOGIES, INC.'S
EXECUTIVE SEVERANCE PAY PLAN
AND SUMMARY PLAN DESCRIPTION

Effective July 18, 2006
As amended on May 9, 2008 and December 16, 2008

1. ***Establishment of the Plan***. Akamai Technologies, Inc. (referred to herein collectively with its United States subsidiaries as "Akamai" or the "Company") hereby establishes an unfunded "Executive Severance Pay Plan" (the "Plan") which is intended to be a welfare benefit plan within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The Plan is in effect for Akamai executives who are members of the Office of the CEO (or its successor group), excluding the Chief Executive Officer and the Executive Chairman ("Executives"), at the time that they are terminated.

2. ***Purpose***. The Plan is for the purpose of assisting Executives of Akamai who are involuntarily terminated for reasons other than "cause" and to resolve fully and finally all potential issues arising out of their employment. This Plan supersedes the provisions of any other agreement(s) an Executive may have regarding payments to be made upon termination of employment, including but not limited to, the acceleration of stock options and/or any lump sum payment an Executive may receive in the event of termination following a Change of Control, as that term is defined in such agreement(s); provided, however, that this Plan shall not be deemed to terminate or replace, but shall be deemed to supplement, (a) provisions in restricted stock unit agreements entered into with Executives that relate to the effect of a termination of employment or (b) provisions in stock option agreements or the Company's Stock Incentive Plans that that provide for the automatic acceleration of vesting of options upon a Change in Control Event. This Plan is intended to operate and provide benefits in conjunction with the Change of Control benefits for Executives approved by the Company's Board of Directors on July 18, 2006. An amendment to the Plan to add clause (l) to Section 4 was approved by the Compensation Committee of the Company's Board of Directors on May 9, 2008.

3. ***Definition of Termination for Cause***. For the purposes of this Plan, "Cause" is defined as (i) any act or omission by an Executive which has an adverse effect on Akamai's business or on the Executive's ability to perform services for Akamai, including, without limitation, the commission of any crime (other than ordinary traffic violations), or (ii) refusal or failure to perform assigned duties, serious misconduct, or excessive absenteeism, or (iii) refusal or failure to comply with Akamai's Code of Business Ethics. Whether an Executive has been terminated for "cause" shall be determined in the sole discretion of the Plan Administrator after consultation with appropriate members of Akamai's management.

4. ***Eligibility***. Eligibility to participate in the Plan, which is to be determined in the sole discretion of the Plan Administrator, is limited to regular full-time Executives who are involuntarily terminated by Akamai or any of its United States based subsidiaries on or after July 18, 2006 and who have signed a separation agreement acceptable to and provided by the Company that contains, among other provisions, a full release of claims and, where permitted by applicable law, an agreement not to compete with the Company for one year following such termination, in such forms and within such times as may be reasonably determined by the Company.

The following are NOT eligible for severance pay under this Plan:

(a) an Executive who resigns voluntarily, including but not limited to an Executive who is offered an employment opportunity with any purchaser or other successor of Akamai, its business operations or any part thereof (regardless of whether or not such employment opportunity is accepted);

(b) an Executive who fails to continue in the employ of Akamai, satisfactorily performing his or her assigned duties, until the date actually set for his or her involuntary termination;

(c) an Executive who does not sign and return a separation agreement acceptable to and provided by the Company that contains, among other things, a release (the "Release") in accordance with Section 5 below;

(d) an Executive who fails to return all of Akamai's property in his or her possession or under his or her control, including, but not limited to, intellectual property and other confidential information;

(e) an Executive who, despite Akamai's request, fails to execute any documents evidencing Akamai's interest in and to any intellectual property;

(f) an Executive who is not employed on the United States payroll of the Company or any of its U.S.-based subsidiaries;

(g) an Executive who is not a member of the Office of the CEO (or its successor group);

(h) the Chief Executive Officer;

(i) the Executive Chairman;

(j) an Executive who becomes totally disabled or dies prior to the date set for his or her involuntary termination by Akamai; and

(k) an Executive who is terminated for "Cause"; and

(l) an Executive who, pursuant to a change of control agreement with the Company, receives severance pay and/or benefits upon a Change of Control Event, as that term is defined in Section 9(c)(1)(b) of the Akamai Technologies, Inc. 2006 Stock Incentive Plan.

5. ***Severance Pay and Benefits***. Any Executive terminated for any reason other than "Cause" as defined above shall be entitled to the following severance pay benefits, all of which shall be paid less applicable withholdings for taxes and other deductions required by law:

(a) A lump sum payment equal to one year of the Executive's then-current base salary.

(b) A lump sum payment equal to the annual incentive bonus at target that would have been payable to the Executive under the Company's then-current Executive Bonus Plan, if any, in the year of the Executive's termination had both the Company and the Executive achieved the target bonus objectives set forth in such Executive's Bonus Plan during such year.

(c) Reimbursement for up to 12 months of the amount paid by the Executive for continued health and dental insurance coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA). In order to receive this benefit, the Executive must timely elect COBRA continuation coverage in accordance with the Company's usual COBRA procedures.

All payments and benefits under this Section 5 are conditioned upon the Executive's satisfaction of all eligibility requirements under this Plan, including but not limited to, the execution of a separation agreement acceptable to and provided by the Company that contains, among other provisions, a full release of claims and, where permitted by applicable law, an agreement not to compete with the Company for one year following the Executive's termination. The payments and benefits described in Sections 5(a) and 5(b) shall be provided within sixty (60) days after the Executive's termination of employment, provided the Executive has executed the separation agreement described herein and such agreement has become enforceable; provided that if such the last day of such sixty day period occurs in the calendar year after the calendar year of termination, the payments and benefits shall be made no earlier than January 1 of such subsequent calendar year

6. ***Section 409A***. The payments under this Plan shall be subject to Appendix A.

7. ***Funding***. All cash payments under the Plan shall be funded solely from Akamai's general assets.

8. ***Duration of Plan***. The initial term of the Plan shall commence effective July 18, 2006 through December 31, 2006 and shall automatically renew for successive one year periods unless otherwise terminated by the Company. The Plan may be amended or terminated at Akamai's discretion without prior notice at any time.

9. ***Plan Administration***. The general administration of the Plan herein set forth and the responsibility for carrying out its provisions shall be vested in the Plan Administrator. The Plan Administrator shall be the "Administrator" within the meaning of section 3(16) of ERISA and shall have all the responsibilities and duties contained therein. Akamai is the Plan Administrator of the Plan. The Board of Directors of Akamai may delegate to an Administrative Committee the day-to-day operation and administration of the Plan.

The Plan Administrator shall discharge its duties with respect to the Plan solely in the interest of the participants and their beneficiaries, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives. However, the inclusion of this language in the Plan is for the sole purpose of informing the Plan Administrator of the applicable standard of care under ERISA. It is not intended that this provision impose any additional duties, responsibilities, or liabilities than would otherwise apply under ERISA.

The Plan Administrator shall have such powers as are necessary to discharge its duties, including, but not limited to, interpretation and construction of the Plan, sole discretion to determine all questions of eligibility, participation and benefits and all other related or incidental matters. The Plan Administrator shall decide all such questions in accordance with the terms of the controlling legal documents and applicable law, and its decision will be binding on Akamai, the participant, the participant's spouse or other dependent or beneficiary and all other interested parties.

The Plan Administrator may adopt rules and procedures of uniform applicability in its interpretation and implementation of the Plan.

The Plan Administrator may require each participant to submit, in such form as it shall deem reasonable and acceptable, proof of any information which the Plan Administrator finds necessary or desirable for the proper administration of the Plan.

The Plan Administrator shall maintain such records as are necessary to carry out the provisions of the Plan. The Plan Administrator shall also make all disclosures which are required by ERISA and any subsequent amendments thereto.

10. ***Questions and Claims Procedure***. Any questions concerning eligibility to participate in the Plan and the payment of any severance pay or benefits hereunder should be directed to the Administrative Committee. The Plan will comply with the Claims Procedure set forth in ERISA regulations at Title 29 C.F.R. § 2560.503-1.

10.1. ***Claim for Benefits***.

(a) Any person claiming benefits under the Plan ("Claimant") may be required to submit an application therefor, together with such other documents and information as the Administrative Committee may require ("Application").

(b) Within ninety (90) days following receipt of the Application, the Administrative Committee's authorized delegate will review the claim and furnish the Claimant with written notice of the decision rendered with respect to the Application.

(c) Should special circumstances require an extension of time for processing the claim, written notice of the extension will be furnished to the Claimant prior to the expiration of the initial ninety (90) day period.

(i) The notice will indicate the special circumstances requiring an extension of time and the date by which a final decision is expected to be rendered.

(ii) In no event will the period of the extension exceed ninety (90) days from the end of the initial (90) day period.

10.2 ***Content of Denial***. In the case of a denial of the Claimant's Application, the written notice will set forth:

(a) The specific reasons for the denial;

(b) References to the Plan provisions upon which the denial is based;

(c) A description of any additional information or material necessary for perfection of the Application (together with an explanation of why the material or information is necessary); and

(d) An explanation of the Plan's claim review procedure.

10.3 ***Appeals***. In order to appeal the decision rendered with respect to his or her Application or with respect to the amount of his or her benefit, the Claimant must follow the procedures set forth in this Section 10.3.

(a) The appeal must be made in writing:

(i) If the claim was expressly rejected, within sixty-five (65) days after the date of notice of the decision with respect to the Application; or

(ii) If the claim was neither approved nor denied within the applicable period provided in Section 10.1 above, within sixty-five (65) days after the expiration of that period.

(b) If the Claimant does not file the appeal within this time period (or request in writing an extension from the Administrative Committee), the Claimant will be precluded from appealing the decision at a later time.

(c) The Claimant may request that his or her Application be given a full and fair review by the Administrative Committee. The Claimant may review all pertinent documents and submit issues and comments in writing in connection with the appeal.

(d) The decision of the Administrative Committee will be made promptly, and not later than sixty (60) days after the Administrative Committee's receipt of a request for review, unless special circumstances require an extension of time for processing. In such a case, a decision will be rendered as soon as possible, but not later than one hundred twenty (120) days after receipt of the request for review.

(e) The decision on review will be in writing and will include specific reasons for the decision, written in a manner designed to be understood by the Claimant, with specific references to the pertinent Plan provisions upon which the decision is based.

11. ***Tax and Other Withholdings***. Akamai may withhold from any payment under the Plan any federal, state, or local taxes required by law to be withheld with respect to such payment and such sum as Akamai may reasonably estimate is necessary to cover any taxes for which Akamai may be liable and which may be assessed with regard to such payment. Akamai may also withhold sums to cover an Executive's share of any applicable group health insurance premiums. Akamai may also withhold sums owed to Akamai by an Executive which have not been repaid in full before the time for payment of any benefits due under this Plan.

12. ***Agent for Service of Legal Process***. Legal process with respect to claims under the Plan may be served on the Plan Administrator.

13. ***Expenses***. All costs and expenses incurred in administering the Plan, including the expenses of the Plan Administrator, shall be borne by Akamai.

14. ***Plan Not an Employment Contract***. The Plan is not a contract between Akamai and any Executive, nor is it a condition of employment of any Executive. Nothing contained in the Plan gives, or is intended to give, any Executive the right to be retained in the service of Akamai, or to interfere with the right of Akamai to discharge or terminate the employment of any Executive at any time and for any reason. Except as provided in paragraph 2 above, no Executive shall have the right or claim to benefits beyond those expressly provided in this Plan. All rights and claims are limited as set forth in the Plan.

15. ***Indemnification***. To the extent permitted by law, the Plan Administrator and all Executives, agents and representatives of the Plan Administrator shall be indemnified by Akamai and saved harmless against any claim and the expenses of defending against such claims, resulting from any action or conduct relating to the administration of the Plan except to the extent that such claims arise from gross negligence, willful neglect, or willful misconduct. However, Akamai will have the right to select counsel and to control the prosecution or defense of any lawsuit. Additionally, Akamai will not be required to indemnify any person for any amount incurred through any settlement unless Akamai consents to the settlement.

16. ***Separability***. In case any one or more of the provisions of this Plan (or part thereof) shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions hereof, and this Plan shall be construed as if such invalid, illegal or unenforceable provisions (or part thereof) never had been contained herein.

17. ***Non-Assignability***. No right or interest of any participant in the Plan shall be assignable or transferable in whole or in part either directly or by operation of law or otherwise, including, but not limited to, execution, levy, garnishment, attachment, pledge or bankruptcy, provided, however, that this provision shall not be applicable in the case of obligations of a participant to Akamai.

18. ***Amendment or Termination***. Akamai reserves the right, through its Board of Directors, to amend, modify or terminate this Plan at any time.

19. ***Integration with Other Pay or Benefits Requirements***. The pay and benefits provided for in the Plan are the maximum benefits that Akamai will pay. To the extent that any federal, state or local law, including, without limitation, so-called "plant closing" laws, requires Akamai to make a payment of any kind to an Executive because of that Executive's involuntary termination due to a Layoff, Reduction in Force, Plant or Facility Closing, Sale of Business, or similar event, the benefits provided under this Plan shall be reduced in an amount equal to any such payment(s). Akamai intends for the benefits provided under this Plan to satisfy any and all statutory obligations which may arise out of an Executive's involuntary termination for the foregoing reasons and the Plan Administrator shall so construe and implement the terms of the Plan.

20. ***Governing Law***. The Plan and the rights of all persons under the Plan shall be construed in accordance with and under applicable provisions of ERISA, and the regulations thereunder, and the laws of the Commonwealth of Massachusetts to the extent not pre-empted by federal law.

21. ***Gender and Number***. Except where otherwise indicated by the context, any masculine gender used herein shall also include the feminine and vice versa, and the definition of any term herein in the singular shall also include the plural, and vice versa.

22. ***Statement of ERISA Rights***. Participants in the Plan are entitled to certain rights and protections under ERISA. ERISA provides that all Plan participants shall be entitled to:

(a) Examine, without charge, at the Plan Administrator's office all Plan documents, including insurance contracts, collective bargaining agreements, and copies of all documents filed by the Plan with the United States Department of Labor and Internal Revenue Service, such as annual reports and plan descriptions.

(b) Obtain copies of all Plan documents and other plan information upon written request to the Plan Administrator.

The Plan Administrator may make a reasonable charge for the copies.

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of all Plan participants and beneficiaries. No one, including Akamai or any other person, may fire a participant or otherwise discriminate against the participant in any way for the purpose of preventing the participant from obtaining a benefit or exercising his or her rights under ERISA. If a participant's claim for a benefit is denied in whole or in part, the participant must receive a written explanation of the reason for the denial. The participant has the right to have the Plan Administrator review and reconsider the claim. Under ERISA, there are steps a participant can take to enforce the above rights. For instance, if the participant requests materials from the Plan Administrator and does not receive them within 30 days, the participant may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay the participant up to $100 a day until the participant receives the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If a participant has a claim for benefits

which is denied or ignored, in whole or in part, the participant may file suit in a state or federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if a participant is discriminated against for asserting his or her rights, the participant may seek assistance from the United States Department of Labor, or may file suit in a federal court. The court will decide who should pay court costs and legal fees. If the participant is successful, the court may order the person whom the participant sued to pay these costs and fees. If the participant loses, the court may order the participant to pay these costs and fees, if, for example, it finds the claim is frivolous. If the participant has any questions about this Plan, the participant should contact the Plan Administrator. If a participant has any questions about this statement or about his or her rights under ERISA, the participant should contact the nearest Area Office of Pension and Welfare Benefits, United States Department of Labor.

APPENDIX A

PAYMENTS SUBJECT TO SECTION 409A

1. Subject to this Appendix A, payments or benefits under this Agreement shall begin only upon the date of the Executive's "separation from service" (determined as set forth below) which occurs on or after the termination of the Executive's employment. The following rules shall apply with respect to distribution of the payments and benefits, if any, to be provided to an Executive under this Agreement, as applicable:

A. It is intended that each installment of the payments and benefits provided under this Agreement shall be treated as a separate "payment" for purposes of Section 409A of the Code and the guidance issued thereunder ("Section 409A"). Neither the Company nor the Executive shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A.

B. If, as of the date of the Executive's "separation from service" from the Company, the Executive is not a "specified employee" (within the meaning of Section 409A), then each installment of the payments and benefits shall be made on the dates and terms set forth in this Agreement.

C. If, as of the date of Executive's "separation from service" from the Company, the Executive is a "specified employee" (within the meaning of Section 409A), then:

(i) Each installment of the payments and benefits due under this Agreement that, in accordance with the dates and terms set forth therein, will in all circumstances, regardless of when the separation from service occurs, be paid within the period of time permitted under Treasury Regulation Section 1.409A-1(b)(4) shall be treated as a short-term deferral within the meaning of such Section to the maximum extent possible; and

(ii) Each installment of the payments and benefits due under this Agreement that is not described in this Appendix A, 1.C.i. above and that would, absent this subsection, be paid within the six-month period following the Executive's "separation from service" from the Company shall not be paid until the date that is six months and one day after such separation from service (or, if earlier, the Executive's death), with any such installments that are required to be delayed being accumulated during the six-month period and paid in a lump sum on the date that is six months and one day following the Executive's separation from service and any subsequent installments, if any, being paid in accordance with the dates and terms set forth in this Agreement (or other applicable agreement); provided, however, that the preceding provisions of this sentence shall not apply to any installment of payments and benefits if and to the maximum extent that that such installment is deemed to be paid under a separation pay plan that does not provide for a deferral of compensation by reason of the application of Treasury Regulation 1.409A-1(b)(9)(iii) (relating to separation pay upon an involuntary separation from service). Any installments that qualify for the exception under Treasury Regulation Section 1.409A-1(b)(9)(iii) must be paid no later than the last day of the Executive's second taxable year following his taxable year in which the separation from service occurs.

(iii) The determination of whether and when the Executive's separation from service from the Company has occurred shall be made and in a manner consistent with, and based on the presumptions set forth in, Treasury Regulation Section 1.409A-1(h). Solely for purposes of this Appendix A, 1.C.iii., "Company" shall include all persons with whom the Company would be considered a single employer under Section 414(b) and 414(c) of the Code.

2. All reimbursements and in-kind benefits provided this Agreement shall be made or provided in accordance with the requirements of Section 409A to the extent that such reimbursements or in-kind benefits are subject to Section 409A, including, where applicable, the requirements that (i) any reimbursement is for expenses incurred during the Executive's lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred and (iv) the right to reimbursement is not subject to set off or liquidation or exchange for any other benefit.

3. Notwithstanding anything herein to the contrary, the Company shall have no liability to the Executive or to any other person if the payments and benefits provided in this Agreement that are intended to be exempt from or compliant with Section 409A are not so exempt or compliant.

MISCELLANEOUS INFORMATION

1.	PLAN NAME:	Akamai Technologies, Inc.'s 2006 Executive Severance Pay Plan
2.	EMPLOYER: (PLAN SPONSOR)	Akamai Technologies, Inc.
	ADDRESS:	8 Cambridge Center Cambridge, MA 02142
	TELEPHONE:	617-444-3000
3.	EMPLOYER ID NUMBER:	04-3432319
4.	PLAN NUMBER:	2006.2
5.	PLAN ADMINISTRATOR:	Akamai Technologies, Inc. 2006 Executive Severance Pay Plan 8 Cambridge Center Cambridge, MA 02142

Exhibit 10.35

AKAMAI TECHNOLOGIES, INC.
CHANGE OF CONTROL AND SEVERANCE AGREEMENT

This Change of Control and Severance Agreement (the "Agreement") is made and entered into by and between (the "Executive") and Akamai Technologies, Inc. (the "Company"), effective as of the last date set forth by the signatures of the parties below (the "Effective Date").

RECITALS

A. It is expected that the Company from time to time will consider the possibility of its acquisition by another company or another Change of Control Event (as defined below). The Board of Directors of the Company (the "Board") recognizes that such consideration, and the possibility that the Executive's employment could be terminated by the Company for a reason other than for cause, can be distractions to the Executive and can cause the Executive to consider alternative employment opportunities. The Board has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication and objectivity of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control Event of the Company or the termination by the Company of the Executive's employment for a reason other than for Cause (as defined below).

B. The Board believes that it is in the best interests of the Company and its stockholders to provide the Executive with an incentive to continue his or her employment with the Company, or a wholly-owned subsidiary of the Company, as the case may be, and to motivate the Executive to maximize the value of the Company upon a Change of Control Event for the benefit of its stockholders.

C. The Board believes that it is imperative to provide the Executive with certain benefits upon a Change of Control Event or upon the termination of the Executive's employment following a Change of Control Event for a reason other than Cause, thereby encouraging the Executive to remain with the Company notwithstanding the possibility of a Change of Control Event or termination of employment for a reason other than for Cause.

The Company and the Executive hereby agree as follows:

1. Term of Agreement. This Agreement shall terminate upon the date that all obligations of the Company and the Executive with respect to this Agreement have been satisfied.

2. At-Will Employment. The Company and the Executive acknowledge that the Executive's employment is and shall continue to be at-will, as defined under applicable law, and may be terminated at any time by either party, with or without cause.

3. Change of Control Event. If: (i) the Executive is employed by the Company as of the date of a Change of Control Event; and (ii) within one year of the Change of Control Event the Executive's employment is terminated by the surviving entity for any reason other than for Cause, including the Executive's voluntary termination for Good Reason, then the Executive shall be entitled to:

(a) full acceleration of the vesting of the Executive's stock options so that such stock options become 100% vested; and

(b) severance pay and benefits, all of which shall be paid less applicable withholdings for taxes and other deductions required by law, consisting of:

(i) A lump sum payment equal to one year of the Executive's then-current base salary;

(ii) A lump sum payment equal to the annual incentive bonus at target that would have been payable to the Executive under the Company's Executive Bonus Plan in effect immediately before the Change of Control Event, if any, in the year of the Executive's termination had both the Company and the Executive achieved the target bonus objectives set forth in such Executive's Bonus Plan during such year; and

(iii) Reimbursement for up to 12 months of the amount paid by the Executive for continued health and dental insurance coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA). In order to receive this benefit, the Executive must timely elect COBRA continuation coverage in accordance with the Company's or surviving entity's usual COBRA procedures.

All payments and benefits under this Section 3 are conditioned upon the Executive's execution of a separation agreement acceptable to and provided by the surviving entity that contains, among other provisions, a full release of claims and, where permitted by applicable law, an agreement not to compete with the surviving entity for one year following the Executive's termination. The payments and benefits described in Sections 3(a) and 3(b) shall be provided within sixty (60) days after the Executive's termination of employment, provided the Executive has executed the separation agreement described herein and such agreement has become enforceable; provided that if such the last day of such sixty day period occurs in the calendar year after the calendar year of termination, the payments and benefits shall be made no earlier than January 1 of such subsequent calendar year.

4. Compliance with Section 409A. Subject to the provisions in this Section 4, any severance payments or benefits under Section 3 of this Agreement shall begin only upon the date of the Executive's "separation from service" (determined as set forth below) which occurs on or after the date of termination of the Executive's employment. The following rules shall apply with respect to distribution of the payments and benefits, if any, to be provided to the Executive under Section 3 of this Agreement:

(a) It is intended that each installment of the severance payments and benefits provided under this Agreement shall be treated as a separate "payment" for purposes of Section 409A of the Code and the guidance issued thereunder ("Section 409A"). Neither the Executive nor the Company shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A.

(b) If, as of the date of the Executive's "separation from service" from the Company, the Executive is not a "specified employee" (within the meaning of Section 409A), then each installment of the severance payments and benefits shall be made on the dates and terms set forth in Section 3.

(c) If, as of the date of the Executive's "separation from service" from the Company, the Executive is a "specified employee" (within the meaning of Section 409A), then:

(i) Each installment of the severance payments and benefits due under this Agreement that, in accordance with the dates and terms set forth herein, will in all circumstances, regardless of when the separation from service occurs, be paid within the period of time permitted under Section Treasury Regulation Section 1.409A-1(b)(4) shall be treated as a short-term deferral within the meaning of such Section to the maximum extent permissible; and

(ii) Each installment of the severance payments and benefits due Section 3 that is not described in paragraph 4(c)(i) above and that would, absent this subsection, be paid within the six-month period following the Executive's "separation from service" from the Company shall not be paid until the date that is six months and one day after such separation from service (or, if earlier, the Executive's death), with any such installments that are required to be delayed being accumulated during the six-month period and paid in a lump sum on the date that is six months and one day following your separation from service and any subsequent installments, if any, being paid in accordance with the dates and terms set forth herein; provided, however, that the preceding provisions of this sentence shall not apply to any installment of severance payments and benefits if and to the maximum extent that such installment is deemed to be paid under a separation pay plan that does not provide for a deferral of compensation by reason of the application of Treasury Regulation 1.409A-1(b)(9)(iii) (relating to separation pay upon an involuntary separation from service). Any installments that qualify for the exception under Treasury Regulation Section 1.409A-1(b)(9)(iii) must be paid no later than the last day of the second taxable year following the taxable year in which the separation from service occurs.

(d) The determination of whether and when the Executive's separation from service from the Company has occurred shall be made and in a manner consistent with, and based on the presumptions set forth in, Treasury Regulation Section 1.409A-1(h). Solely for purposes of this Section 4(d), "Company" shall include all persons with whom the Company would be considered a single employer under Section 414(b) and 414(c) of the Code.

(e) All reimbursements and in-kind benefits provided this Agreement shall be made or provided in accordance with the requirements of Section 409A to the extent that such reimbursements or in-kind benefits are subject to Section 409A, including, where applicable, the requirements that (i) any reimbursement is for expenses incurred during the Executive's lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred and (iv) the right to reimbursement is not subject to set off or liquidation or exchange for any other benefit.

(f) Notwithstanding anything herein to the contrary, the Company shall have no liability to the Executive or to any other person if the payments and benefits provided in this Agreement that are intended to be exempt from or compliant with Section 409A are not so exempt or compliant.

5. Definitions.

(a) For the purposes of this Agreement, "Change of Control Event" is defined as set forth in Section 9(c)(1)(b) of the Akamai Technologies, Inc. 2006 Stock Incentive Plan, which definition is incorporated herein by reference.

(b) For the purposes of this Agreement, "Cause" is defined as set forth in Section 3 of the Akamai Technologies, Inc. 2006 Executive Severance Pay Plan and Summary Plan Description, which definition is incorporated herein by reference.

(c) For the purposes of this Agreement, "Good Reason" is defined as (i) a material reduction in the Executive's compensation and benefits (including without limitation any bonus plan or indemnity agreement) not agreed to in writing by the Executive; (ii) the assignment to the Executive of

duties and/or responsibilities that are materially inconsistent with those associated with the Executive's position; or (iii) a requirement, not agreed to in writing by the Executive, that the Executive relocate to, or perform his or her principal job functions at, an office that is more than twenty-five (25) miles from the office at which the Executive was previously performing his or her principal job functions.

6. Golden Parachute Excise Taxes. Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution, or any acceleration of vesting of any benefit or award, by the Company or its affiliated companies to or for the benefit of the Executive, payable within the meaning of Section 280G of the Internal Revenue Code (the "Code") (whether paid or payable, distributed or distributable or accelerated or subject to acceleration pursuant to the terms of this Agreement or otherwise, but determined without regard to any additional payments required under this Section 6) (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code, or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then the Executive shall be entitled to receive an additional payment in an amount not to exceed $2.5 million (a "Gross-Up Payment") on an amount such that, to the maximum extent possible given such $2.5 million cap, after payment by the Executive of all taxes imposed upon the Gross-Up Payment and any interest or penalties imposed with respect to such taxes, the Executive retains an amount of the Gross-Up Payment equal to the sum of: (a) the Excise Tax imposed upon the Payments; and (b) the product of any deductions disallowed because of the inclusion of the Gross-Up Payment in the Executive's adjusted gross income and the highest applicable marginal rate of federal income taxation for the calendar year in which the Gross-Up Payment is to be made. For purposes of determining the amount of the Gross-Up Payment, the Executive shall be deemed to have: (a) paid federal income taxes at the highest marginal rates of federal income taxation for the calendar year in which the Gross-Up Payment is to be made; (b) paid applicable state and local income taxes at the highest rate of taxation for the calendar year in which the Gross-Up Payment is to be made, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes; and (c) otherwise allowable deductions for federal income tax purposes at least equal to those which would be disallowed because of the inclusion of the Gross-Up Payment in the Executive's adjusted gross income. The payment of a Gross-Up Payment under this Section 5 shall in no event be conditioned upon the Executive's termination of employment or the receipt of severance benefits under this Agreement.

7. Successors.

(a) Company's Successors. Any successor to the Company (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets shall assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term "Company" shall include any successor to the Company's business and/or assets which executes and delivers the assumption agreement described in this Section 7(a), or which becomes bound by the terms of this Agreement by operation of law.

(b) Executive's Successors. The terms of this Agreement and all rights of the Executive hereunder shall inure to the benefit of, and be enforceable by, the Executive's personal or legal representatives, executors, administrators, heirs, distributees, devisees and legatees.

8. Miscellaneous Provisions.

(a) Waiver. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Executive and by an

authorized officer of the Company (other than the Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(b) Whole Agreement. No agreements, representations or understandings (whether oral or written and whether express or implied) which are not expressly set forth in this Agreement have been made or entered into by either party with respect to the subject matter hereof. This Agreement represents the entire understanding of the Company and the Executive with respect to the subject matter of this Agreement and this Agreement supersedes all prior agreements, arrangements and understandings regarding the subject matter of this Agreement; provided, however, that this Agreement shall not be deemed to terminate or replace, but shall be deemed to supplement, (a) provisions in restricted stock unit agreements entered into with Executives that relate to the effect of a termination of employment or (b) provisions in stock option agreements or the Company's Stock Incentive Plans that that provide for the automatic acceleration of vesting of options upon a Change of Control Event. If stock option vesting acceleration is triggered and severance is paid pursuant to this Agreement, the Executive acknowledges and agrees that he or she shall not be entitled to any additional stock option vesting or severance payment pursuant to any prior agreement, arrangement or understanding or pursuant to any other severance pay plan, including, but not limited to, the Akamai Technologies, Inc. 2006 Executive Severance Pay Plan and Summary Plan Description.

(c) Choice of Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

(d) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

(e) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, as of the day and year set forth below.

AKAMAI TECHNOLOGIES, INC.	EXECUTIVE
_____	_____
Signature	Signature
_____	_____
Print Name	Print Name
_____	
Title	
Dated: _____, 200__	Dated: _____, 200__

Exhibit 10.37

Confidential Materials omitted and filed separately with the
Securities and Exchange Commission. Asterisks denote omissions.

Akamai Technologies, Inc. 2009 Executive Bonus Plan

Name: Robert Hughes ***Performance Period: FY 2009***

This 2009 Executive Bonus Plan sets forth your annual compensation for 2009 based on the achievement of certain corporate and individual performance objectives. In order to receive your annual cash incentive bonus, you must be an employee and a member of the Office of the CEO throughout all of 2009 and the corporate and individual objectives must be met, as described more thoroughly below. The Compensation Committee will resolve all questions arising in the administration, interpretation and application of this plan, and the Compensation Committee's determination will be final and binding on all concerned. Where permitted by applicable law, the Compensation Committee reserves the right to modify, at its discretion and at any time, the terms of this plan, including, but not limited to, the performance objectives, targets, and payouts.

Annual Compensation Levels at Target Performance

Base salary:	$_____
Annual cash incentive bonus at target:	$_____
Total Cash Compensation at target:	$_____

Performance Objectives/Targets

Your 2009 cash incentive bonus is comprised of two components: corporate financial performance during Fiscal Year 2009 (60%) (the "Corporate Financial Component"), performance of the Company's Advertising Decision Solutions business during Fiscal Year 2009 (20%) the ("ADS Component") and individual 2009 performance goals[1] (20%) (the "MBO Component").

(A) The method for calculating the Corporate Financial Component is described in the attached Schedule 1. In the event of any question as to whether the components of the Financial Component have been satisfied, the Compensation Committee shall make such determination. The amounts payable to you under the Financial Component are as follows:

Akamai Performance Against Actual % of Targets from Schedule 1[2]	**Amount Payable to You**
91.6% of Targets:	50% of Financial Component ($)
96.1% of Targets:	85% of Financial Component ($)
100% of Targets:	100% of Financial Component ($)
102.6% of Targets:	115% of Financial Component ($)
108.4% or greater of Targets:	200% of Financial Component ($)

Unless otherwise determined by the Compensation Committee, the Financial Components will not be paid if Akamai fails to achieve at least 91.6% of Targets and the maximum bonus payable is capped at 200% of the Financial Component.

(B) The method for calculating the ADS Component is described in the attached Schedule 1. In the event of any question as to whether the components of the ADS Component have been satisfied, the Compensation Committee shall make such determination. The amounts payable to you under the ADS Component are as follows:

Akamai Performance Against ADS Target Percentage from Schedule 1[2]	**Amount Payable to You**
% of ADS Target:	50% of Financial Component ($)
100% of ADS Target:	100% of Financial Component ($)
or greater of ADS Target:	200% of Financial Component ($)

Unless otherwise determined by the Compensation Committee, the ADS Component will not be paid if Akamai fails to achieve at least % of Target and the maximum bonus payable thereunder is capped at 200% of the ADS Component.

(C) The amount payable under the MBO Component ranges from 0% to 100% of that target ($0 up to $) based on the determination of whether individual objectives have been met by you. The Chief Executive Officer shall make such determination and shall report such determination to the Compensation Committee. The Compensation Committee shall retain the right, exercisable in its discretion, to overrule the determination of the Chief Executive Officer and make an independent and binding determination as to whether you have achieved your individual objectives. Subject to the foregoing, the Chief Executive Officer's determination will be final and binding on all concerned.[3] Performance above the maximum may result in higher reward at the sole discretion of the Compensation Committee.

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1 As established by the Chief Executive Officer or, in the case of the CEO, the Compensation Committee.
2 See Schedule 1 for pro-ration formulas applicable to intermediate percentages not specified below.
3 In the case of the Chief Executive Officer, the Board of Directors shall make the determination as to whether his individual performance objectives have been met. The determination of the Board of Directors will be final and binding on all concerned.

The payment of any annual incentive bonus will be made within thirty (30) days following the filing of Akamai's SEC 10-K filing for FY 2009 but no later than March 15, 2010.

Acceptance: _____ _____
Date

Approved by: _____ _____
Date

SCHEDULE 1

CORPORATE FINANCIAL PERFORMANCE MEASUREMENT METHODOLOGY

A. Overview; Definitions

The executive shall only be eligible for the corporate performance-based bonus of the salary upon the Company's achievement of certain financial metrics. Such financial metrics are based on target 2009 Revenue of $[**] million, target 2009 Normalized EPS of $[**] per share and target gross profit dollars generated by the Company's Advertising Decision Solutions operations ("ADS Operations") of $[**] million.

For purposes of this Agreement, such metrics shall have the following meanings:

"Revenue" shall mean the Company's revenue for fiscal year 2009 calculated in accordance with generally accepted accounting principles in the United States of America as reported in the 2009 Financial Statements.

"Normalized EPS" shall mean the Company's annual earnings per diluted share for fiscal year 2009 excluding amortization of intangible assets, equity-related compensation, restructuring charges and benefits, certain gains and losses on equity investments, loss on early extinguishment of debt, utilization of tax NOLs/credits, release of deferred tax asset valuation allowance and similar items excluded by the Company in determining normalized earnings per share in issuing its earnings announcement for fiscal year 2009.

"Gross Profit Dollars" from the ADS Operations shall mean revenue from the ADS Operations in fiscal year 2009 less cost of goods sold attributable to the ADS Operations in fiscal year 2009. In the case of revenues, such amounts shall be calculated based on revenue generated by ADS services. In the case of cost of goods sold, such amounts shall be based on a reasonable allocation of cost of goods sold to operations associated with the ADS Operations as determined by Akamai's Finance organization and reported to the Compensation Committee of the Board of Directors.

If, on December 31, 2009, the Company is required to make periodic reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Company's consolidated financial statements filed with the Securities and Exchange Commission on Form 10-K shall constitute its "Public Company Financial Statements" and shall apply. If, on December 31, 2009, the Company is not required to make periodic reports under the Exchange Act, the Company's regularly prepared annual audited financial statements prepared by management shall be its "Private Company Financial Statements" and shall apply. The applicable financial statements may be referred to herein as the "2009 Financial Statements."

B. Calculation of Percentages

(1) Financial Component

The Company's Revenue shall be calculated as a percentage of the Company's target revenue for fiscal year 2009 of $[**] million and multiplied by 0.5 (the "Revenue Percentage Component"). The Company's Normalized EPS shall be calculated as a percentage of the Company's target normalized earnings per share for fiscal year 2009 of $[**] and multiplied by 0.5 (the "Normalized EPS Component"). The sum of the Revenue Percentage Component and the Normalized EPS Component shall be the "Actual Percentage of Targets."

(2) ADS Component

The Company's Gross Profit Dollars from ADS Operations shall be calculated as a percentage of the Company's Gross Profit Dollars from ADS target of $[**] million (the "Actual ADS Percentage").

C. Bonus Amounts – Financial Component

1. If the Actual Percentage of Targets is equal to any of the percentage amounts set forth in Clause (A) on the first page of this Plan, then the Executive shall be entitled to the percentage of the target Financial Component of the bonus set forth opposite such amount.

2. If the Actual Percentage of Targets is greater than 91.6% of Target but less than 108.4% of Target and not equal to any of the percentage amounts set forth in Clause (A) on the first page of this Plan (i.e., the actual percentage is between two of the percentages set forth on the first page), then the Executive shall receive a bonus equal to the sum of (i) the bonus set forth opposite the next lowest percentage set forth on the first page plus (ii) an amount equal to (A) the bonus payable at the next higher percentage identified on the first page minus the bonus payable at the next lowest percentage identified on the first page multiplied by (B) a fraction, (y) the numerator of which is the Actual Percentage of Targets or the ADS-Adjusted Actual Percentage of Targets, as applicable, minus that next lower percentage and (z) the denominator of which is the next highest percentage minus the next lowest percentage.

As an example, if the Actual Percentage of Targets was 97% and the amount payable at 100% of achievement against target is $100,000, the bonus payable would be equal to: $85,000 + ($90,000—$85,000) X (97.0% – 96.1%/97.4% – 96.1%) = $85,000 + $3,462 = $88,462.

D. Bonus Amounts – ADS Component

1. If the Actual ADS Percentage is equal to any of the percentage amounts set forth in Clause (B) on the first page of this Plan, then the Executive shall be entitled to the percentage of the target Financial Component of the bonus set forth opposite such amount.

2. If the Actual ADS Percentage is between the minimum and maximum target percentages set forth in Clause (B) on the first page of this Plan, the actual payment shall be interpolated on a straight-line basis between the nearest percentages set forth in such Clause (B).

E. Effect of an Acquisition by Akamai

In the event that Akamai enters into an Acquisition Transaction during 2009, then Revenue and Normalized EPS shall be adjusted to give effect to such Acquisition Transaction. An “Acquisition Transaction” means (i) the purchase of more than 50% of the voting power of an entity, (ii) any merger, reorganization, consolidation, recapitalization, business combination, liquidation, dissolution or share exchange involving Akamai and an entity not previously owned by Akamai, or (iii) the purchase or other acquisition (including, without limitation, via license outside of the ordinary course of business or joint venture) of assets that constitute more than 50% of another entity’s total assets or assets that account for more than 50% of the consolidated net revenues or net income of such entity.

As soon as practicable following the closing of an Acquisition Transaction, the Compensation Committee shall make a determination of the estimated impact of the Acquisition Transaction on the Company’s 2009 Revenue and Normalized EPS. If the Acquisition Transaction is estimated to be accretive, then:

(i) in calculating Revenue for purposes of determining the Revenue Percentage Component, reported Revenue shall be reduced by the amount of estimated revenue contribution from the Acquisition Transaction; and

(ii) in calculating Normalized EPS for purposes of determining the Normalized EPS Percentage Component, Normalized EPS, as calculated based on the 2009 Financial Statements, shall be reduced by the amount of the estimated Normalized EPS contribution from the Acquisition Transaction.

If the Acquisition is estimated to be non-accretive, then:

(iii) in calculating Normalized EPS for purposes of determining the Normalized EPS Percentage Component, Normalized EPS, as calculated based on the 2009 Financial Statements, shall be increased by the amount of the estimated negative Normalized EPS impact from the Acquisition Transaction.

All determinations of the Compensation Committee regarding the estimated impact of an Acquisition Transaction shall be final, binding and non-appealable. The cumulative impact of all Acquisition Transactions shall be set forth in a statement delivered upon payment, if any, of the bonus contemplated by this plan. This plan shall be deemed to be automatically amended, without further action by the Company or the executive, to give effect to any adjustments required by this Section D.

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-62072, 333-37810, 333-36518, 333-35464, 333-35470, 333-35462, 333-31668, 333-89887, 333-89889, 333-91558, 333-83502, 333-116452, 333-126114, 333-139408, 333-139255, 333-141854, 333-142399 and 333-155423) of Akamai Technologies, Inc. of our report dated March 2, 2009 relating to the financial statements, financial statement schedule, and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

Boston, Massachusetts
March 2, 2009

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Paul Sagan, certify that:

1. I have reviewed this Annual Report on Form 10-K of Akamai Technologies, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 2, 2009

/s/ Paul Sagan

Paul Sagan, President and CEO

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, J. Donald Sherman, certify that:

1. I have reviewed this Annual Report on Form 10-K of Akamai Technologies, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 2, 2009

/s/ J. Donald Sherman

J. Donald Sherman, Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the annual report on Form 10-K of Akamai Technologies, Inc. (the "Company") for the period ended December 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Paul Sagan, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that, to his knowledge:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Paul Sagan

Dated: March 2, 2009

Paul Sagan
President and CEO

A signed original of this written statement required by Section 906 has been provided to Akamai Technologies, Inc. and will be retained by Akamai Technologies, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

Exhibit 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the annual report on Form 10-K of Akamai Technologies, Inc. (the "Company") for the period ended December 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, J. Donald Sherman, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that, to his knowledge:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ J. Donald Sherman

Dated: March 2, 2009

J. Donald Sherman
Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to Akamai Technologies, Inc. and will be retained by Akamai Technologies, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

EXHIBIT 99.1

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

AKAMAI TECHNOLOGIES, INC.,

ARROW ACQUISITION CORP.,

IB HOLDCO INC.,

I-BEHAVIOR INC.,

ACERNO INC.,

IB SPINCO LLC

AND

THE REPRESENTATIVE OF THE COMPANY PARTICIPATING EQUITY HOLDERS

(NAMED HEREIN)

October 20, 2008

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AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this "Agreement") is entered into as of October 20, 2008, by and among Akamai Technologies, Inc., a Delaware corporation (the "Buyer"), Arrow Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of the Buyer (the "Transitory Subsidiary"), IB Holdco Inc., a Delaware corporation (the "Company"), I-Behavior, Inc., a Delaware corporation and a wholly-owned subsidiary of the Company ("I-B"), aCerno Inc., a Delaware corporation and a wholly-owned subsidiary of I-B ("A-C"), IB Spinco LLC, a Delaware limited liability company and a wholly-owned subsidiary of I-B ("Spinco") and, solely for the purpose of carrying out its responsibilities hereunder as representative of the Company Participating Equity Holders, the Representative specified in Article X. The Buyer, the Transitory Subsidiary, the Company, I-B, A-C and Spinco are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

A. On the date hereof, I-B and Spinco have entered into the Agreement and Plan of Distribution in the form attached hereto as Exhibit A (as modified, amended and supplemented in accordance with the terms thereof and of this Agreement, the "Distribution Agreement"). The transactions described in the Distribution Agreement are referred to herein as the "Distribution Transaction."

B. Pursuant to the Distribution Agreement, prior to the consummation of the Merger, I-B will distribute to its sole stockholder, the Company, all of the membership interests of Spinco held by I-B (the "Dividend"). Immediately following the Dividend, the Company will cause Spinco to be converted into a Delaware corporation.

C. On the date hereof, the Company has adopted the Plan of Recapitalization in the form attached hereto as Exhibit B (the "Plan of Recapitalization"). The transactions described in the Plan of Recapitalization, including the amendment and restatement of the certificate of incorporation of the Company attached thereto, are referred to herein as the "Recapitalization."

D. Pursuant to the Plan of Recapitalization and following the Distribution Transaction and the Recapitalization, but prior to the Merger, the Company will distribute all of the capital stock of Spinco received by the Company as a result of such conversion (the "Spinco Stock") to all of its stockholders in a partial, pro rata redemption of the capital stock of the Company held by each such stockholder (the "Redemption"). As a result of, and upon completion of, the Dividend, the Recapitalization and the Redemption, Spinco will be owned directly by the stockholders of the Company who are stockholders as of immediately prior to the Effective Time of the Merger. The Distribution Transaction, the Dividend, the Recapitalization and the transactions described in this Recital D are collectively referred to herein as the "Spin-Off Transaction."

E. Concurrently with the Closing, but immediately following the consummation of the Spin-Off Transaction, the Transitory Subsidiary will merge with and into the Company, with the Company becoming the Surviving Corporation in accordance with this Agreement. In connection with the Merger, (i) the Company Stockholders will receive cash consideration in exchange for their remaining capital stock of the Company, (ii) all vested Options shall be cancelled in exchange for the cash option consideration set forth herein and (iii) unvested options held by employees of A-C to acquire common stock of the Company will become options to acquire Buyer Common Shares.

F. Concurrently with the execution of this Agreement, certain employees of the Company and its Subsidiaries are entering into agreements with the Buyer regarding retention arrangements and certain of the employees of the Company and its Subsidiaries are entering into non-competition and non-solicitation agreements with the Buyer and which will become effective simultaneous with the Closing.

G. The Parties intend that, as soon as practicable following the execution of this Agreement, and as a condition of the willingness of the Buyer and the Company to enter into this Agreement, in accordance with applicable law certain stockholders of the Company will cause written consents to approve the transactions contemplated by this Agreement to be executed by themselves or by their proxy holders.

Now, therefore, in consideration of the representations, warranties and covenants herein contained, the Parties hereby agree as follows.

ARTICLE I
THE MERGER

1.1 The Merger. Upon and subject to the terms and conditions of this Agreement, immediately after the consummation of the Spin-Off Transaction, the Transitory Subsidiary shall merge with and into the Company at the Effective Time. From and after the Effective Time, the separate corporate existence of the Transitory Subsidiary shall cease and the Company shall continue as the Surviving Corporation. The Merger shall have the effects set forth in Section 259 of the Delaware General Corporation Law.

1.2 The Closing. The Closing shall take place at the offices of Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109, commencing at 9:00 a.m. local time on the Closing Date, or such other time and place as the Parties mutually agree.

1.3 Actions at the Closing. At the Closing:

(a) the Company shall deliver to the Buyer and the Transitory Subsidiary the various certificates, instruments and documents referred to in Section 6.1;

(b) the Buyer and the Transitory Subsidiary shall deliver to the Company and Spinco the various certificates, instruments and documents referred to in Section 6.2;

(c) the Surviving Corporation shall file with the Secretary of State of the State of Delaware the Certificate of Merger;

(d) the Buyer shall deposit with the Paying Agent the aggregate Initial Merger Consideration and the aggregate Initial Option Consideration in immediately available funds;

(e) the Buyer or the Surviving Corporation shall authorize and instruct the Paying Agent to deliver the aggregate Initial Merger Consideration and the Initial Option Consideration in accordance with Section 1.8(a);

(f) the Buyer shall deposit the Representative Expense Amount to an account designated by the Representative in writing to the Buyer not less than three (3) business days prior to the Closing;

(g) the Buyer shall pay the Company Third Party Expenses in immediately available funds set forth on the Preliminary Closing Balance Sheet in accordance with payment instructions provided by the Company in writing to the Buyer not less than three (3) business days prior to the Closing;

(h) the Buyer shall pay off the Silicon Valley Bank Loan in accordance with the terms of the SVB Payoff Letter;

(i) the Buyer shall retain the Option Tax Amount for payment to the Internal Revenue Service; and

(j) the Buyer shall retain the Tax Estimate for payment to the Internal Revenue Service and the applicable state taxing authorities pursuant to the provisions of Section 8.1(c), subject to the adjustment provisions thereof; and

(k) the Buyer, the Representative and the Escrow Agent shall execute and deliver the Escrow Agreement, and the Buyer shall deliver to the Escrow Agent the Initial Escrow Fund being placed in escrow on the Closing Date pursuant to Section 1.11(a) and the Initial Special Escrow Fund being placed in escrow on the Closing Date pursuant to Section 1.11(b).

1.4 Additional Action. The Surviving Corporation may, at any time from and after the Effective Time, take any action, including executing and delivering any document, in the name and on behalf of either the Company, the Transitory Subsidiary, I-B or A-C in order to consummate and give effect to the transactions contemplated by this Agreement.

1.5 Conversion of Shares. At the Effective Time, by virtue of the Merger and without any action on the part of any Party or the holder of any of the following securities:

(a) Each Series D-1 Non-Redeemable Share, or fraction thereof, issued and outstanding immediately prior to the Effective Time (other than Series D-1 Non-Redeemable Shares owned beneficially by the Buyer or the Transitory Subsidiary, Dissenting Shares and Series D-1 Non-Redeemable Shares held in the Company's treasury) shall be converted into and represent the right to receive (subject to, and payable in accordance with, the provisions of Section 1.8) an amount in cash, on the basis of each whole share, equal to $1.00.

(b) Each Series D-2 Redeemable Participating Share, or fraction thereof, issued and outstanding immediately prior to the Effective Time (other than Series D-2 Redeemable Participating Shares owned beneficially by the Buyer or the Transitory Subsidiary, Dissenting Shares and Series D-2 Redeemable Participating Shares held in the Company's treasury) shall be converted into and represent the right to receive (subject to, and payable in accordance with, the provisions of Sections 1.6, 1.8, 1.10 and 1.11) an amount in cash, on the basis of each whole share, equal to the sum of (i) the Per Share Participating Initial Consideration; (ii) the Per Share Participating Earn-Out Consideration; (iii) the Per Share Positive Closing Net Surplus, if any; (iv) the Per Share Escrow Fund Interest, when and if payable; (v) the Per Share Special Escrow Fund Interest, when and if payable, in each case without any interest thereon; and (vi) the Per Share Representative Expense Amount Surplus, if any.

(c) Each Series C-1 Non-Redeemable Share, or fraction thereof, issued and outstanding immediately prior to the Effective Time (other than Series C-1 Non-Redeemable Shares owned beneficially by the Buyer or the Transitory Subsidiary, Dissenting Shares and Series C-1 Non-Redeemable Shares held in the Company's treasury) shall be converted into and represent the right to receive (subject to, and payable in accordance with, the provisions of Section 1.8) an amount in cash, on the basis of each whole share, equal to $1.75.

(d) Each Series C-2 Redeemable Participating Share, or fraction thereof, issued and outstanding immediately prior to the Effective Time (other than Series C-2 Redeemable Participating Shares owned beneficially by the Buyer or the Transitory Subsidiary, Dissenting Shares and Series C-2 Redeemable Participating Shares held in the Company's treasury) shall be converted into and represent the right to receive (subject to, and payable in accordance with, the provisions of Sections 1.6, 1.8, 1.10 and 1.11) an amount in cash, on the basis of each whole share, equal to the sum of (i) the Per Share Participating Initial Consideration; (ii) the Per Share Participating Earn-Out Consideration; (iii) the Per Share Positive Closing Net Surplus, if any; (iv) the Per Share Escrow Fund Interest, when and if payable; (v) the Per Share Special Escrow Fund Interest, when and if payable, in each case without any interest thereon; and (vi) the Per Share Representative Expense Amount Surplus, if any.

(e) Each Series B-1 Non-Redeemable Share, or fraction thereof, issued and outstanding immediately prior to the Effective Time (other than Series B-1 Non-Redeemable Shares owned beneficially by the Buyer or the Transitory Subsidiary, Dissenting Shares and Series B-1 Non-Redeemable Shares held in the Company's treasury) shall be converted into and represent the right to receive (subject to, and payable in accordance with, the provisions of Section 1.8) an amount in cash, on the basis of each whole share, equal to $1.01.

(f) Each Series B-2 Redeemable Participating Share, or fraction thereof, issued and outstanding immediately prior to the Effective Time (other than Series B-2 Redeemable Participating Shares owned beneficially by the Buyer or the Transitory Subsidiary, Dissenting Shares and Series B-2 Redeemable Participating

Shares held in the Company's treasury) shall be converted into and represent the right to receive (subject to, and payable in accordance with, the provisions of Sections 1.6, 1.8, 1.10 and 1.11) an amount in cash, on the basis of each whole share, equal to the sum of (i) the Per Share Participating Initial Consideration; (ii) the Per Share Participating Earn-Out Consideration; (iii) the Per Share Positive Closing Net Surplus, if any; (iv) the Per Share Escrow Fund Interest, when and if payable; (v) the Per Share Special Escrow Fund Interest, when and if payable, in each case without any interest thereon; and (vi) the Per Share Representative Expense Amount Surplus, if any.

(g) Each Series A-1 Non-Redeemable Share, or fraction thereof, issued and outstanding immediately prior to the Effective Time (other than Series A-1 Non-Redeemable Shares owned beneficially by the Buyer or the Transitory Subsidiary, Dissenting Shares and Series A-1 Non-Redeemable Shares held in the Company's treasury) shall be converted into and represent the right to receive (subject to, and payable in accordance with, the provisions of Section 1.8) an amount in cash, on the basis of each whole share, equal to $0.40.

(h) Each Series A-2 Redeemable Participating Share, or fraction thereof, issued and outstanding immediately prior to the Effective Time (other than Series A-2 Redeemable Participating Shares owned beneficially by the Buyer or the Transitory Subsidiary, Dissenting Shares and Series A-2 Redeemable Participating Shares held in the Company's treasury) shall be converted into and represent the right to receive (subject to, and payable in accordance with, the provisions of Sections 1.6, 1.8, 1.10 and 1.11) an amount in cash, on the basis of each whole share, equal to the sum of (i) the Per Share Participating Initial Consideration; (ii) the Per Share Participating Earn-Out Consideration; (iii) the Per Share Positive Closing Net Surplus, if any; (iv) the Per Share Escrow Fund Interest, when and if payable; (v) the Per Share Special Escrow Fund Interest, when and if payable, in each case without any interest thereon; and (vi) the Per Share Representative Expense Amount Surplus, if any.

(i) Each Common Share, or fraction thereof, issued and outstanding immediately prior to the Effective Time other than Common Shares owned beneficially by the Buyer or the Transitory Subsidiary, Dissenting Shares and Common Shares held in the Company's treasury) shall be converted into and represent the right to receive (subject to, and payable in accordance with, the provisions of Sections 1.6, 1.8, 1.10 and 1.11) an amount in cash, on the basis of each whole share, equal to (i) the Per Share Participating Initial Consideration; (ii) the Per Share Participating Earn-Out Consideration; (iii) the Per Share Positive Closing Net Surplus, if any; (iv) the Per Share Escrow Fund Interest; when and if payable; (v) the Per Share Special Escrow Fund Interest, when and if payable, in each case, without any interest thereon; and (vi) the Per Share Representative Expense Amount Surplus, if any.

(j) The Company has prepared Schedule I attached hereto as a preliminary summary of the allocation of the aggregate Initial Merger Consideration, the Initial Option Consideration, the Initial Escrow Fund and the Initial Special Escrow Fund. The Parties acknowledge and agree that the Company and the Buyer will jointly amend Schedule I as of the Effective Time to reflect such amounts based on (i) the Company Participating Equity Equivalents and the Total Equity outstanding immediately prior to the Effective Time and (ii) the calculation of the Net Total Consideration after giving effect to the items specified in the Total Consideration.

(k) Each Company Share held in the Company's treasury immediately prior to the Effective Time and each Company Share owned beneficially by the Buyer or the Transitory Subsidiary shall be cancelled and retired without payment of any consideration therefor.

(l) Each share of common stock, $0.01 par value per share, of the Transitory Subsidiary issued and outstanding immediately prior to the Effective Time shall be converted into and thereafter evidence one share of common stock, $0.01 par value per share, of the Surviving Corporation.

1.6 Earn-Out Consideration. The Company Participating Equity Holders shall be entitled to additional consideration as follows:

(a) If the Company Revenue for the three month period ended December 31, 2008 is equal to or greater than the Revenue Target, then the Company Participating Equity Holders shall be entitled to additional consideration equal to the sum of (i) $3,000,000 (the "Initial Performance Payment") and (ii) $2.00 for each $1.00 of

Company Revenue for the three month period ended December 31, 2008 that is greater than the Revenue Target (the "Additional Threshold Payment" and, together with the Initial Performance Payment, the "Earn-out Consideration"). In no event shall (i) the Additional Threshold Payment exceed an aggregate of $5,000,000 or (ii) the Earn-out Consideration exceed an aggregate of $8,000,000.

(b) The Company Participating Equity Holders shall not be entitled to receive, and shall not receive, any Earn-out Consideration if the Company Gross Margins for the three month period ending December 31, 2008 are less than the Gross Margins Target.

(c) As soon as practicable after completion of the Buyer's audit for the three month period ending December 31, 2008, and in any event no later than March 31, 2009, the Buyer shall prepare (or cause to be prepared) and deliver to the Representative (i) a calculation of the Company Revenue for the three month period ending December 31, 2008, (ii) a calculation of the Company Gross Margins for the three month period ending December 31, 2008, (iii) relevant backup schedules reasonably sufficient to allow review of the Buyer's calculation of such Company Revenue and Company Gross Margins, and (iv) a statement of the amount, if any, of the Earn-out Consideration to be delivered to the Company Participating Equity Holders. Unless the Representative shall, in accordance with the provisions of subsection (d) below, challenge the Buyer's determination of the Company Revenue for the three month period ended December 31, 2008, the Company Gross Margins for the three month period ending December 31, 2008 and/or the Earn-out Consideration within 30 days after the delivery of the Buyer's calculation thereof, the Buyer's determination shall be binding upon the Company Participating Equity Holders and the Representative. The Representative shall be granted reasonable access during business hours to the books, records and accounting work papers of the Company to conduct its review of such Company Gross Revenue and Company Gross Margins. Such access shall be at such times and in such a manner as shall not unreasonably interfere with the Buyer's operation of the Company's business.

(d) In the event that the Representative disputes the calculation of the Company Revenue for the three month period ending December 31, 2008, the Company Gross Margins for the three month period ending December 31, 2008 and/or the Earn-out Consideration, the Representative shall notify the Buyer in writing by delivery of a notice (an "Earn-out Dispute Notice") within 30 calendar days after delivery of the Buyer's calculation of the Company Revenue for the three month period ending December 31, 2008, the Company Gross Margins for the three month period ending December 31, 2008 and/or the Earn-out Consideration, which Earn-out Dispute Notice shall set forth in reasonable detail the basis for such dispute. In the event of such a dispute, the Buyer and the Representative shall use their Reasonable Best Efforts to reach agreement on the disputed items or amounts in order to determine the Earn-out Consideration. If the Buyer and the Representative are unable to resolve the dispute within 30 calendar days after delivery of the Earn-out Dispute Notice, then any remaining items in dispute shall be submitted to an independent nationally recognized accounting firm selected in writing by the Representative and the Buyer or, if the Representative and the Buyer fail or refuse to select a firm within 10 calendar days after written request therefor by the Representative or the Buyer, such an independent nationally recognized accounting firm shall be selected in accordance with the rules of the Wilmington, Delaware office of the AAA (the "Neutral Accountant"). All determinations pursuant to this paragraph (d) shall be in writing and shall be delivered to the Representative and the Buyer. The determination of the Neutral Accountant as to the resolution of any dispute shall be binding and conclusive upon all Parties. A judgment on the determination made by the Neutral Accountant pursuant to this Section 1.6 may be entered in and enforced by any court having jurisdiction thereover.

(e) The fees and expenses of the Neutral Accountant in connection with the resolution of disputes pursuant to Section 1.6(d) shall be shared equally by the Company Participating Equity Holders, on the one hand, and the Buyer, on the other hand; provided that if the Neutral Accountant determines that the Buyer, on the one hand, or the Representative, on the other hand, adopted a position or positions with respect to the Earn-out Consideration that is frivolous or clearly without merit, the Neutral Accountant may, in its discretion, assign a greater portion of any such fees and expenses to such party.

(f) Within 14 days of the resolution of any dispute or the Representative's failure to deliver an Earn-out Dispute Notice on a timely basis, the Buyer shall (i) pay 1.3% of the Earn-out Consideration, if any, to The Jordan, Edmiston Group, Inc. in accordance with payment instructions provided by the Representative, (ii) pay 86.2% of the Earn-out Consideration, if any, to the Paying Agent and (iii) deposit with the Escrow Agent 12.5% of

the Earn-out Consideration, if any, in escrow pursuant to the Escrow Agreement. The Paying Agent shall pay to each Company Participating Equity Holder an amount equal to the product of (x) the number of Company Participating Equity Equivalents owned by the Company Participating Equity Holder immediately prior to the Effective Time and (y) the Per Share Participating Earn-out Consideration.

(g) By their adoption of this Agreement, the Company Participating Equity Holders agree and acknowledge that the Buyer may make from time to time such business decisions as it deems appropriate, in its sole discretion, in the conduct of the business of the Company and its Subsidiaries following Closing, including actions that may have an impact on the Company Revenue, Company Gross Margins and/or the Earn-out Consideration. The Company Participating Equity Holders will have no right to claim any lost earn-out or other damages as a result of such decisions so long as the actions were not taken by the Buyer in bad faith for the principal purpose of frustrating provisions of this Section 1.6.

(h) Notwithstanding any other provision in this Section 1.6, if at the time any Earn-out Consideration would otherwise be payable to the Company Participating Equity Holders the Buyer has made any claim for indemnification under and in accordance with Article VII of this Agreement based upon a claim of fraud, willful misrepresentation or a breach of any Constitutive Representation, which claim has not previously been satisfied (an "Unsatisfied Claim"), then, if the sum of (i) the amount of such Unsatisfied Claim plus (ii) the aggregate amount of Damages claimed by the Buyer with respect to any pending claims under Article VII (the aggregate amount of the claims under clauses (i) and (ii) are hereinafter referred to as the "Total Pending Claims") would reduce the aggregate amount then in the Escrow Fund, if any, to zero ($0), then the Buyer may offset that portion of the Earn-out Consideration otherwise payable by the Buyer by the amount by which that portion of the Total Pending Claims attributable to the Unsatisfied Claim that would reduce the Escrow Fund to an amount of less than zero ($0) (or, if the actual amount of the Unsatisfied Claim has been determined under Article VII, the actual Damages with respect to such claim as so determined). One hundred percent (100%) of any remaining balance of the Earn-out Consideration remaining after such offset shall be paid to the Paying Agent for payment to each Company Participating Equity Holder in accordance with the provisions of Section 1.6(f). If, after the final resolution of any such Unsatisfied Claim, the amount of Damages to which the Buyer is entitled to indemnification from such offset Earn-out Consideration is less than the amount of such offset, such excess portion of the previously offset Earn-out Consideration shall be paid to the Paying Agent for payment to each Company Participating Equity Holder in accordance with the provisions of Section 1.6(f).

1.7 Dissenting Shares.

(a) Dissenting Shares shall not be converted into or represent the right to receive the consideration for the applicable Company Shares as specified in Section 1.5 (the "Applicable Specified Consideration"), unless the Company Stockholder holding such Dissenting Shares shall have forfeited his, her or its right to appraisal under the Delaware General Corporation Law or properly withdrawn, his, her or its demand for appraisal. If such Company Stockholder has so forfeited or withdrawn his, her or its right to appraisal of Dissenting Shares, then as of the occurrence of such event, such holder's Dissenting Shares shall cease to be Dissenting Shares and shall be converted into and represent the right to receive the Applicable Specified Consideration issuable in respect of such Company Shares.

(b) Immediately after the occurrence of a conversion of Dissenting Shares into Merger Consideration pursuant to Section 1.7(a), (i) if such conversion occurs during (A) the Escrow Period, the Per Share Escrow Amount, if applicable, for each Dissenting Share formerly held by the Company Stockholder shall be designated as part of the Escrow Fund and shall remain in escrow pursuant to Section 1.11(a) and (B) the Special Escrow Period, the Per Share Special Escrow Amount, if applicable, for each Dissenting Share formerly held by the Company Stockholder shall be designated as part of the Special Escrow Fund and shall remain in escrow pursuant to Section 1.11(b) and (ii) the Initial Merger Consideration for each Dissenting Share formerly held by the Company Stockholder shall be delivered to the Paying Agent for distribution to the Company Stockholder in accordance with Section 1.8.

(c) The Company shall give the Buyer (i) prompt notice of any written demands for appraisal of any Company Shares, withdrawals of such demands, and any other instruments that relate to such demands

received by the Company and (ii) the opportunity to direct, in consultation with the Company, all negotiations and proceedings with respect to demands for appraisal under the Delaware General Corporation Law. The Company shall not, except with the prior written consent of the Buyer, make any payment with respect to any demands for appraisal of Company Shares or offer to settle or settle any such demands.

1.8 Paying Agent and Payment Process.

(a) Prior to the Effective Time, the Buyer shall appoint the Paying Agent to effect the delivery of the Applicable Specified Consideration and the Option Consideration (at the times, and on the terms and conditions, set forth in this Agreement). On the Closing Date, the Buyer shall authorize and instruct the Paying Agent in writing to distribute (i) the Initial Merger Consideration to the Company Stockholders as described in Section 1.5 and in accordance with this Section 1.8 and (ii) the Initial Option Consideration to the Company Optionholders as described in Section 1.9 and in accordance with this Section 1.8. As soon as practicable after the Effective Time, the Buyer shall cause the Paying Agent to send a notice and payment instruction letter to each Company Stockholder and each Company Optionholder advising such holder of the effectiveness of the Merger and the procedure for payment of the Initial Merger Consideration and the Initial Option Consideration, as the case may be, payable to such holder pursuant to Section 1.5 or Section 1.9, as the case may be. Each Company Stockholder and each Company Optionholder upon submission of such payment instruction letter in accordance with the instructions in such letter, shall be entitled to receive (subject to any Taxes required to be withheld) the Initial Merger Consideration payable pursuant to Section 1.5 or the Initial Option Consideration payable pursuant to Section 1.9, as the case may be, and, subject to the terms and conditions set forth in this Agreement, the other Applicable Specified Consideration or Option Consideration, as the case may be, when and if payable under the terms of this Agreement. Until such payment instruction letter is delivered to the Paying Agent, each Company Stockholder shall be entitled to receive only the Initial Merger Consideration payable pursuant to Section 1.5 and, subject to the terms and conditions set forth in this Agreement, the other Applicable Specified Consideration when and if payable under the terms of this Agreement and each Company Optionholder shall be entitled to receive only the Initial Option Consideration payable pursuant to Section 1.9 and, subject to the terms and conditions set forth in this Agreement, the other Option Consideration when and if payable under the terms of this Agreement. Company Stockholders and Company Optionholders shall not be entitled to receive the Initial Merger Consideration or the Initial Option Consideration, as the case may be, and, subject to the terms and conditions set forth in this Agreement, the other Applicable Specified Consideration or the other Option Consideration, as applicable, when and if payable under the terms of this Agreement, to which they would otherwise be entitled until such payment instruction letter is properly delivered to the Paying Agent.

(b) If any portion of the Applicable Specified Consideration or Option Consideration is to be paid to a person other than the Company Stockholder or Company Optionholder of record, it shall be a condition to the payment of such Applicable Specified Consideration or Option Consideration, as the case may be, that the person requesting such assignment of the applicable consideration shall (i) provide irrevocable instructions in form satisfactory to the Paying Agent setting forth the provisions for such payment and (ii) pay to the Paying Agent any transfer or other Taxes payable by reason of the foregoing or establish to the satisfaction of the Paying Agent that such Taxes have been paid or are not required to be paid. Notwithstanding the foregoing, neither the Paying Agent nor any Party shall be liable to a Company Stockholder or a Company Optionholder, as the case may be, for any Applicable Specified Consideration payable to such holder pursuant to Section 1.5 or any Option Consideration payable to such holder pursuant to Section 1.9, as the case may be, that is delivered to a public official pursuant to applicable abandoned property, escheat or similar laws.

1.9 Options and Warrants.

(a) As of the Effective Time, all unvested I-B Options shall be terminated as of immediately prior to the Effective Time. As of the Effective Time, all unvested A-C Options and any Option Plan, insofar as it relates to unvested A-C Options outstanding under such Option Plan as of the Closing, shall be assumed by the Buyer, in such manner that the Buyer (i) is a corporation "assuming a stock option in a transaction to which Section 424(a) applies" within the meaning of Section 424 of the Code and the regulations thereunder or (ii) to the extent Section 424 of the Code does not apply to any such A-C Options, would be such a corporation were Section 424 of the Code applicable to such A-C Options, and in accordance with the provisions set forth below. Immediately after

the Effective Time, each unvested A-C Option outstanding immediately prior to the Effective Time shall be deemed to constitute an option to acquire, on the same terms and conditions as were applicable under such A-C Option at the Effective Time, such number of Buyer Common Shares as is equal to the result obtained by dividing (i) the product of (A) the Per Share Participating Initial Consideration and (B) number of Common Shares subject to the unvested portion of such A-C Option by (ii) the Buyer Stock Price (with any fraction resulting from such multiplication to be rounded down to the nearest whole number). The exercise price per share of each such assumed unvested Option shall be equal to the product of (i) the result obtained by dividing (X) the exercise price of such Option immediately prior to the Effective Time by (Y) the Per Share Participating Initial Consideration and (ii) the Buyer Stock Price (rounded up to the nearest whole cent). The term, exercisability, vesting schedule and all of the other terms of the unvested Options shall otherwise remain unchanged.

(b) As soon as practicable after the Effective Time, the Buyer or the Surviving Corporation shall deliver to the holders of unvested A-C Options appropriate notices setting forth such holders' rights pursuant to such A-C Options, as amended by this Section 1.9, and the agreements evidencing such A-C Options, and that such A-C Option shall continue in effect on the same terms and conditions (subject to the amendments provided for in this Section 1.9 and such notice).

(c) The Buyer shall take all corporate action necessary to reserve for issuance a sufficient number of Buyer Common Shares for delivery upon exercise of the unvested A-C Options assumed in accordance with this Section 1.9. Within 15 business days after the Effective Time, the Buyer shall file a Registration Statement on Form S-8 (or any successor form) under the Securities Act with respect to all Buyer Common Shares subject to the A-C Options that may be registered on a Form S-8, and shall use its Reasonable Best Efforts to maintain the effectiveness of such Registration Statement for so long as such A-C Options remain outstanding.

(d) The Company shall obtain, prior to the Closing, the consent from each holder of an unvested A-C Option to the amendment of such Option to the extent necessary to give effect to the provisions of this Section 1.9 (unless such consent is not required under the terms of the applicable agreement, instrument or plan). The Company shall obtain, prior to the Closing, the consent from each holder of an unvested I-B Option to the termination of such unvested I-B Option pursuant to this Section 1.9 (unless such consent is not required under the terms of the applicable agreement, instrument or plan).

(e) As of the Effective Time, all vested Options shall, to the extent not exercised prior to the Closing, be cancelled in exchange for the right to receive (subject to, and payable in accordance with, the provisions of Sections 1.6, 1.8, 1.10 and 1.11) the Option Consideration. The Company shall obtain, prior to the Closing, the consent from each holder of a vested Option to the cancellation of such vested portion of the Option pursuant to this Section 1.9 (unless such consent is not required under the terms of the applicable agreement, instrument or plan).

(f) The Company shall cause the termination, as of the Effective Time, of the Warrants which remain unexercised.

(g) The Company shall obtain, prior to the Closing, the consent from each holder of a Warrant to the termination of such Warrant pursuant to this Section 1.9 (unless such consent is not required under the terms of the applicable agreement or instrument).

1.10 Adjustment Before and After the Closing. The Merger Consideration shall be subject to adjustment as follows:

(a) Not later than three business days prior to the Closing Date, the Company shall prepare and deliver to the Buyer a balance sheet of the Company as of a date (the "Preliminary Closing Balance Sheet Date") within five business days of the Closing Date (the "Preliminary Closing Balance Sheet"). The Preliminary Closing Balance Sheet shall be prepared in accordance with the provisions relating to the preparation of the Closing Balance Sheet set forth in this Section 1.10; provided, however, for the purposes of the Preliminary Closing Balance Sheet, the Spin-Off Transaction shall be deemed to have been completed immediately prior to the date of the Preliminary Closing Balance Sheet, and no amounts representing federal or state income Taxes attributable to the

Spin-Off Transaction shall be included as a liability on the Preliminary Closing Balance Sheet. The Preliminary Closing Balance Sheet shall be accompanied by (i) all relevant backup materials and schedules, in detail reasonably acceptable to the Buyer, and (ii) a statement setting forth the amount, if any, by which the estimated Net Asset Value (the "Preliminary Net Asset Value") is greater than, or less than, the Target Amount. In calculating the Preliminary Net Asset Value, the Preliminary Closing Balance Sheet shall include (A) all Company Third Party Expenses that have not been paid prior to the date of Closing and which shall be paid by the Buyer in accordance with the provisions of Section 1.3(g) (it being agreed that the amount of such Company Third Party Expenses so set forth shall not be recorded as a liability of the Company for purposes of the calculation of the Preliminary Net Asset Value since such amounts shall be deducted from the determination of Total Consideration); (B) accruals for the disputes, severance obligations and retention and change in control payments (it being agreed that the amount of Employee Amounts set forth on the Preliminary Closing Balance Sheet, which for the avoidance of doubt the Surviving Corporation shall pay, shall not be recorded as a liability of the Company for purposes of the calculation of the Preliminary Net Asset Value since such amounts shall be deducted from the determination of Total Consideration); (C) reserves in respect of Taxes, including, without limitation, liabilities for state income Taxes, property Taxes, and sales Taxes and all deferred tax liabilities such as the deferred tax liability for the Section 481 adjustments (it being agreed that the amount of the Tax Estimate and Option Tax Amount set forth on the Preliminary Closing Balance Sheet shall not be recorded as a liability of the Company for purposes of the calculation of the Preliminary Net Asset Value since such amounts shall be deducted from the determination of Total Consideration); (D) all amounts required to pay in full the principal, interest, fees and other charges payable to satisfy and discharge in full the Silicon Valley Bank Loan (it being agreed that such amount so set forth shall not be recorded as a liability of the Company for purposes of the calculation of the Preliminary Net Asset Value since such amount shall be deducted from the determination of Total Consideration); (E) if not paid in full prior to the Closing, the premium for the directors' and officers' liability insurance and fiduciary liability insurance to be acquired by the Company pursuant to Section 5.15; (F) all accrued bonus and vacation obligations; (G) all capital lease obligations; (H) accruals for Option repricing obligations to the extent not included in the Employee Amounts; (I) accruals for Company Employee 401(k) liability; and (J) accruals for aged payables beyond the normal course. Schedule II attached hereto reflects accruals and other items contemplated by the preceding sentence, including estimated amounts in respect thereof as of the date of this Agreement, that the Parties agree shall be reflected on the Preliminary Closing Balance Sheet. The Preliminary Closing Balance Sheet shall be accompanied by a statement setting forth the calculations showing the basis for the determination of such sums.

(b) Not later than the due date (without regard to extensions) for filing the federal income Tax Return of the Company for the taxable period ending on the Closing Date, the Buyer shall deliver to the Representative the Closing Balance Sheet. The Closing Balance Sheet shall be prepared in accordance with GAAP applied consistently with the Company's past practices (to the extent such past practices are consistent with GAAP), except that the Closing Balance Sheet may exclude all footnotes, subject to the adjustments set forth in this Section 1.10 (which shall be in addition to and not in lieu of those required by GAAP) and shall be certified as such by the Buyer.

(c) The Closing Balance Sheet delivered pursuant to paragraph (b) above shall be accompanied by (i) all relevant backup materials and schedules, in detail reasonably acceptable to the Representative, and (ii) a statement setting forth the amount, if any, by which the Net Asset Value is greater than, or less than, the Preliminary Net Asset Value. In calculating the Net Asset Value, the Closing Balance shall include as liabilities (A) the full amount of the Company Third Party Expenses (it being agreed that the amount of the Company Third Party Expenses shall be recorded as a liability of the Company for purposes of the calculation of the Net Asset Value only to the extent such Company Third Party Expenses were not set forth on the Preliminary Closing Balance Sheet and paid by the Buyer in accordance with the provisions of Section 1.3(g)); (B) accruals for the disputes, severance obligations and retention and change in control payments (it being agreed that the amount of the Employee Amounts, which for the avoidance of doubt the Surviving Corporation shall pay, shall be recorded as a liability of the Company for purposes of the calculation of the Net Asset Value only to the extent such Employee Amounts were not set forth on the Preliminary Closing Balance Sheet); (C) reserves in respect of Taxes, , including, without limitation, all deferred tax liabilities such as the deferred tax liability for the Section 481 adjustments and liabilities for state income Taxes, property Taxes, and sales Taxes (it being agreed that the amount of the Tax Estimate shall not be recorded as a liability, but that any amounts representing federal or state income Taxes attributable to the Spin-Off Transaction in excess of the Tax Estimate shall be included as a liability on the Closing Balance Sheet and the Option Tax Amount so set forth shall be recorded as a liability of the Company for purposes

of the calculation of the Net Asset Value only to the extent such amounts were not set forth on the Preliminary Closing Balance Sheet and paid by the Buyer in accordance with the provisions of Section 1.3(i)); (D) all amounts required to pay in full the principal, interest, fees and other charges payable to satisfy and discharge in full the Silicon Valley Bank Loan (it being agreed that such amount so set forth shall be recorded as a liability of the Company for purposes of the calculation of the Net Asset Value only to the extent such amounts were not set forth on the Preliminary Closing Balance Sheet and paid by the Buyer in accordance with Section 1.3(h)); (E) if not paid in full prior to the Closing, the premium for the directors' and officers' liability insurance and fiduciary liability insurance to be acquired by the Company pursuant to Section 5.15; (F) all accrued bonus and vacation obligations; (G) all capital lease obligations; (H) accruals for Option repricing obligations to the extent not included in the Employee Amounts; (I) accruals for Company Employee 401(k) liability; and (J) accruals for aged payables beyond the normal course. Schedule II attached hereto reflects accruals and other items contemplated by the preceding sentence, including but not limited to, estimated amounts in respect thereof as of the date of this Agreement, that the Parties agree shall be reflected in the Closing Balance Sheet. The Closing Balance Sheet shall be accompanied by a statement setting forth the calculations showing the basis for the determination of such sums.

(d) In the event that the Representative disputes the Closing Balance Sheet or the calculation of the Closing Net Asset Value Adjustment, the Representative shall notify the Buyer in writing (the "Dispute Notice") of the amount, nature and basis of such dispute, within 30 calendar days after delivery of the Closing Balance Sheet; provided, however, that if the Net Asset Value differs from the Preliminary Net Asset Value by more than $2,000,000, such 30 calendar day review period shall be extended to 60 calendar days. Any such Dispute Notice shall specify those items or amounts as to which the Representative disagrees, and the Representative shall be deemed to have agreed with all other items and amounts contained in the Closing Balance Sheet and the calculation of the Closing Net Asset Value Adjustment delivered pursuant to Sections 1.10(b) and 1.10(c). In the event of such a dispute, the Buyer and the Representative shall first use their Reasonable Best Efforts to reach agreement on the disputed items or amounts in order to determine the Closing Net Asset Value Adjustment, which amount shall not be less than the Buyer's calculation delivered pursuant to Section 1.10(c) nor more than the Representative's calculation delivered pursuant to this Section 1.10(d). If the Buyer and the Representative are unable to resolve the dispute within 30 calendar days after delivery of the Dispute Notice, then any remaining items in dispute shall be submitted to the Neutral Accountant. All determinations and calculations pursuant to this paragraph (d) shall consider only those items or amounts on the Closing Balance Sheet or the Buyer's calculation of Closing Net Asset Value as to which the Representative has disagreed, shall be in writing and shall be delivered to the Buyer and the Representative as promptly as practicable. The determination of the Neutral Accountant as to the resolution of any dispute shall be binding and conclusive upon all Parties. A judgment on the determination made by the Neutral Accountant pursuant to this Section 1.10 may be entered in and enforced by any court having jurisdiction thereover.

(e) The fees and expenses of the Neutral Accountant in connection with the resolution of disputes pursuant to Section 1.10 (d) shall be shared equally by the Company Participating Equity Holders, on the one hand, and the Buyer, on the other hand; provided that if the Neutral Accountant determines that one such party has adopted a position or positions with respect to the Closing Balance Sheet or the calculation of the Closing Net Asset Value Adjustment that is frivolous or clearly without merit, the Neutral Accountant may, in its discretion, assign a greater portion of any such fees and expenses to such party.

(f) Immediately upon the expiration of the 30 calendar day period for giving the Dispute Notice, if no such notice is given, or upon notification by the Representative to the Buyer, that no such notice will be given, or immediately upon the resolution of disputes, if any, pursuant to this Section 1.10, the Merger Consideration shall be adjusted as follows (the "Adjusted Merger Consideration"):

(i) If the Closing Net Asset Value Adjustment is negative, the Buyer shall be entitled to recover such deficiency (the "Closing Net Asset Value Shortfall") pursuant to the terms of the Escrow Agreement;

(ii) If the Closing Net Asset Value Adjustment is zero, the Merger Consideration shall not be adjusted; and

(iii) If the Closing Net Asset Value Adjustment is positive, the amount of such surplus (the "Closing Net Asset Value Surplus") shall be paid as follows: (A) the Buyer shall deliver to the Paying Agent an amount in immediately available funds equal to 87.5% of the Closing Net Asset Value Surplus, which amount shall be distributed by the Paying Agent to the Company Participating Equity Holders, and (B) the Buyer shall deposit with the Escrow Agent 12.5% of the Closing Net Asset Value Surplus in escrow pursuant to the Escrow Agreement. The Paying Agent shall pay to each Company Participating Equity Holder an amount equal to the product of (x) the number of Company Participating Equity Equivalents owned by the Company Participating Equity Holder immediately prior to the Effective Time and (y) the Per Share Closing Net Asset Value Surplus.

1.11 Escrow Arrangements.

(a) On the Closing Date, the Buyer shall deliver to the Escrow Agent the Initial Escrow Fund for the purpose of (i) providing security for any adjustment to the amount of the Merger Consideration pursuant to Section 1.10 and (ii) securing the indemnification obligations of the Company Participating Equity Holders set forth in Article VII. The Escrow Fund shall be held by the Escrow Agent under the Escrow Agreement pursuant to the terms thereof. The Escrow Fund shall be held as a trust fund and shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any party, and shall be held and disbursed solely for the purposes and in accordance with the terms of the Escrow Agreement.

(b) On the Closing Date, the Buyer shall deliver to the Escrow Agent the Initial Special Escrow Fund for the purpose of securing the indemnification obligations of the Company Participating Equity Holders set forth in Article VII with respect to the I-B Obligations. The Special Escrow Fund shall be held by the Escrow Agent under the Escrow Agreement pursuant to the terms thereof. The Special Escrow Fund shall be held as a trust fund and shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any party, and shall be held and disbursed solely for the purposes and in accordance with the terms of the Escrow Agreement.

(c) The adoption of this Agreement and the approval of the Merger by the Company Participating Equity Holders shall constitute approval of the Escrow Agreement and of all of the arrangements relating thereto, including the placement of the Escrow Fund and the Special Escrow Fund in the escrows established pursuant to this Section 1.11.

1.12 Representative.

(a) In order to efficiently administer the transactions contemplated hereby, including (i) the determination of the Earn-out Consideration, the Preliminary Net Asset Value and the Adjusted Merger Consideration, (ii) the waiver of any condition to the obligations of the Company Participating Equity Holders to consummate the transactions contemplated hereby and (iii) the defense and/or settlement of any claims for which the Company Participating Equity Holders may be required to indemnify the Buyer and/or the Surviving Corporation pursuant to this Agreement, the Company Participating Equity Holders, by the approval of the Merger and adoption of this Agreement and/or their acceptance of any Merger Consideration pursuant to this Agreement, hereby designate the Representative as their representative, attorney-in-fact and agent.

(b) The Company Participating Equity Holders, by the approval of the Merger and adoption of this Agreement and/or their acceptance of any Merger Consideration pursuant to this Agreement, hereby authorize the Representative (i) to make all decisions relating to the determination of the Earn-out Consideration pursuant to Section 1.6, (ii) to make all decisions relating to the determination of the Preliminary Net Asset Value and the Adjusted Merger Consideration pursuant to Section 1.10, (iii) to take all action necessary in connection with the waiver of any condition to the obligations of the Company to consummate the transactions contemplated hereby, or the defense and/or settlement of any claims for which the Company Participating Equity Holders may be required to indemnify the Buyer and/or the Surviving Corporation pursuant to Article VII hereof, (iv) to give and receive all notices required to be given under the Agreement, (v) to use the Representative Expense Amount for purposes of paying fees and expenses of the Representative incurred in connection with the discharge of its duties under this Agreement and (vi) to take any and all additional action as is contemplated to be taken by or on behalf of the

Company Participating Equity Holders by the terms of this Agreement. If any amount of the Representative Expense Amount remains after the Representative has discharged its duties under this Agreement (the "Representative Expense Amount Surplus"), the Paying Agent shall pay to each Company Participating Equity Holder an amount equal to the product of (x) the number of Company Participating Equity Equivalents owned by the Company Participating Equity Holder immediately prior to the Effective Time and (y) the Per Share Representative Expense Amount Surplus.

(c) In the event that the Representative becomes unable to perform its responsibilities hereunder or resigns from such position, the Company Stockholders (acting by the vote of the Company Stockholders who immediately prior to the Effective Time held at least a majority of the outstanding Company Shares held by all Company Stockholders (voting on an as-converted to Common Share basis)) shall select another representative to fill the vacancy of the Representative initially chosen by the Company Stockholders, and such substituted representative shall be deemed to be the Representative for all purposes of this Agreement and the documents delivered pursuant hereto. Notwithstanding anything to the contrary set forth herein, Company Stockholders (acting by a vote of the Company Stockholders who immediately prior to the Effective Time held at least a majority of the outstanding Company Shares held by all Company Stockholders (voting on an as-converted to Common Share basis)) shall have the right to remove the Representative (with or without cause) and shall select another representative to fill the vacancy of such Representative, and such substituted representative shall be deemed to be the Representative for all purposes of this Agreement and the documents delivered pursuant hereto.

(d) A decision, act, consent, instruction or action of the Representative, including without limitation any agreement between the Representative and the Buyer relating to the determination of the Preliminary Net Asset Value, the Adjusted Merger Consideration, the Earn-out Consideration, the defense or settlement of any claims for which the Company Participating Equity Holders may be required to indemnify the Buyer and/or the Surviving Corporation pursuant to Article VII hereof or any adjustment to Schedule I in accordance with the provisions of Section 7.3(h), shall constitute a decision, act, consent, instruction or action of all Company Participating Equity Holders and shall be binding and conclusive upon each of such Company Participating Equity Holders and the Parties, the Surviving Corporation and the Escrow Agent may rely upon any such decision, act, consent, instruction or action as being the decision, act, consent or instructions of each and every such Company Participating Equity Holder. The Buyer, I-B, A-C, the Surviving Corporation and the Escrow Agent are hereby relieved from any liability to any Company Participating Equity Holder for any acts done by them in accordance with such decision, act, consent, instruction or action of the Representative.

(e) By his, her or its approval of the Merger and adoption of this Agreement, and/or their acceptance of any Merger Consideration pursuant to this Agreement, each Company Participating Equity Holder, agrees that:

(i) the Buyer shall be able to rely conclusively on the instructions and decisions of the Representative as to the determination of the Earn-out Consideration, the Preliminary Net Asset Value and the Adjusted Merger Consideration, the settlement of any claims for indemnification by the Buyer and/or the Surviving Corporation pursuant to Article VII or any other actions required or permitted to be taken by the Representative hereunder (including any adjustment to Schedule I in accordance with the provisions of Section 7.3(h)), and no party shall have any cause of action against the Buyer for any action taken by the Buyer in reliance upon the instructions or decisions of the Representative;

(ii) no Company Participating Equity Holder shall have any cause of action against the Representative for any action taken or not taken, decision made or not made or instruction given or not given by the Representative under this Agreement, the Escrow Agreement or any of the agreements related hereto, except for fraud or willful breach of this Agreement by the Representative, and the Company Participating Equity Holders shall jointly and severally indemnify the Representative in respect of and hold it harmless for, any action taken, decision made or instruction given by the Representative under this Agreement, the Escrow Agreement or any of the agreements related hereto, except for fraud or willful breach of this Agreement by the Representative;

(iii) the provisions of this Section 1.12 are independent and severable, are irrevocable and coupled with an interest and shall be enforceable notwithstanding any rights or remedies that any Company Participating Equity Holder may have in connection with the transactions contemplated by this Agreement;

(iv) remedies available at law for any breach of the provisions of this Section 1.12 are inadequate; therefore, the Buyer and the Surviving Corporation shall be entitled to temporary and permanent injunctive relief without the necessity of proving damages if either the Buyer and/or the Surviving Corporation brings an action to enforce the provisions of this Section 1.12; and

(v) the provisions of this Section 1.12 shall be binding upon the executors, heirs, legal representatives, personal representatives, successors and permitted assigns of each Company Participating Equity Holder, and any references in this Agreement to a Company Participating Equity Holder or the Company Participating Equity Holders shall mean and include the successors to the Company Participating Equity Holder's rights hereunder, whether pursuant to testamentary disposition, the laws of descent and distribution or otherwise

(f) For purposes of clarification, the Representative is a representative and agent of the Company Participating Equity Holders only and does not represent, and is not an agent for, any other Party hereto, including Spinco.

1.13 Certificate of Incorporation and By-laws.

(a) The Certificate of Incorporation of the Surviving Corporation immediately following the Effective Time shall be the same as the Certificate of Incorporation of the Transitory Subsidiary immediately prior to the Effective Time, except that (i) the name of the corporation set forth therein shall be changed to the name of the Company and (ii) the identity of the incorporator shall be deleted.

(b) The By-laws of the Surviving Corporation immediately following the Effective Time shall be the same as the By-laws of the Transitory Subsidiary immediately prior to the Effective Time, except that the name of the corporation set forth therein shall be changed to the name of the Company.

1.14 Directors and Officers of the Surviving Corporation.

(a) The directors of the Transitory Subsidiary immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and By-laws of the Surviving Corporation.

(b) The officers of the Transitory Subsidiary immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, each to hold office in accordance with the Certificate of Incorporation and By-laws of the Surviving Corporation.

1.15 No Further Rights. From and after the Effective Time, no Company Shares shall be deemed to be outstanding, and the holder of such Company Shares shall cease to have any rights with respect thereto, except as provided herein or by law.

1.16 Closing of Transfer Books. At the Effective Time, the stock transfer books of the Company shall be closed and no transfer of Company Shares shall thereafter be made. If, after the Effective Time, any demand for such a transfer is made to the Buyer, the Surviving Corporation or the Paying Agent, the Company Shares formerly owned by such Company Stockholder shall be cancelled and exchanged for the Applicable Specified Consideration (at the times, and on the terms and conditions, set forth in this Agreement), subject to applicable law in the case of Dissenting Shares.

1.17 Withholding Obligations. Each of the Buyer, the Company, the Surviving Corporation, the Paying Agent and the Escrow Agent, as applicable and without duplication, shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to any provision of this Agreement to any Equity Holders such amounts as it reasonably determines that it is required to deduct and withhold with respect to the making of such

payment under the Code, or any other applicable U.S., state, local or foreign law, rule or regulation. To the extent that amounts are so withheld by the Buyer, the Company, the Surviving Corporation, the Paying Agent and the Escrow Agent, as the case may be, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Equity Holders in respect of which such deduction and withholding was made by the Buyer, the Company, the Surviving Corporation, the Paying Agent or the Escrow Agent, as the case may be. The Buyer shall also have the right to collect Forms W-8 or W-9, or such other forms relating to United States federal withholding obligations as may be applicable, from the Equity Holders.

ARTICLE II
REPRESENTATIONS AND WARRANTIES OF THE COMPANY, I-B AND A-C

The Company, I-B and A-C, jointly and severally, represent and warrant to the Buyer that, except as set forth in the Disclosure Schedule, the statements contained in this Article II are true and correct as of the date of this Agreement and will be true and correct as of the Closing as though made as of the Closing, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties will be true and correct as of such date). Except in the case of Sections 2.2(a), 2.2(c), 2.2(d) and 2.6, for purposes of this Article II, the term Subsidiaries shall exclude Spinco and the representations and warranties in this Article II shall be deemed to be made assuming the Spin-Off Transaction has been consummated, and the obligations of Spinco and I-B under the Distribution Agreement have been fully satisfied. The Disclosure Schedule shall be arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs contained in this Article II and in Article III. The disclosures in any section or paragraph of the Disclosure Schedule shall qualify only (a) the corresponding section or paragraph in this Article II or in Article III and (b) other sections or paragraphs in this Article II or in Article III to the extent that it is reasonably clear from a reading of the disclosure that such disclosure also qualifies or applies to such other section or paragraph. The inclusion of any disclosure set forth in Disclosure Schedule shall not be deemed to constitute an admission of any liability of any Party to any third party or otherwise imply, except where required in response to the provisions of any representation or warranty, that such disclosure is material, creates a measure for materiality for purposes of the Agreement or has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect or Spinco Material Adverse Effect.

2.1 Organization, Qualification and Corporate Power. The Company is a corporation duly organized, validly existing and in corporate and tax good standing under the laws of the State of Delaware. The Company is duly qualified to conduct business and is in corporate and tax good standing under the laws of each jurisdiction listed in Section 2.1 of the Disclosure Schedule, which jurisdictions constitute the only jurisdictions in which the nature of the Company's businesses or the ownership or leasing of its properties requires such qualification. The Company has all requisite corporate power and authority to carry on the businesses in which it is engaged and to own and use the properties owned and used by it. The Company has made available to the Buyer complete and accurate copies of its certificate of incorporation and by-laws, each as amended to date. The Company is not in default under or in violation of any provision of its certificate of incorporation or by-laws.

2.2 Capitalization.

(a) As of the date of this Agreement, the authorized capital stock of the Company consists of (i) 29,645,572 Common Shares, of which, as of the date of this Agreement, 3,145,323 shares were issued and outstanding and no shares were held in the treasury of the Company, and (ii) 16,136,259 Preferred Shares, of which (A) 3,300,000 have been designated as Series A Shares, of which, as of the date of this Agreement, 3,300,000 shares were issued and outstanding, (B) 1,772,201 have been designated as Series B Shares, of which, as of the date of this Agreement, 1,772,201 shares were issued and outstanding, (C) 2,954,171 have been designated as Series C Shares, of which, as of the date of this Agreement, 2,954,171 shares were issued and outstanding, and (D) 8,109,887 have been designated as Series D Shares, of which, as of the date of this Agreement, 5,109,887 shares were issued and outstanding.

(b) Upon the completion of the Spin-Off Transaction, the authorized capital stock of the Company shall consist of (i) 29,645,572 Common Non-redeemable Shares (ii) 29,645,572 Redeemable Class A Common Shares, (iii) 5,000,000 Redeemable Class B Common Shares, and (iv) 48,408,777 Preferred Shares, of

which (A) 3,300,000 shall have been designated as Series A Shares, (B) 3,300,000 shall have been designated as Series A-1 Non-Redeemable Shares, (C) 3,300,000 shall have been designated as Series A-2 Redeemable Participating Shares, (D) 1,772,201 shall have been designated as Series B Shares, (E) 1,772,201 shall have been designated as Series B-1 Non-Redeemable Shares, (F) 1,772,201 shall have been designated as Series B-2 Redeemable Participating Shares (G) 2,954,171 shall have been designated as Series C Shares, (H) 2,954,171 shall have been designated as Series C-1 Non-Redeemable Shares, (I) 2,954,171 shall have been designated as Series C-2 Redeemable Participating Shares, (J) 8,109,887 shall have been designated as Series D Shares, (K) 8,109,887 shall have been designated as Series D-1 Non-Redeemable Shares, and (L) 8,109,887 shall have been designated as Series D-2 Redeemable Participating Shares.

(c) Section 2.2(c) of the Disclosure Schedule sets forth a complete and accurate list, as of the date of the Agreement, of the holders of record of capital stock of the Company, showing the number of shares of capital stock, and the class or series of such shares, held by each stockholder and (for shares other than Common Shares) the number of Common Shares (if any) into which such shares are convertible. Section 2.2(c) of the Disclosure Schedule also indicates all outstanding Company Shares that constitute restricted stock or that are otherwise subject to a repurchase or redemption right, indicating the name of the applicable stockholder, the vesting schedule (including any acceleration provisions with respect thereto), and the repurchase price payable by the Company. All of the issued and outstanding shares of capital stock of the Company have been and on the Closing Date will be duly authorized, validly issued, fully paid, nonassessable and free of all preemptive rights. All of the issued and outstanding shares of capital stock of the Company have been offered, issued and sold by the Company in compliance with all applicable federal and state securities laws.

(d) Section 2.2(d) of the Disclosure Schedule sets forth a complete and accurate list, as of the date of this Agreement, of: (i) all Company Stock Plans, indicating for each Company Stock Plan the number of Company Shares issued to date under such Plan, the number of Company Shares subject to outstanding options under such Plan and the number of Company Shares reserved for future issuance under such Plan, (ii) all holders of outstanding Options, indicating with respect to each Option the Company Stock Plan under which it was granted, the number of Company Shares subject to such Option, the exercise price, the date of grant, and the vesting schedule (including any acceleration provisions with respect thereto), (iii) all holders of outstanding Warrants, indicating with respect to each Warrant the agreement or other document under which it was granted, the number of shares of capital stock, and the class or series of such shares, subject to such Warrant, the exercise price, the date of issuance and the expiration date thereof, and (iv) all holders of outstanding Notes, indicating with respect to each Note the agreement or other document under which it was granted, the principal amount of the Note, the rate of interest on the principal amount of the Note, the number of shares of capital stock, and the class or series of such shares, subject to such Note, the conversion price, the date of issuance and the expiration date thereof. The Company has made available to the Buyer complete and accurate copies of all Company Stock Plans, forms of all stock option agreements evidencing Options and all agreements evidencing Warrants and Notes. All of the shares of capital stock of the Company subject to Options, Warrants and Notes will be, upon issuance pursuant to the exercise of such instruments, duly authorized, validly issued, fully paid, nonassessable and free of all preemptive rights.

(e) With respect to the outstanding Options, (i) each such Option intended to qualify as an "incentive stock option" under Section 422 of the Code so qualifies, (ii) each grant of an Option was duly authorized no later than the date on which the grant of such Option was by its terms to be effective (the "Grant Date") by all necessary corporate action, including, as applicable, approval by the Company's Board of Directors (or a duly constituted and authorized committee thereof), or a duly authorized delegate thereof, and any required stockholder approval by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto no later than the Grant Date, (iii) each such grant was made in accordance with the terms of the applicable Company Stock Plan, the Exchange Act, to the extent applicable, and all other applicable laws, (iv) the per share exercise price of each Option was not, and will not be deemed to be, less than the fair market value of a Company Share issuable upon exercise of the Option on the applicable Grant Date, and (v) each such grant was properly accounted for in all material respects in accordance with GAAP in the financial statements (including the related notes) of the Company.

(f) Except as set forth in Section 2.2(d) or 2.2(f) of the Disclosure Schedule, (i) no subscription, warrant, option, convertible security or other right (contingent or otherwise) to purchase or acquire any

shares of capital stock of the Company is authorized or outstanding, (ii) the Company has no obligation (contingent or otherwise) to issue any subscription, warrant, option, convertible security or other such right, or to issue or distribute to holders of any shares of its capital stock any evidences of indebtedness or assets of the Company, (iii) the Company has no obligation (contingent or otherwise) to purchase, redeem or otherwise acquire any shares of capital stock of the Company or any interest therein or to pay any dividend or to make any other distribution in respect thereof, and (iv) there are no outstanding or authorized stock appreciation, phantom stock or similar rights with respect to the Company.

(g) There is no agreement, written or oral, between the Company and any holder of its securities, or, to the Company's Knowledge, among any holders of its securities, relating to the sale or transfer (including agreements relating to rights of first refusal, co sale rights or "drag along" rights), registration under the Securities Act or the securities laws of any other jurisdiction, or voting, of the capital stock of the Company.

2.3 Authorization. The Company, I-B, and A-C have all requisite corporate power and authority to execute and deliver this Agreement and the other agreements contemplated hereby to which they are a party and to perform their respective obligations hereunder and thereunder. The execution and delivery by the Company of this Agreement and the other agreements contemplated hereby to which they are a party and, subject to obtaining the Requisite Stockholder Approval, which is the only approval required from the Company Stockholders, the performance by the Company, of this Agreement and the consummation by the Company of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of the Company. The execution and delivery by I-B and A-C of this Agreement and the other agreements contemplated hereby (to the extent that they are a party thereto), the performance by I-B and A-C, of this Agreement and the consummation by I-B and A-C of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate and other action on the part of I-B and A-C. Without limiting the generality of the foregoing, the Board of Directors of the Company, by written action or at a meeting duly called and held, by the unanimous vote of all directors (i) determined that the Merger is advisable, fair and in the best interests of the Company and its stockholders, (ii) approved this Agreement in accordance with the provisions of the Delaware General Corporation Law, and (iii) directed that this Agreement and the Merger be submitted to the stockholders of the Company for their adoption and approval and resolved to recommend that the stockholders of the Company vote in favor of the adoption of this Agreement and the approval of the Merger. The Board of Directors of I-B, by written action or at a meeting duly called and held, by the unanimous vote of all directors has approved the execution and delivery of this Agreement, and the performance by I-B of its obligations hereunder in accordance with the provisions of the Delaware General Corporation Law. The Board of Directors of A-C, by written action or at a meeting duly called and held, by the unanimous vote of all directors has approved the execution and delivery of this Agreement and the performance by A-C of its obligations hereunder in accordance with the provisions of the Delaware General Corporation Law. This Agreement and all other agreements contemplated hereby to which any of the Company, I-B and A-C are or will be a party have been or will be as of the Closing Date duly and validly executed and delivered by each of the Company, I-B and A-C and, subject to the valid execution and delivery thereof by the Buyer and the Transitory Subsidiary, constitute or will constitute the valid and binding obligation of each of the Company, I-B, and A-C, as applicable, enforceable against each of them in accordance with its terms.

2.4 Noncontravention. Subject to the filing of the Certificate of Merger as required by the Delaware General Corporation Law, to the filing or other regulatory requirements, if any, of any applicable U.S. or foreign regulatory body, and, in the case of the Merger, to the Company's receipt of the Requisite Stockholder Approval, neither the execution and delivery by the Company, I-B and A-C of this Agreement or any other agreement contemplated hereby to which they are a party, nor the performance by the Company, I-B and A-C of their respective obligations hereunder or thereunder, nor the consummation by the Company, I-B and A-C of the transactions contemplated hereby or thereby, will (a) conflict with or violate any provision of the Certificate of Incorporation or By-laws of the Company, each as amended or restated to date, or the Certificate of Incorporation or By-laws (or comparable organizational documents) of any Subsidiary, each as amended or restated to date, (b) require on the part of the Company, any Subsidiary or, to the Company's Knowledge, any Company Stockholder any notice to or filing with, or any permit, authorization, consent or approval of, any Governmental Entity, (c) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any party the right to accelerate, terminate, modify or cancel,

or require any notice, consent or waiver under, any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, Security Interest or other arrangement to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary is bound or to which any of the assets of the Company or any Subsidiary are subject, (d) result in the imposition of any Security Interest upon any assets of the Company or any Subsidiary or (e) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company or any Subsidiary or any of their respective properties or assets. Section 2.4 of the Disclosure Schedule sets forth a true, correct and complete list of all consents and approvals of third parties required under the Contracts and from Persons set forth on Section 2.25 of the Disclosure Schedule and of Governmental Entities, and all filings and notices, that are required in connection with the consummation by the Company, I-B and A-C of the transactions contemplated by this Agreement.

2.5 Subsidiaries.

(a) Section 2.5 of the Disclosure Schedule sets forth: (i) the name of each Subsidiary; (ii) the number and type of outstanding equity securities of each Subsidiary and a list of the holders thereof; (iii) the jurisdiction of organization of each Subsidiary; (iv) the names of the officers and directors of each Subsidiary; and (v) the jurisdictions in which each Subsidiary is qualified or holds licenses to do business as a foreign corporation or other entity.

(b) Each Subsidiary is a corporation duly organized, validly existing and in corporate and tax good standing under the laws of the jurisdiction of its incorporation. Each Subsidiary is duly qualified to conduct business and is in corporate and tax good standing under the laws of each jurisdiction in which the nature of its businesses or the ownership or leasing of its properties requires such qualification. Each Subsidiary has all requisite power and authority to carry on the businesses in which it is engaged and to own and use the properties owned and used by it. The Company has made available to the Buyer complete and accurate copies of the charter, by-laws or other organizational documents of each Subsidiary. No Subsidiary is in default under or in violation of any provision of its charter, by-laws or other organizational documents. All of the issued and outstanding shares of capital stock of each Subsidiary are duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights. All shares of each Subsidiary that are held of record or owned beneficially by either the Company or any Subsidiary are held or owned free and clear of any restrictions on transfer (other than restrictions under the Securities Act and state securities laws), claims, Security Interests, options, warrants, rights, contracts, calls, commitments, equities and demands. There are no outstanding or authorized options, warrants, rights, agreements or commitments to which the Company or any Subsidiary is a party or which are binding on any of them providing for the issuance, disposition or acquisition of any capital stock of any Subsidiary. There are no outstanding stock appreciation, phantom stock or similar rights with respect to any Subsidiary. There are no voting trusts, proxies or other agreements or understandings with respect to the voting of any capital stock of any Subsidiary.

(c) The Company does not control directly or indirectly or have any direct or indirect equity participation or similar interest in any corporation, partnership, limited liability company, joint venture, trust or other business association or entity that is not a Subsidiary.

2.6 Financial Statements.

(a) The Company has made available to the Buyer the Financial Statements. The Financial Statements (i) comply as to form with all applicable accounting requirements and (ii) were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby; provided, however, that the Financial Statements referred to in clauses (b) and (c) of the definition of such term are subject to normal recurring year-end adjustments (which, individually and in the aggregate, will not be material) and do not include footnotes.

(b) Each of the Financial Statements fairly presents the consolidated assets, liabilities, business, financial condition, results of operations and cash flows of the Company and its Subsidiaries as of the date thereof and for the period referred to therein, and is consistent with the books and records of the Company and its Subsidiaries. The accruals for bonus payments, vacation expenses, severance payments and Taxes are accounted for on the Most Recent Balance Sheet and are adequate and properly reflect the expenses associated therewith in accordance with GAAP.

(c) The Company maintains accurate books and records reflecting its assets and liabilities and maintains a system of internal accounting controls and procedures which provide reasonable assurance that (i) transactions are executed with management's authorization, (ii) transactions are recorded as necessary to permit preparation of the financial statements of the Company and to maintain accountability for the Company's assets, (iii) access to assets of the Company is permitted only in accordance with management's authorization, (iv) the reporting of assets of the Company is compared with existing assets at regular intervals, and (v) accounts, notes and other receivables and inventory were recorded accurately, and proper and adequate procedures are implemented to effect the collection thereof on a current and timely basis. For the avoidance of doubt, the assessment of the sufficiency of the Company's system of internal accounting controls and procedures in the preceding sentence shall include consideration of the relative size and complexity of the Company's and its Subsidiaries' operations and the inapplicability of Section 404 of the Sarbanes Oxley Act of 2002 to the Company and its Subsidiaries.

(d) The Company does not have any "off-balance sheet arrangements (as defined in Item 303(a)(4) of Regulation S-K of the SEC).

(e) Neither the Company nor any Subsidiary has, since July 30, 2002, extended or maintained credit, arranged for the extension of credit, modified or renewed an extension of credit, in the form of a personal loan or otherwise, to or for any director or executive officer of the Company or any Subsidiary. Section 2.6(e) of the Disclosure Schedule identifies any loan or extension of credit maintained by the Company or any Subsidiary to which the second sentence of Section 13(k)(1) of the Exchange Act would apply.

(f) EKS&H, the auditor of the Company and the Company's Subsidiaries pursuant to the engagement letter, dated as of March 4, 2008 between I-B and EKS&H, was and had been at all times during its engagement by the Company or its Subsidiaries "independent" with respect to the Company and its Subsidiaries within the meaning of Regulation S-X.

2.7 Absence of Certain Changes. Since January 1, 2008, except with respect to the business and operations of I-B, (a) there has occurred no event or development which, individually or in the aggregate, has had, or would reasonably be expected to have in the future, a Company Material Adverse Effect, and (b) neither the Company nor any Subsidiary has taken any of the actions set forth in paragraphs (a) through (s) of Section 5.5.

2.8 Undisclosed Liabilities. Neither the Company nor any Subsidiary has any liability (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated and whether due or to become due), except for (a) liabilities shown on the Most Recent Balance Sheet, a copy of which is attached to Section 2.8 of the Disclosure Schedule, (b) liabilities which have arisen since the Most Recent Balance Sheet Date in the Ordinary Course of Business and which are similar in nature and amount to the liabilities which arose during the comparable period of time in the immediately preceding fiscal period and (c) contractual and other liabilities incurred in the Ordinary Course of Business which are not required by GAAP to be reflected on a balance sheet and that are not in the aggregate material.

2.9 Tax Matters.

(a) Each of the Company and its Subsidiaries has properly filed on a timely basis all Tax Returns that it was required to file, and all such Tax Returns are true, correct and complete in all material respects. Neither the Company nor any Subsidiary is or has ever been a member of a group of corporations with which it has filed (or been required to file) consolidated, combined or unitary Tax Returns, other than a group of which the common parent is or was the Company or I-B. The Company and the Subsidiaries have paid on a timely basis all Taxes that were due and payable. The unpaid Taxes of the Company and the Subsidiaries for Tax periods through the Most Recent Balance Sheet Date do not exceed the accruals and reserves for Taxes (excluding accruals and reserves for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the Most Recent Balance Sheet and all unpaid Taxes of the Company and each Subsidiary for all Tax periods

commencing after the date of the Most Recent Balance Sheet arose in the Ordinary Course of Business and are of a type and amount commensurate with Taxes attributable to prior similar periods. Neither the Company nor any Subsidiary has any actual or potential liability under Treasury Regulations Section 1.1502-6 (or any comparable or similar provision of federal, state, local or foreign law), as a transferee or successor, pursuant to any contractual obligation, or otherwise for any Taxes of any person or entity other than the Company or a Subsidiary. Neither the Company nor any Subsidiary is a party to or bound by any Tax indemnity, Tax sharing, Tax allocation or similar agreement. All Taxes that the Company and the Subsidiaries were required by applicable law to withhold or collect have been duly withheld or collected and, to the extent required, have been properly paid to the appropriate Governmental Entity.

(b) The Company has made available to the Buyer (i) complete and correct copies of all Tax Returns of the Company and the Subsidiaries relating to Taxes for all taxable periods for which the applicable statute of limitations has not yet expired and (ii) complete and correct copies of all private letter rulings, revenue agent reports, information document requests, notices of proposed deficiencies, deficiency notices, protests, petitions, closing agreements, settlement agreements, pending ruling requests and any similar documents submitted by, received by, or agreed to by or on behalf of the Company or a Subsidiary relating to Taxes for all taxable periods for which the statute of limitations has not yet expired. The federal income Tax Returns of the Company and each Subsidiary have been audited by the Internal Revenue Service or are closed by the applicable statute of limitations for all taxable years through the taxable year specified in Section 2.9(b) of the Disclosure Schedule. No examination or audit of any Tax Return of the Company or any Subsidiary by any Governmental Entity is currently in progress or, to the Knowledge of the Company, threatened or contemplated. Neither the Company nor any Subsidiary has been informed by any jurisdiction that the jurisdiction believes that the Company or any Subsidiary was required to file any Tax Return that was not filed. Neither the Company nor any Subsidiary has (x) waived any statute of limitations with respect to Taxes or agreed to extend the period for assessment or collection of any Taxes, (y) requested any extension of time within which to file any Tax Return, which Tax Return has not yet been filed, or (z) executed or filed any power of attorney with any taxing authority which is still in force.

(c) Neither the Company nor any Subsidiary has made any payment, is obligated to make any payment or is a party to any agreement that could obligate it to make any payment that may be treated as an “excess parachute payment” under Section 280G of the Code (without regard to Sections 280G(b)(4) and 280G(b)(5) of the Code). Neither the Company nor any Subsidiary is or has ever been required to make a basis reduction pursuant to Treasury Regulation Section 1.1502-20(b) or Treasury Regulation Section 1.337(d)-2(b).

(d) None of the assets of the Company or any Subsidiary (i) is property that is required to be treated as being owned by any other person or entity pursuant to the provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, (ii) is “tax-exempt use property” within the meaning of Section 168(h) of the Code, (iii) directly or indirectly secures any debt the interest on which is tax exempt under Section 103(a) of the Code or (iv) is subject to a lease under Section 7701(h) of the Code or under any predecessor section.

(e) There are no adjustments under Section 481 of the Code (or any similar adjustments under any provision of the Code or the corresponding foreign, state or local Tax laws) that are required to be taken into account by the Company or any Subsidiary in any period ending after the Closing Date by reason of a change in method of accounting in any taxable period ending on or before the Closing Date or as a result of the consummation of the transactions contemplated by this Agreement.

(f) There is no limitation on the utilization by the Company or any Subsidiary of its net operating losses, built-in losses, Tax credits, or similar items under Sections 382, 383 or 384 of the Code or comparable provisions of foreign state or local law (other than any such limitation arising as a result of the consummation of the transactions contemplated by this Agreement).

(g) Neither the Company nor any Subsidiary is a “consenting corporation” within the meaning of former Section 341(f) of the Code, and none of the assets of the Company are subject to an election under former Section 341(f) of the Code. Neither the Company nor any Subsidiary has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(l)(A)(ii) of the Code.

(h) Neither the Company nor any Subsidiary has ever participated in an international boycott as defined in Section 999 of the Code.

(i) Neither the Company nor any Subsidiary is a party to a lease that is treated as a "Section 467 rental agreement" within the meaning of Section 467(d) of the Code.

(j) Neither the Company nor any Subsidiary has ever distributed to its stockholders or security holders stock or securities of a controlled corporation, nor has stock or securities of the Company or any Subsidiary been distributed, in a transaction to which Section 355 of the Code applies (i) in the two (2) years prior to the date of this Agreement or (ii) in a distribution that could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) that includes the transactions contemplated by this Agreement.

(k) Neither the Company nor any Subsidiary owns any interest in an entity that is characterized as a partnership for federal income Tax purposes.

(l) Section 2.9(l) of the Disclosure Schedule sets forth each jurisdiction (other than the United States, with respect to federal income Taxes) in which the Company and any Subsidiary files, is required to file or has been required to file a Tax Return or is or has been liable for any Taxes on a "nexus" basis and each jurisdiction that has sent notices or communications of any kind requesting information relating to the Company's nexus with such jurisdiction.

(m) Neither the Company nor any Subsidiary has ever owned an interest in a passive foreign investment company within the meaning of Sections 1291 through 1297 of the Code.

(n) Neither the Company nor any Subsidiary has ever incurred (or been allocated) an "overall foreign loss" as defined in Section 904(f)(2) of the Code which has not been previously recaptured in full as provided in Sections 904(f)(1) and/or 904(f)(3) of the Code.

(o) Neither the Company nor any Subsidiary is a party to a gain recognition agreement under Section 367 of the Code.

(p) Neither the Company nor any Subsidiary will be required to include any item of income in, or exclude any item of deduction from, taxable income for any period (or any portion thereof) ending after the Closing Date as a result of any (i) deferred intercompany gain or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding provision of state, local or foreign Tax law), except in connection with the Spin-Off Transaction, (ii) closing agreement as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Tax law) executed on or prior to the Closing Date, (iii) installment sale or other open transaction disposition made on or prior to the Closing Date or (iv) prepaid amount received on or prior to the Closing Date.

(q) There are no liens or other encumbrances with respect to Taxes upon any of the assets or properties of the Company or any Subsidiary, other than with respect to Taxes not yet due and payable.

(r) No holder of Company Shares holds any Company Shares that are non-transferable and subject to a substantial risk of forfeiture within the meaning of Section 83 of the Code with respect to which a valid election under Section 83(b) of the Code which, to the Knowledge of the Company, has not been made.

(s) Neither the Company nor any Subsidiary is or ever has been a party to a transaction or agreement that is in conflict with the Tax rules on transfer pricing in any relevant jurisdiction.

(t) Neither the Company nor any Subsidiary has ever engaged in any "listed transaction" for purposes of Treasury Regulation sections 1.6011-4(b)(2) or 301.6111-2(b)(2) or any analogous provision of state or local law.

(u) Section 2.9(u) of the Disclosure Schedule sets forth a complete and accurate list of all agreements, rulings, settlements or other Tax documents relating to Tax incentives between the Company or any Subsidiary and a Governmental Entity.

2.10 Assets.

(a) The Company or the applicable Subsidiary is the true and lawful owner of, and has good title to, all of the assets (tangible or intangible) purported to be owned by the Company or such Subsidiary, free and clear of all Security Interests. Each of the Company and the Subsidiaries owns or leases all tangible assets sufficient for the conduct of its businesses as presently conducted and as presently proposed to be conducted, which tangible assets are reflected in the Financial Statements (other than to the extent disposed of in the Ordinary Course of Business). Each such tangible asset is free from defects, has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear) and is suitable for the purposes for which it presently is used.

(b) Section 2.10(b) of the Disclosure Schedule lists individually (i) all fixed assets (within the meaning of GAAP) of the Company and its Subsidiaries, indicating the cost, accumulated book depreciation (if any) and the net book value of each such fixed asset as of the Most Recent Balance Sheet Date, and (ii) all other assets of a tangible nature (other than inventories) of the Company or the Subsidiaries.

(c) Each item of equipment, motor vehicle and other asset that the Company or a Subsidiary has possession of pursuant to a lease agreement or other contractual arrangement is in such condition that, upon its return to its lessor or owner in its present condition at the end of the relevant lease term or as otherwise contemplated by the applicable lease or contract, the obligations of the Company or such Subsidiary to such lessor or owner will have been discharged in full.

2.11 Owned Real Property. Neither the Company nor any Subsidiary owns, or has ever owned, any real property.

2.12 Real Property Leases. Section 2.12 of the Disclosure Schedule lists all Leases and lists the term of such Lease, any extension and expansion options, and the rent payable, security deposit, maintenance and like charges thereunder, and any advance rent paid thereunder. The Company has made available to the Buyer complete and accurate copies of the Leases. With respect to each Lease:

(a) such Lease is, subject to the valid execution and delivery thereof by the other parties thereto, legal, valid, binding, enforceable and in full force and effect against the Company or the Subsidiary that is the party thereto and, to the Company's Knowledge, against each other party thereto;

(b) such Lease will continue to be legal, valid, binding, enforceable and in full force and effect against the Company or the Subsidiary that is the party thereto and, to the Company's Knowledge (assuming the receipt by the Company or its Subsidiaries, as applicable, of the consents, and the making of required notices, in each case as disclosed with respect to such Lease in Section 2.4 of the Disclosure Schedule), against each other party thereto immediately following the Closing in accordance with the terms thereof as in effect immediately prior to the Closing;

(c) neither the Company, nor any Subsidiary nor, to the Knowledge of the Company, any other party, is in breach or violation of, or default under, any such Lease, and no event has occurred, is pending or, to the Knowledge of the Company, is threatened, which, after the giving of notice, with lapse of time, or otherwise, would constitute a breach or default by the Company or any Subsidiary or, to the Knowledge of the Company, any other party under such Lease;

(d) there are no disputes, oral agreements or forbearance programs in effect as to such Lease;

(e) neither the Company nor any Subsidiary has assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any interest in the leasehold or subleasehold;

(f) all facilities leased or subleased thereunder are, to the Company's Knowledge, supplied with utilities and other services adequate for the operation of said facilities;

(g) to the Company's Knowledge, there is no Security Interest, easement, covenant or other restriction applicable to the real property subject to such Lease which would reasonably be expected to impair the current uses or the occupancy by the Company or a Subsidiary of the property subject thereto;

(h) no construction, alteration or other leasehold improvement work with respect to the Lease remains to be paid for or performed by the Company or any Subsidiary;

(i) neither the Company nor any Subsidiary is obligated to pay any leasing or brokerage commission relating to such Lease and will not have any obligation to pay any leasing or brokerage commission upon the renewal of the Lease; and

(j) the Financial Statements contain adequate reserves to provide for the restoration of the property subject to the Lease at the end of the respective Lease term, to the extent required by the Lease.

2.13 Intellectual Property.

(a) Section 2.13(a) of the Disclosure Schedule lists all Company Registrations, in each case enumerating specifically the applicable filing or registration number, title, jurisdiction in which filing was made or from which registration issued, date of filing or issuance, as applicable. All assignments of Company Registrations to the Company or any Subsidiary have been properly executed and recorded. To the Knowledge of the Company, all Company Registrations are valid and enforceable and all issuance, renewal, maintenance and other payments that have become due with respect thereto have been timely paid by or on behalf of the Company as necessary to maintain the validity and enforceability thereof.

(b) There are no inventorship challenges, opposition or nullity proceedings or interferences declared, commenced or provoked, or to the Knowledge of the Company, threatened, with respect to any Patent Rights included in the Company Registrations. The Company and the Subsidiaries have complied with their duty of candor and disclosure to the United States Patent and Trademark Office and any relevant foreign patent office with respect to all patent and trademark applications included in the Company Registrations and have made no material misrepresentation in such applications. Other than as made known to the Company during the ordinary course of the application process of any Company Registrations, the Company has no Knowledge of any information that would preclude the Company or any Subsidiary from having clear title to the Company Registrations or affecting the patentability or enforceability of any Company Registrations.

(c) Each item of Company Intellectual Property will be owned or available for use by the Buyer or a Subsidiary of the Buyer following the Closing on substantially identical terms and conditions as it was immediately prior to the Closing. The Company or a Subsidiary is the sole and exclusive owner of all Company Owned Intellectual Property, free and clear of any Security Interests and all joint owners of the Company Owned Intellectual Property are listed in Section 2.13(c) of the Disclosure Schedule. The Company Owned Intellectual Property constitutes all Intellectual Property necessary (i) to Exploit the current Customer Offerings in the manner so done currently by the Company and its Subsidiaries, (ii) to Exploit the Internal Systems as they are currently used by the Company and its Subsidiaries and (iii) otherwise to conduct the Company's business in the manner currently conducted by the Company and its Subsidiaries.

(d) The Company or the appropriate Subsidiary has taken reasonable measures to protect the proprietary nature of each item of Company Owned Intellectual Property, and to maintain in confidence all trade secrets and confidential information comprising a part thereof. The Company and each Subsidiary have complied with all applicable contractual and legal requirements pertaining to the privacy and security of such trade secrets and confidential information. No complaint involving a bona fide claim with a reasonable likelihood of success on the merits relating to an improper use or disclosure of, or a breach in the security of, any such information has been made or, to the Knowledge of the Company, threatened, against the Company or any Subsidiary. To the Knowledge of the Company, there has been no: (i) unauthorized disclosure of any third party proprietary or confidential information in the possession, custody or control of the Company or any Subsidiary, or (ii) breach of the Company's or any Subsidiary's written security procedures wherein confidential information has been disclosed to a third person as a direct result of such breach. The Company and each Subsidiary has actively policed the quality of all goods and services sold, distributed or marketed under each of its Trademarks and has enforced reasonable quality control measures designed to ensure that no Trademarks that it has licensed to others shall be deemed to be abandoned.

(e) None of the Customer Offerings, or the Exploitation thereof by the Company, its Subsidiaries or any reseller, distributor, customer or user of the Company or its Subsidiaries, or any other activity of the Company or its Subsidiaries, infringes or violates, or constitutes a misappropriation of, any Intellectual Property rights of any third party. The Company's or any Subsidiary's Exploitation of the Internal Systems does not infringe or violate, or constitute a misappropriation of, any Intellectual Property rights of any third party. Section 2.13(e) of the Disclosure Schedule lists any written or, to the Knowledge of the Company, any other complaint, claim or notice, or threat of any of the foregoing (including any notification that a license under any patent is or may be required), received in writing by the Company or any Subsidiary alleging any such infringement, violation or misappropriation and any request or demand for indemnification or defense received in writing by the Company or any Subsidiary from any reseller, distributor, customer, user or any other third party; and the Company has made available to the Buyer copies of all such complaints, claims, notices, requests, demands or threats, as well as any written legal opinions, studies, market surveys and analyses relating to any such alleged or potential infringement, violation or misappropriation.

(f) To the Knowledge of the Company, no person (including any current or former employee or consultant of Company or its Subsidiaries) or entity is infringing, violating or misappropriating any of the Company Owned Intellectual Property or any Company Licensed Intellectual Property which is exclusively licensed to the Company or any Subsidiary. The Company has made available to the Buyer copies of all written correspondence, analyses, legal opinions, complaints, claims, notices or threats concerning the infringement, violation or misappropriation of any Company Owned Intellectual Property.

(g) Section 2.13(g) of the Disclosure Schedule identifies each license, covenant or other agreement pursuant to which the Company or a Subsidiary has assigned, transferred, licensed, distributed or otherwise granted any right or access to any Person or covenanted not to assert any right, with respect to any past, existing or future Company Intellectual Property (other than licenses, covenants or other agreements relating to commercially available Customer Offerings or otherwise entered into in the Ordinary Course of Business). Neither the Company nor any Subsidiary has agreed to indemnify any Person against any infringement, violation or misappropriation of any Intellectual Property rights with respect to any Customer Offerings or any third party Intellectual Property rights. Neither the Company nor any Subsidiary is a member of or party to any patent pool, industry standards body, trade association or other organization pursuant to the rules of which it is obligated to license any existing or future Intellectual Property to any Person.

(h) Section 2.13(h) of the Disclosure Schedule identifies (i) each item of Company Licensed Intellectual Property and the license or agreement pursuant to which the Company or any Subsidiary Exploit it (excluding licenses or agreements relating to currently-available, off the shelf technology) and (ii) each agreement, contract, assignment or other instrument pursuant to which the Company or any Subsidiary has obtained any joint or sole ownership interest in or to each item of Company Owned Intellectual Property. No third party inventions, methods, services, materials, processes or Software are included in or required to Exploit the Customer Offerings or Internal Systems, except as specifically set forth in Section 2.13(h) of the Disclosure Schedule. None of the Customer Offerings or Internal Systems includes "shareware," "freeware" or other Software or other material that was obtained by the Company from third parties other than pursuant to the license agreements listed in Section 2.13(h) of the Disclosure Schedule.

(i) Neither the Company nor any Subsidiary has licensed, distributed or disclosed, and the Company has no Knowledge of any distribution or disclosure by others (including its and the Subsidiaries' employees and contractors) of, the Company Source Code to any person or entity, except pursuant to the agreements listed in Section 2.13(g) or 2.13(i) of the Disclosure Schedule, and the Company and the Subsidiaries have taken reasonable physical and electronic security measures to prevent the unauthorized disclosure of such Company Source Code. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or would reasonably be expected to, nor will the consummation of the transactions contemplated hereby, result in an obligation of the Company, its Subsidiaries, or their escrow agent(s) or any other person to disclose or release such Company Source Code to any third party.

(j) All of the Software and Documentation comprising, incorporated in or bundled with the Customer Offerings or Internal Systems have been designed, authored, tested and debugged solely by regular employees of the Company or a Subsidiary within the scope of their employment or by independent contractors of the Company or a Subsidiary who have executed valid and binding agreements in a form made available to Buyer expressly assigning all right, title and interest in such copyrightable materials to the Company or a Subsidiary and leaving such independent contractors no residual claim to such materials.

(k) Section 2.13(k) of the Disclosure Schedule lists all Open Source Materials incorporated by the Company or its Subsidiaries in the Customer Offerings or Internal Systems, and describes the manner in which such Open Source Materials have been utilized, including, without limitation, whether and how the Open Source Materials have been modified and/or distributed by the Company or its Subsidiaries. Except as specifically disclosed in Section 2.13(k) of the Disclosure Schedule, neither the Company nor any Subsidiary has (i) incorporated Open Source Materials into, or combined Open Source Materials with, the Customer Offerings; (ii) distributed Open Source Materials in conjunction with any other software developed or distributed by the Company or a Subsidiary; or (iii) used Open Source Materials in such a manner as to create, or purport to create, obligations for the Company or any Subsidiary with respect to the Customer Offerings that grant, or purport to grant, to any third party, any rights or immunities under Intellectual Property rights (including, but not limited to, using any Open Source Materials that require, as a condition of Exploitation of such Open Source Materials, that other Software incorporated into, derived from or distributed with such Open Source Materials be (x) disclosed or distributed in source code form, (y) licensed for the purpose of making derivative works, or (z) redistributable at no charge or minimal charge).

(l) Each employee of the Company or any Subsidiary and each independent contractor of the Company or any Subsidiary has executed a valid and binding written agreement expressly assigning to the Company or such Subsidiary all right, title and interest in any inventions and works of authorship, whether or not patentable, invented, created, developed, conceived and/or reduced to practice during the term of such employee's employment or during the terms and within the scope of such independent contractor's work for the Company or the relevant Subsidiary, and all Intellectual Property rights therein.

(m) To the Knowledge of the Company, the Customer Offerings and the Internal Systems are free from defects in design, workmanship and materials and conform to the written Documentation and specifications therefor. The Customer Offerings and the Internal Systems do not contain any disabling device, virus, worm, back door, Trojan horse or other disruptive or malicious code that may or are intended to impair their intended performance or otherwise permit unauthorized access to, hamper, delete or damage any computer system, software, network or data. For the avoidance of doubt, any unauthorized access, hampering, deletion or damage caused in whole or in part, by the computer system, software, network or data of third parties, shall not be deemed to be caused by the Customer Offerings and the Internal Systems. The Company and its Subsidiaries have not received any written warranty claims, contractual terminations or requests for settlement or refund due to the failure of the Customer Offerings to meet their specifications or otherwise to satisfy end user needs or for harm or damage to any third party.

(n) The Company and its Subsidiaries have neither sought, applied for nor received any support, funding, resources or assistance from any federal, state, local or foreign governmental or quasi-governmental agency or funding source in connection with the Exploitation of the Customer Offerings, the Internal Systems or any facilities or equipment used in connection therewith.

2.14 Inventory. Other than general office supplies, neither the Company nor any Subsidiary maintains any inventory.

2.15 Contracts.

(a) Section 2.15(a) of the Disclosure Schedule lists the following agreements (each a "Contract") to which the Company or any Subsidiary is a party and under which the Company or any Subsidiary has any remaining rights or obligations:

(i) any agreement (or group of related agreements) for the lease of personal property from or to third parties;

(ii) any agreement (or group of related agreements) for the purchase or sale of products or for the furnishing or receipt of services (A) which calls for performance over a period of more than one year, (B) which involves payment or receipt by the Company or any Subsidiary of more than the sum of $50,000 in any 12 month period, or (C) in which the Company or any Subsidiary has granted manufacturing rights, "most favored nation" pricing provisions or marketing or distribution rights relating to any services, products or territory or has agreed to purchase a minimum quantity of goods or services or has agreed to purchase goods or services exclusively from a certain party;

(iii) any agreement concerning the establishment or operation of a partnership, joint venture or limited liability company;

(iv) any agreement (or group of related agreements) under which the Company or a Subsidiary has created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) indebtedness (including capitalized lease obligations) or under which it has imposed (or may impose) a Security Interest on any of its assets, tangible or intangible;

(v) any agreement for the disposition of any significant portion of the assets or business of the Company or any Subsidiary (other than sales of products in the Ordinary Course of Business) or any agreement for the acquisition of the assets or business of any other entity (other than purchases of inventory or components in the Ordinary Course of Business);

(vi) any agreement concerning confidentiality, noncompetition or non-solicitation (other than confidentiality agreements with customers or employees of the Company or any Subsidiary set forth in the Company's or the applicable Subsidiary's standard terms and conditions of sale or standard form of employment agreement, copies of the standard form of which have previously been made available to the Buyer);

(vii) any employment agreement, consulting agreement for consultants retained by the Company or its Subsidiaries as consultants within the past 12 months, severance agreement (or agreement that includes provisions for the payment of severance) or retention agreement for Persons presently employed or retained by the Company or its Subsidiaries or under which the Company or any Subsidiary may have any remaining rights or obligations;

(viii) any settlement agreement or settlement-related agreement (including any agreement in connection with which any employment-related claim is settled for which there are any remaining rights or obligations of the Company or any Subsidiary);

(ix) any agreement involving any current or former officer, director or stockholder of the Company or any Affiliate thereof;

(x) any agreement under which the consequences of a default or termination would individually, or together with any group of related agreements with the same Person or any Affiliate of such Person, reasonably be expected to have a Company Material Adverse Effect;

(xi) any agency, distributor, sales representative, franchise or similar agreements to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary is bound;

(xii) any agreement which contains any provisions requiring the Company or any Subsidiary to indemnify any other party (excluding indemnities contained in agreements for the purchase, sale or license of products or services entered into in the Ordinary Course of Business);

(xiii) any agreement that could reasonably be expected to have the effect of prohibiting or materially impairing the conduct of the business of the Company or any of its Subsidiaries or the Buyer or any of its subsidiaries as currently conducted; and

(xiv) any other agreement (or group of related agreements) either involving more than $50,000 in any 12 month period or not entered into in the Ordinary Course of Business.

(b) The Company has made available to the Buyer a complete and accurate copy of each Contract (as amended to date). With respect to each Contract: (i) the Contract is, subject to the valid execution and delivery thereof by the other parties thereto, legal, valid, binding and enforceable and in full force and effect against the Company or the Subsidiary that is the party thereto and, to the Company's Knowledge, against each other party thereto; (ii) assuming the receipt by the Company or its Subsidiaries, as applicable, of the consents, and the making of required notices, in each case as disclosed with respect to such Contract in Section 2.4 of the Disclosure Schedule, the Contract will continue to be legal, valid, binding and enforceable and in full force and effect against the Company or the Subsidiary that is the party thereto and, to the Company's Knowledge, against each other party thereto immediately following the Closing in accordance with the terms thereof as in effect immediately prior to the Closing; and (iii) neither the Company, any Subsidiary nor, to the Knowledge of the Company, any other party, is in breach or violation of, or default under, any such Contract, and no event has occurred, is pending or, to the Knowledge of the Company, is threatened, which, after the giving of notice, with lapse of time, or otherwise, would constitute a breach or default by the Company, any Subsidiary or, to the Knowledge of the Company, any other party under such Contract.

(c) Neither the Company nor any Subsidiary is a party to any oral contract, agreement or other arrangement which, if reduced to written form, would be required to be listed in Section 2.15(a) of the Disclosure Schedule under the terms of Section 2.15(a). Neither the Company nor any Subsidiary is a party to any written or oral arrangement (i) to perform services or sell products which is expected to be performed at, or to result in, a loss or (ii) for which the customer has already been billed or paid that have not been fully accounted for on the Most Recent Balance Sheet.

2.16 Accounts Receivable. All accounts receivable of the Company and its Subsidiaries reflected on the Most Recent Balance Sheet (other than those paid since such date) are valid receivables subject to no setoffs or counterclaims and are current and collectible (within 120 days after the date on which it first became due and payable), net of the applicable reserve for bad debts on the Most Recent Balance Sheet. A complete and accurate list of the accounts receivable reflected on the Most Recent Balance Sheet, showing the aging thereof, is included in Section 2.16 of the Disclosure Schedule. All accounts receivable of the Company and the Subsidiaries that have arisen since the Most Recent Balance Sheet Date are valid receivables subject to no setoffs or counterclaims and are collectible (within 120 days after the date on which it first became due and payable), net of a reserve for bad debts related to such accounts receivable in an amount proportionate to the reserve shown on the Most Recent Balance Sheet. Neither the Company nor any Subsidiary has received any written notice from an account debtor stating that any account receivable in an amount in excess of $5,000 is subject to any contest, claim or setoff by such account debtor.

2.17 Powers of Attorney. There are no outstanding powers of attorney executed on behalf of the Company or any Subsidiary.

2.18 Insurance. Section 2.18 of the Disclosure Schedule lists each insurance policy (including fire, theft, casualty, comprehensive general liability, workers compensation, business interruption, environmental, product liability and automobile insurance policies and bond and surety arrangements) to which the Company or any Subsidiary is a party, a named insured or otherwise the beneficiary of coverage, all of which are in full force and effect. There is no claim pending under any such policy as to which coverage has been questioned, denied or disputed by the underwriter of such policy. All premiums due and payable under all such policies have been paid, neither the Company nor any Subsidiary are liable for retroactive premiums or similar payments, and the Company and the Subsidiaries are otherwise in compliance with the terms of such policies. The Company has no Knowledge of any threatened termination of, or premium increase with respect to, any such policy. Each such policy will continue to be enforceable and in full force and effect immediately following the Closing in accordance with the terms thereof as in effect immediately prior to the Closing. Section 2.18 of the Disclosure Schedule identifies all claims asserted by the Company pursuant to any insurance policy since January 1, 2003 and describes the nature and status of each such claim.

2.19 Litigation. There is no Legal Proceeding which is pending or has been threatened in writing against the Company or any Subsidiary. There are no judgments, orders or decrees outstanding against the Company or any Subsidiary.

2.20 Warranties.

(a) No service or product provided, manufactured, sold, leased, licensed or delivered by the Company or any Subsidiary is subject to any guaranty, warranty, right of return, right of credit or other indemnity other than (i) the applicable standard terms and conditions of sale or lease of the Company, copies of which standard terms have been made available to the Buyer, and (ii) manufacturers' warranties for which neither the Company nor any Subsidiary has any liability. Section 2.20(a) of the Disclosure Schedule sets forth the aggregate expenses incurred by the Company and the Subsidiaries in fulfilling their obligations under their guaranty, warranty, right of return and indemnity provisions during each of the fiscal years and the interim period covered by the Financial Statements; and the Company has no Knowledge of any reason that such expenses should significantly increase as a percentage of sales in the future.

(b) The reserve for warranty claims set forth on the Most Recent Balance Sheet and any reserves for warranty claims created by the Company in the Ordinary Course of Business subsequent to the Most Recent Balance Sheet Date are adequate and were calculated in accordance with GAAP consistently applied.

(c) Neither the Company nor any Subsidiary has any liability to any customer in connection with any service provided or product manufactured, sold, leased or delivered by the Company or a Subsidiary to provide the customer with any other services or products of the Company or a Subsidiary on pre-negotiated terms, including for upgrades to other services or products at prices below the Company's or Subsidiary's, as the case may be, published price for such services or products. Neither the Company nor any Subsidiary has any liability to any customer in connection with any service provided or product manufactured, sold, leased or delivered by the Company other than those arising in the Ordinary Course of Business.

2.21 Employees.

(a) Section 2.21(a) of the Disclosure Schedule contains a list of all employees of the Company and each Subsidiary, along with the position, date of hire, annual rate of compensation (or with respect to employees compensated on an hourly or per diem basis, the hourly or per diem rate of compensation), estimated or target annual incentive compensation of each such person and employment status of each such person (including

whether the person is on leave of absence and the dates of such leave). Each of such employees is retained at-will and none of such employees is a party to an employment agreement or contract with the Company or any Subsidiary. Each current and former employee of the Company or any Subsidiary has entered into the Company's or such Subsidiary's standard form of employee confidentiality, intellectual property and non-disclosure agreement, a copy of which standard form has previously been made available to the Buyer. All of the agreements referenced in the preceding sentence will continue to be legal, valid, binding and enforceable and in full force and effect immediately following the Closing in accordance with the terms thereof as in effect immediately prior to the Closing. Section 2.21(a) of the Disclosure Schedule contains a list of all employees of the Company or any Subsidiary who are not citizens of the United States. To the Knowledge of the Company, no key employee or group of employees has any plans to terminate employment with the Company or any Subsidiary. The Company and each Subsidiary are in compliance with all applicable laws relating to the employment of employees, including the hiring, classification and termination of employees.

(b) Neither the Company nor any Subsidiary is a party to or bound by any collective bargaining agreement, nor has any of them experienced any actual or threatened strikes, grievances, claims of unfair labor practices or other collective bargaining disputes. The Company has no Knowledge of any organizational effort made or threatened (including the filing of a petition for certification) either currently or within the past two years, by or on behalf of any labor union with respect to employees of the Company or any Subsidiary.

(c) None of the Company, any Subsidiary or, to the Company's Knowledge, any director, officer or other key employee of the Company or a Subsidiary, or any Affiliate of any of the foregoing, has any existing undisclosed contractual relationship with the Company or a Subsidiary or owns, directly or indirectly, individually or collectively, any interest in any entity which is in a business similar or competitive to the business of the Company and the Subsidiaries.

(d) Section 2.21(d) of the Disclosure Schedule contains a list of all independent contractors currently engaged by the Company and the Subsidiaries, copies of which have been made available to the Buyer, along with the position, date of retention and rate of remuneration for each such person or entity. Except as set forth in Section 2.21(d) of the Disclosure Schedule, none of such independent contractors is a party to a written agreement or contract with the Company or any Subsidiary. Each such independent contractor has entered into the Company's or the applicable Subsidiary's standard form of confidentiality, non-competition and assignment of inventions agreement with the Company or the applicable Subsidiary, a copy of which has previously been made available to the Buyer.

(e) Section 2.21(e) of the Disclosure Schedule sets forth a list of each employee of the Company or any Subsidiary who is providing services in the United States and who holds a temporary work authorization ("Work Permit"), including H-1B, TN, E-1, E-2, L-1, F-1 or J-1 visa status or Employment Authorization Document ("EAD") work authorizations, setting forth the name of such employee, the type of Work Permit and the length of time remaining on such Work Permit. With respect to each Work Permit, all of the information that the Company or any Subsidiary provided to the United States Department of Labor ("DOL") and the United States Customs and Immigration Service ("USCIS") in the applications for such Work Permit was, to the Knowledge of the Company, true and complete at the time of filing such applications. The Company or applicable Subsidiary received the appropriate notice of approval or other evidence of authorized employment from the USCIS, the DOL, the Department of State or other relevant Governmental Entity with respect to each such Work Permit. Neither the Company nor any Subsidiary has received any notice from the USCIS or any other Governmental Entity that any Work Permit has been revoked. There is no action pending or, to the Knowledge of the Company, threatened to revoke or adversely modify the terms of any of the Work Permits.

(f) The Company or a Subsidiary obtained the necessary prevailing wage documentation for each H-1B worker and has paid and continues to pay each H-1B worker the prevailing wage according to the regulations of the DOL. The Company and the Subsidiaries have complied with all terms of the Labor Condition Applications for all H-1B workers and has maintained all documentation required by the DOL regulations. The Company has made available to the Buyer a written statement which summarizes the compliance of the Company and each Subsidiary with the DOL regulations governing labor condition applications.

(g) The Company has withheld and paid to the appropriate Governmental Entity or is holding for payment not yet due to such Governmental Entity all amounts required to be withheld from its employees and is not liable for any arrears of wages, Taxes, penalties or other sums for failure to comply with any of the foregoing. There are no, and at no time have been, any independent contractors who have provided services to the Company for a period of six consecutive months or longer. The Company has never had any temporary or leased employees.

(h) Section 2.21(h) of the Disclosure Schedule contains a complete and accurate summaries of all unwritten employment policies. All the Company's and each Subsidiary's written employee handbooks, employment manuals, employment policies, or affirmative action plans have been made available to the Buyer.

(i) Except as contemplated by Section 2.1 of the Distribution Agreement, neither the Company nor any Subsidiary has caused or will cause any "employment loss" (as that term is defined or used in the Worker Adjustment Retraining Notification Act) at any time from the date that is 90 days immediately preceding the Company's execution of this Agreement and continuing through the Closing Date.

(j) Neither the Company nor any Subsidiary has incurred, and no circumstances exist under which the Company or any Subsidiary reasonably expects to incur, any liability arising from the misclassification of employees as consultants or independent contractors, or from the misclassification of consultants or independent contractors as employees.

2.22 Employee Benefits.

(a) Section 2.22(a) of the Disclosure Schedule contains a complete and accurate list of all Company Plans. Complete and accurate copies of (i) all Company Plans which have been reduced to writing, together with all amendments thereto (ii) written summaries of all unwritten Company Plans, (iii) all related trust agreements, insurance contracts and summary plan descriptions, and (iv) all annual reports filed on IRS Form 5500, 5500C or 5500R and (for all funded plans) all plan financial statements for the last three plan years for each Company Plan, have been made available to the Buyer. All Company Plans comply with California law.

(b) Each Company Plan has been administered in accordance with its terms and each of the Company, the Subsidiaries and the ERISA Affiliates has met its obligations with respect to each Company Plan and has timely made all required contributions thereto. The Company, each ERISA Affiliate and each Company Plan are in compliance with the currently applicable provisions of ERISA and the Code and the regulations thereunder (including Section 4980B of the Code, Subtitle K, Chapter 100 of the Code and Sections 601 through 608 and Section 701 et seq. of ERISA). All filings and reports as to each Company Plan required to have been submitted to the Internal Revenue Service or to the DOL have been timely submitted.

(c) There are no Legal Proceedings (except claims for benefits payable in the normal operation of the Company Plans and proceedings with respect to qualified domestic relations orders) against or involving any Company Plan or asserting any rights or claims to benefits under any Company Plan that could give rise to any liability. No Company Plan is or within the last three calendar years has been the subject of, or has received notice that it is the subject of, examination by a Governmental Entity or a participant in a government sponsored amnesty, voluntary compliance or similar program.

(d) All the Company Plans that are intended to be qualified under Section 401(a) of the Code rely on opinion letters or have received determination letters from the Internal Revenue Service to the effect that such Company Plans (or their underlying prototype) are qualified and the plans and the trusts related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, no such determination letter has been revoked and revocation has not been threatened, and no such Company Plan has been amended since the date of its most recent opinion or determination letter or application therefor in any respect, and no act or omission has occurred, that would adversely affect its qualification or increase its cost. There has been no termination or partial termination of such a Company Plan. Each Company Plan which is required to satisfy Section 401(k)(3) or Section 401(m)(2) of the Code has been tested for compliance with, and satisfies the requirements of Section 401(k)(3) and Section 401(m)(2) of the Code for each plan year ending prior to the Closing Date. Each Company Plan that provides for compliance with Section 404(c) of ERISA or is intended to comply with such provision, so complies.

(e) Neither the Company, any Subsidiary nor any ERISA Affiliate has ever maintained or contributed to an Employee Benefit Plan subject to Section 412 of the Code or Title IV of ERISA. At no time has the Company, any Subsidiary or any ERISA Affiliate been obligated to contribute to any "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA).

(f) No Company Plan has assets that include securities issued by the Company, any Subsidiary or any ERISA Affiliate.

(g) With respect to the Company Plans, there are no benefit obligations for which contributions have not been made or properly accrued and there are no benefit obligations which have not been accounted for by reserves, or otherwise properly footnoted in accordance with GAAP, on the Financial Statements. Neither the Company nor any Subsidiary has any liability for benefits (contingent or otherwise) under any Company Plan, except as set forth on the Financial Statements. The assets of each Company Plan which is funded are reported at their fair market value on the books and records of such Employee Benefit Plan. There are no unfunded obligations under any Company Plan providing benefits after termination of employment to any employee of the Company or any Subsidiary (or to any beneficiary of any such employee), including but not limited to retiree health coverage and deferred compensation, but excluding continuation of health coverage required to be continued under Section 4980B of the Code or other applicable law and insurance conversion privileges under state law, but only to the extent that such continuation of coverage is provided solely at the participant's or beneficiary's expense.

(h) No act or omission has occurred and no condition exists with respect to any Company Plan that would subject the Buyer, the Company, any Subsidiary, any ERISA Affiliate, or any plan participant to (i) any fine, penalty, Tax or liability of any kind imposed under ERISA or the Code or (ii) any contractual indemnification or contribution obligation protecting any fiduciary, insurer or service provider with respect to any Company Plan, nor will the transactions contemplated by this Agreement give rise to any such liability.

(i) No Company Plan is funded by, associated with or related to a "voluntary employee's beneficiary association" within the meaning of Section 501(c)(9) of the Code.

(j) Each Company Plan is amendable and terminable unilaterally by the Company at any time without liability or expense to the Company or such Company Plan as a result thereof (other than for benefits accrued through the date of termination or amendment and reasonable administrative expenses related thereto) and no Company Plan, plan documentation or agreement, summary plan description or other written communication distributed generally to employees by its terms prohibits the Company from amending or terminating any such Company Plan, or in any way limit such action. The investment vehicles used to fund any Company Plan may be changed at anytime without incurring a sales charge, surrender fee or other similar expense.

(k) Section 2.22(k) of the Disclosure Schedule discloses each: (i) agreement with any stockholder, director, executive officer or other key employee of the Company or any Subsidiary (A) the benefits of which are contingent, or the terms of which are altered, upon the occurrence of a transaction involving the Company or any Subsidiary of the nature of any of the transactions contemplated by this Agreement, (B) providing any term of employment or compensation guarantee or (C) providing severance benefits or other benefits after the termination of employment of such director, executive officer or key employee; (ii) agreement, plan or arrangement under which any person may receive payments from the Company or any Subsidiary that may be subject to the tax imposed by Section 4999 of the Code or included in the determination of such person's "parachute payment" under Section 280G of the Code; and (iii) agreement or plan binding the Company or any Subsidiary, including any stock option plan, stock appreciation right plan, restricted stock plan, stock purchase plan, severance benefit plan or Company Plan, any of the benefits of which will be increased, or the vesting of the benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement.

(l) Each individual who has received compensation for the performance of services on behalf of the Company, the Subsidiaries or the ERISA Affiliates has been properly classified as an employee or independent contractor in accordance with applicable law.

(m) Section 2.22(m) of the Disclosure Schedule sets forth the policy of the Company and any Subsidiary with respect to accrued vacation, accrued sick time and earned time off and the amount of such liabilities as of August 31, 2008.

(n) Section 2.22(n) of the Disclosure Schedule sets forth all bonuses earned by the Company's or any Subsidiary's employees through the Closing Date that are expected to be accrued on the Closing Balance Sheet but unpaid as of the Closing Date.

(o) There are no loans or extensions of credit from the Company, any Subsidiary or any ERISA Affiliate to any employee of or independent contractor to the Company or any Subsidiary.

(p) There is no plan or commitment, whether legally binding or not, to create any additional Company Plans or to modify any existing Company Plans with respect to employees of the Company or any Subsidiary, other than to document or amend agreements documenting benefits previously approved by the Company for the sole purpose of complying with Code Section 409A.

(q) There is no corporate-owned life insurance (COLI), split-dollar life insurance policy or any other life insurance policy on the life of any employee of the Company, any Subsidiary or on any Company Stockholder.

(r) Each Company Plan that is a "nonqualified deferred compensation plan" (as defined in Code Section 409A(d)(1)) has been operated since January 1, 2005 in good faith compliance with Code Section 409A and IRS Notice 2005-1. No Company Plan that is a "nonqualified deferred compensation plan" and was in existence prior to October 4, 2004 has been materially modified (as determined under Notice 2005-1) after October 3, 2004. No event has occurred that would be treated by Code Section 409A(b) as a transfer of property for purposes of Code Section 83. No stock option or equity unit option granted under any Company Plan has an exercise price that has been or may be less than the fair market value of the underlying stock or equity units (as the case may be) as of the date such option was granted or has any feature for the deferral of compensation other than the deferral of recognition of income until the later of exercise or disposition of such option. With respect to any reduction of the exercise price of a stock option or equity unit option, the exercise price as so reduced was not less than the fair market value of the underlying stock or equity units (as the case may be) as of the date of such exercise price reduction.

2.23 Environmental Matters.

(a) Each of the Company and the Subsidiaries has complied with all applicable Environmental Laws. There is no pending or, to the Knowledge of the Company, threatened civil or criminal litigation, written notice of violation, administrative proceeding, or investigation, inquiry or information request by any Governmental Entity, relating to any Environmental Law involving the Company or any Subsidiary.

(b) Neither the Company nor any Subsidiary has any liabilities or obligations arising from the release or threatened release of any Materials of Environmental Concern into the environment.

(c) Neither the Company nor any Subsidiary is a party to or bound by any court order, administrative order, consent order or other agreement between the Company or any Subsidiary and any Governmental Entity entered into in connection with any legal obligation or liability arising under any Environmental Law.

(d) Set forth in Section 2.23(d) of the Disclosure Schedule is a list of all documents (whether in hard copy or electronic form) that contain any environmental reports, investigations and audits relating to premises currently or previously owned or operated by the Company or any Subsidiary (whether conducted by or on behalf of the Company, the Subsidiaries or a third party, and whether done at the initiative of the Company or a Subsidiary or directed by a Governmental Entity or other third party) which the Company has possession of or access to. A complete and accurate copy of each such document has been made available to the Buyer.

(e) The Company has no Knowledge of any environmental liability relating to any solid or hazardous waste transporter or treatment, storage or disposal facility that has been used by the Company or any Subsidiary.

2.24 Legal Compliance.

(a) Each of the Company and the Subsidiaries is currently conducting, and has at all times since their inception conducted, their respective businesses in compliance with each applicable law (including rules and regulations thereunder) of any federal, state, local or foreign government, or any Governmental Entity. Neither the Company nor any Subsidiary has received any notice or communication from any Governmental Entity alleging noncompliance with any applicable law, rule or regulation.

(b) Neither the Company, any Subsidiary nor any officer, director, employee or agent thereof or any Company Stockholder acting on behalf of the Company or any Subsidiary, has condoned any act or authorized, directed or participated in any act in violation of any provision of the United States and Foreign Corrupt Practices Act of 1977, as applied to such officer, director, employee, agent or Company Stockholder.

2.25 Customers and Suppliers. Section 2.25 of the Disclosure Schedule sets forth a list of (a) the 25 customers of A-C that generated the highest amount of revenues (i) during the fiscal year ended December 31, 2007, and (ii) during the eight month period ended August 31, 2008 and (b) the 50 vendors and/or suppliers of A-C to which it paid the highest amount of expenses or other expenditures (i) during the fiscal year ended December 31, 2007, and (ii) during the eight month period ended August 31, 2008. No such customer or supplier has indicated in writing within the past year that it will stop, or, except for fluctuations in the Ordinary Course of Business, decrease the rate of, buying materials, products or services or supplying materials, products or services, as applicable, to the Company or any Subsidiary. No unfilled customer order or commitment obligating the Company or any Subsidiary to process, manufacture, provide or deliver products or perform services will result in a loss to the Company or any Subsidiary upon completion of performance. No purchase order or commitment of the Company or any Subsidiary has been made outside of the Ordinary Course of Business, nor are prices provided therein in excess of amounts for which the Company and its Subsidiaries have budgeted in advance.

2.26 Permits. Section 2.26 of the Disclosure Schedule sets forth a list of all Permits issued to or held by the Company or any Subsidiary. Such listed Permits are the only Permits that are required for the Company and the Subsidiaries to conduct their business as presently conducted or as proposed to be conducted. Each such Permit is in full force and effect; the Company or the applicable Subsidiary is in compliance with the terms of each such Permit; and, to the Knowledge of the Company, no suspension or cancellation of such Permit is threatened and there is no basis for believing that such Permit will not be renewable upon expiration. Each such Permit will continue in full force and effect immediately following the Closing.

2.27 Certain Business Relationships With Affiliates. No Affiliate of the Company or any Subsidiary (a) owns any property or right, tangible or intangible, which is used in the business of the Company or any Subsidiary (except for any such property that will be used by Spinco to provide the services under the Transition Services Agreement or as set forth in Schedule 2.1 to the Distribution Agreement), (b) has any claim or cause of action against the Company or any Subsidiary, (c) owes any money to, or is owed any money by, the Company or any Subsidiary, or (d) is a party to any contract or other arrangement (written or oral) with the Company or any Subsidiary (other than Spinco under the Distributions Documents). Section 2.27 of the Disclosure Schedule describes any transactions or relationships between the Company or a Subsidiary and any Affiliate thereof which occurred or have existed since the beginning of the time period covered by the Financial Statements.

2.28 Brokers' Fees. Except for The Jordan, Edmiston Group, Inc., whose fees will constitute Company Third Party Expenses, neither the Company nor any Subsidiary has any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

2.29 Books and Records. The minute books and other similar records of the Company and each Subsidiary contain complete and accurate records of all actions taken at any meetings of the Company's or such Subsidiary's stockholders, Board of Directors or any committee thereof and of all written consents executed in lieu of the holding of any such meeting. The books and records of the Company and each Subsidiary accurately reflect the assets, liabilities, business, financial condition and results of operations of the Company or such Subsidiary and have been maintained in accordance with good business and bookkeeping practices. Section 2.29 of the Disclosure Schedule contains a list of all bank accounts and safe deposit boxes of the Company and the Subsidiaries and the names of persons having signature authority with respect thereto or access thereto.

2.30 Prepayments, Prebilled Invoices and Deposits.

(a) Section 2.30(a) of the Disclosure Schedule sets forth (i) all prepayments, prebilled invoices and deposits that have been received by the Company and the Subsidiaries as of the date of this Agreement from customers for products to be shipped, or services to be performed, after the Closing Date, and (ii) with respect to each such prepayment, prebilled invoice or deposit, (A) the party and contract credited, (B) the date received or invoiced, (C) the products and/or services to be delivered and (D) the conditions for the return of such prepayment, prebilled invoice or deposit. All such prepayments, prebilled invoices and deposits are properly accrued for on the Most Recent Balance Sheet, and will be properly accrued for on the Closing Balance Sheet, in accordance with GAAP applied on a consistent basis with the past practice of the Company and the Subsidiaries.

(b) Section 2.30(b) of the Disclosure Schedule sets forth (i) all prepayments, prebilled invoices and deposits that have been made or paid by the Company and the Subsidiaries as of the date of this Agreement for products to be purchased, services to be performed or other benefits to be received after the Closing Date and (ii) with respect to each such prepayment, prebilled invoice or deposit, (A) the party to whom such prepayment, prebilled invoice or deposit was made or paid, (B) the date made or paid, (C) the products and/or services to be delivered and (D) the conditions for the return of such prepayment, prebilled invoice or deposit. All such prepayments, prebilled invoices and deposits are properly accrued for on the Most Recent Balance Sheet, and will be properly accrued for on the Closing Balance Sheet, in accordance with GAAP applied on a consistent basis with the past practice of the Company and the Subsidiaries.

2.31 Government Contracts. Neither the Company nor any Subsidiary is, or ever has been, a party to, or has ever been suspended or debarred from bidding on, contracts or subcontracts with any Governmental Entity.

2.32 Disclosure. No representation or warranty by the Company, I-B or A-C contained in this Agreement, and no statement contained in the Disclosure Schedule or any other document, certificate or other instrument delivered or to be delivered by or on behalf of the Company pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements herein or therein not misleading.

ARTICLE III
ADDITIONAL REPRESENTATIONS AND WARRANTIES OF THE COMPANY, I-B, A-C AND SPINCO

The Company, I-B, A-C and Spinco, jointly and severally, represent and warrant to the Buyer that, except as set forth in the Disclosure Schedule, the statements contained in this Article III are true and correct as of the date of this Agreement and will be true and correct as of the Closing as though made as of the Closing, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties will be true and correct as of such date).

3.1 Organization, Qualification and Corporate Power. Spinco is a limited liability company (and will at Closing be a corporation) duly organized, validly existing and in limited liability company (and at Closing, in corporate) and tax good standing under the laws of the State of Delaware. Spinco is duly qualified to conduct business and is in limited liability company (and at Closing, in corporate) and tax good standing under the laws of each jurisdiction listed in Section 3.1 of the Disclosure Schedule, which jurisdictions constitute the only jurisdictions in which the nature of Spinco's businesses or the ownership or leasing of its properties requires such qualification. Spinco has all requisite power and authority to carry on the businesses in which it is engaged and to own and use the properties owned and used by it. Spinco has made available to the Buyer complete and accurate copies of its limited liability company agreement, as amended to date. Spinco is not in default under or in violation of any provision of its limited liability company agreement.

3.2 Spinco Capitalization.

(a) As of the date of this Agreement 100% of the membership interests of Spinco are held by I-B free and clear of any restrictions on transfer (other than restrictions under the Securities Act and state securities laws), claims, Security Interests, options, warrants, rights, contracts, calls, commitments, equities and demands.

(b) All of the issued and outstanding membership interests of Spinco are duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights. There are no outstanding or authorized options, warrants, rights, agreements or commitments to which Spinco is a party or which are binding on it for the issuance, disposition or acquisition of any of its membership interests. There are no outstanding membership interest appreciation, phantom membership interest or similar rights with respect to Spinco. There are no voting trusts, proxies or other agreements or understandings with respect to the membership interests of Spinco.

3.3 Authorization of the Spin-Off Transaction.

(a) I-B and Spinco have all requisite power and authority (corporate and limited liability, as applicable) to execute and deliver the Distribution Agreement and the other agreements contemplated thereby to which they are a party and to perform their respective obligations thereunder and as contemplated in connection with the Spin-Off Transaction. The execution and delivery by I-B and Spinco of the Distribution Agreement and the other agreements contemplated thereby to which they are a party have been, and the performance by I-B and Spinco of their obligations under the Distribution Agreement and the consummation by I-B and Spinco of the transactions contemplated thereby have been, duly and validly authorized by all necessary corporate and limited liability company action, as applicable, on the part of I-B and Spinco, including any stockholder approval of I-B and Spinco, to the extent required (i) by applicable law, (ii) any agreement to which I-B or Spinco is a party or pursuant to which any of them is bound and (iii) any provision of the charter, by-laws or other organizational documents of I-B or Spinco, as applicable. The Distribution Agreement and all other agreements contemplated thereby to which I-B and Spinco are a party have been duly and validly executed and delivered by I-B and Spinco, as applicable, and, to the knowledge of I-B and Spinco, any other party thereto and constitute valid and binding obligations of each of I-B and Spinco, enforceable against it in accordance with their respective terms.

(b) I-B has all requisite power and authority (corporate and other) to declare and pay the Dividend as contemplated in connection with the Spin-Off Transaction. The declaration and payment of the Dividend by I-B to its stockholders as of the record date for the Dividend has been duly and validly authorized by all necessary corporate action on the part of I- B to the extent required by (i) applicable law, (ii) any agreement to which I-B is a party or pursuant to which it is bound and (iii) any provision of the charter, by laws or other organizational documents of I-B. Without limiting the generality of the foregoing, the Board of Directors of I-B, by written consent or at a meeting duly called and held, by the unanimous vote of all directors (i) established the record date for the Dividend, (ii) established the date on which the Dividend is to be paid and (iii) authorized the payment of the Dividend to the stockholders of I-B as of the record date for the Dividend, all in accordance with the provisions of the Delaware General Corporation Law.

(c) The Company has all requisite corporate power and authority to effect the Redemption as contemplated in connection with the Spin-Off Transaction. The Redemption has been duly and validly authorized by all necessary corporate action on the part of the Company to the extent required by (i) applicable law, (ii) any

agreement to which the Company is a party or pursuant to which it is bound and (iii) any provision of the charter, by laws or other organizational documents of the Company. Without limiting the generality of the foregoing, the Board of Directors of the Company, by written consent or at a meeting duly called and held, by the unanimous vote of all directors (i) established the record date for the Redemption, (ii) established the date on which the Redemption is to occur and (iii) authorized the Redemption as of the record date for the Redemption, all in accordance with the provisions of the Delaware General Corporation Law.

3.4 Authorization by Spinco. Spinco has all requisite limited liability company power and authority to execute and deliver this Agreement and the other agreements contemplated hereby to which it is or becomes a party and to perform its obligations hereunder and thereunder. The execution and delivery by Spinco of this Agreement and the other agreements contemplated hereby to which it is or will be a party are, the performance by Spinco of this Agreement and such other agreements are, and the consummation by Spinco of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary limited liability company action on the part of Spinco. This Agreement and all other agreements contemplated hereby to which Spinco is or will be a party have been or will be as of the Closing Date duly and validly executed and delivered by Spinco and constitute or will constitute a valid and binding obligation of Spinco, enforceable against it in accordance with their respective terms.

3.5 Noncontravention.

(a) Neither the execution and delivery by Spinco of this Agreement or any other agreement contemplated hereby to which it is or becomes a party, nor the performance by Spinco of its obligations hereunder or thereunder, nor the consummation by Spinco of the transactions contemplated hereby or thereby, will (i) conflict with or violate any provision of the limited liability company agreement or Certificate of Incorporation and By-laws, as applicable, of Spinco, each as amended or restated to date, (ii) require on the part of Spinco any notice to or filing with, or any permit, authorization, consent or approval of, any Governmental Entity, (iii) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, Security Interest or other arrangement to which Spinco is a party or by which Spinco is bound or to which any of the assets of Spinco are or will be subject, (iv) result in the imposition of any Security Interest upon any assets of Spinco or (v) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Spinco or any of its respective properties or assets. Section 3.5(a) of the Disclosure Schedule sets forth a true, correct and complete list of all consents and approvals of third parties and Governmental Entities, and all filings and notices, that are required in connection with the consummation by Spinco of the transactions contemplated by this Agreement.

(b) Neither the execution and delivery by I-B or Spinco of the Distribution Agreement or any other agreement contemplated thereby to which any of them is or becomes a party, nor the performance by I-B or Spinco of their respective obligations thereunder, nor the consummation by I-B or Spinco of the transactions contemplated thereby, will (i) conflict with or violate any provision of the limited liability company agreement (or, at Closing, the certificate or incorporation and bylaws) of Spinco or the Amended and Restated Certificate of Incorporation or By-laws of I-B, each as amended or restated to date, (ii) require on the part of I-B, Spinco or the Company any notice to or filing with, or any permit, authorization, consent or approval of, any Governmental Entity, (iii) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, Security Interest or other arrangement to which I-B or Spinco is a party or by which I-B or Spinco is bound or to which any of the assets of I-B or Spinco are subject, (iv) result in the imposition of any Security Interest upon any assets of I-B or Spinco or (v) violate any order, writ, injunction, decree, statute, rule or regulation applicable to I-B or Spinco or any of its respective properties or assets. Section 3.5(b) of the Disclosure Schedule sets forth a true, correct and complete list of all consents and approvals of third parties required under Spinco Contracts, and of Governmental Entities, and all filings and notices, that are required in connection with the consummation by I-B or Spinco of the transactions contemplated by the Distribution Agreement.

(c) Neither the declaration nor the payment of the Dividend, nor any action taken in connection therewith or in connection with the Spin-Off Transaction, by I-B, will (i) conflict with or violate any provision of the Certificate of Incorporation or By-laws of I-B, each as amended or restated to date, (ii) require on the part of I-B or the Company any notice to or filing with, or any permit, authorization, consent or approval of, any Governmental Entity, (iii) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, Security Interest or other arrangement to which I-B is a party or by which I-B is bound or to which any of the assets of I-B are subject, (iv) result in the imposition of any Security Interest upon any assets of I-B or (v) violate any order, writ, injunction, decree, statute, rule or regulation applicable to I-B or any of its respective properties or assets. Section 3.5(c) of the Disclosure Schedule sets forth a true, correct and complete list of all consents and approvals of third parties and Governmental Entities, and all filings and notices, that are required in connection with the declaration and payment of the Dividend by I-B.

(d) Neither the Redemption, nor any action taken in connection therewith or in connection with the Spin-Off Transaction, by the Company, will (i) conflict with or violate any provision of the Certificate of Incorporation or By-laws of the Company, each as amended or restated to date, (ii) require on the part of the Company or any stockholder of the Company any notice to or filing with, or any permit, authorization, consent or approval of, any Governmental Entity, (iii) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, Security Interest or other arrangement to which the Company is a party or by which the Company is bound or to which any of the assets of the Company are subject, (iv) result in the imposition of any Security Interest upon any assets of the Company or (v) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company or any of its respective properties or assets. Section 3.5(d) of the Disclosure Schedule sets forth a true, correct and complete list of all consents and approvals of third parties and Governmental Entities, and all filings and notices, that are required in connection with the Redemption by the Company and the consummation of the Spin-Off Transaction.

3.6 Financial Statements.

(a) The Company has made available to the Buyer the Spinco Financial Statements. The Spinco Financial Statements (i) comply as to form with all applicable accounting requirements and (ii) were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby; provided, however, that the Spinco Financial Statements are subject to normal recurring year-end adjustments (which, individually and in the aggregate, will not be material) and do not include footnotes.

(b) Each of the Spinco Financial Statements fairly presents the assets (including the Contributed Assets), liabilities (including the Assumed Liabilities), business, financial condition, results of operations and cash flows of Spinco as of the date thereof and for the period referred to therein, and is consistent with the books and records of Spinco, except that the Spinco Financial Statements are unaudited and do not include footnotes.

3.7 Undisclosed Liabilities. Upon consummation of the transactions contemplated by the Distribution Agreement and the Spin-Off Transaction, Spinco shall have no liability (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated and whether due or to become due), except for (a) liabilities shown on the Spinco Financial Statements, a copy of which is attached to Section 3.7 of the Disclosure Schedule, (b) liabilities which have arisen since August 31, 2008 in the Ordinary Course of Business and (c) contractual and other liabilities incurred in the Ordinary Course of Business which are not required by GAAP to be reflected on a balance sheet and that are not in the aggregate material.

3.8 Absence of Certain Changes. Since August 31, 2008, except as specifically contemplated by the Distribution Documents and the Spin-Off Transaction, there has occurred no event or development which, individually or in the aggregate, has had, or would reasonably be expected to have in the future, a Spinco Material Adverse Effect.

3.9 Contracts.

(a) Section 3.9(a) of the Disclosure Schedule lists the following agreements (each a "Spinco Contract") to which Spinco is (or after giving effect to the Spin-Off Transaction will be) a party and under which Spinco has any remaining rights or obligations:

(i) any agreement (or group of related agreements) under which Spinco has (or after giving effect to the Spin-Off Transaction will have) created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) indebtedness (including capitalized lease obligations) or under which it has (or after giving effect to the Spin-Off Transaction will have) imposed (or may impose) a Security Interest on any of its assets, tangible or intangible;

(ii) any agreement for the disposition of any significant portion of the assets or business of Spinco (other than sales of products in the Ordinary Course of Business) or any agreement for the acquisition of the assets or business of any other entity (other than purchases of inventory or components in the Ordinary Course of Business);

(iii) any agreement under which the consequences of a default or termination would reasonably be expected to have a Spinco Material Adverse Effect; and

(iv) any other agreement (or group of related agreements) either involving more than $100,000 in any 12 month period or not entered into in the Ordinary Course of Business.

(b) The Company has made available to the Buyer a complete and accurate copy of each Spinco Contract (as amended to date). With respect to each Spinco Contract: (i) the Spinco Contract is (or after giving effect to the Spin-Off Transaction will be) legal, valid, binding and enforceable and in full force and effect against Spinco and, to the Knowledge of the Company, against each other party thereto; (ii) assuming the receipt by the Company or its Subsidiaries, as applicable, of the consents, and the making of required notices, in each case as disclosed with respect to such Contract in Section 3.5 of the Disclosure Schedule, the Spinco Contract will continue to be legal, valid, binding and enforceable and in full force and effect against Spinco, and to the Knowledge of the Company, against each other party thereto immediately following the consummation of the Spin-Off Transaction in accordance with the terms thereof as in effect immediately prior to the consummation of the Spin-Off Transaction; and (iii) neither Spinco nor, to the Knowledge of the Company, any other party, is (or after giving effect to the Spin-Off Transaction will be) in breach or violation of, or default under, any such Spinco Contract, and no event has occurred, is pending or, to the Knowledge of the Company, is threatened, which, after the giving of notice, with lapse of time, or otherwise, would constitute a breach or default by Spinco or, to the Knowledge of the Company, any other party under such Spinco Contract.

(c) Spinco is not a party (and after giving effect to the Spin-Off Transaction will not be a party) to any oral contract, agreement or other arrangement which, if reduced to written form, would be required to be listed in Section 3.9(a) of the Disclosure Schedule under the terms of Section 3.9(a).

3.10 Litigation. There is no Legal Proceeding which is pending or has been threatened in writing against Spinco. There are no judgments, orders or decrees outstanding against Spinco.

3.11 Disclosure. No representation or warranty by Spinco contained in this Agreement, and no statement contained in the Disclosure Schedule or any other document, certificate or other instrument delivered or to be delivered by or on behalf of Spinco pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements herein or therein not misleading.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE BUYER AND THE TRANSITORY SUBSIDIARY

Each of the Buyer and the Transitory Subsidiary, jointly and severally, represents and warrants to the Company that the statements contained in this Article IV are true and correct as of the date of this Agreement and will be true and correct as of the Closing as though made as of the Closing, except to the extent such representations and warranties are specifically made as of a particular date (in which case such representations and warranties will be true and correct as of such date):

4.1 Organization and Corporate Power. Each of the Buyer and the Transitory Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation. The Buyer has all requisite power and authority (corporate and other) to carry on the businesses in which it is engaged and to own and use the properties owned and used by it.

4.2 Authorization of Transaction. Each of the Buyer and the Transitory Subsidiary has all requisite power and authority to execute and deliver this Agreement and (in the case of the Buyer) the Escrow Agreement and to perform its obligations hereunder and thereunder. The execution and delivery by the Buyer and the Transitory Subsidiary of this Agreement and (in the case of the Buyer) the Escrow Agreement and the consummation by the Buyer and the Transitory Subsidiary of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of the Buyer and the Transitory Subsidiary, respectively. This Agreement, and all other agreements contemplated hereby to which the Buyer or the Transitory Subsidiary are a party have been duly and validly executed and delivered by the Buyer and the Transitory Subsidiary and, subject to the valid execution and delivery thereof by the Company, I-B, A-C and Spinco, constitute the valid and binding obligation of the Buyer and the Transitory Subsidiary, enforceable against them in accordance with its terms.

4.3 Noncontravention. Subject to compliance with the applicable requirements of the Securities Act and any applicable state securities laws, the Exchange Act, and to the filing or other regulatory requirements, if any, of any applicable U.S. or foreign regulatory body and the filing of the Certificate of Merger as required by the Delaware General Corporation Law, neither the execution and delivery by the Buyer or the Transitory Subsidiary of this Agreement or (in the case of the Buyer) the Escrow Agreement and the Special Escrow Agreement, nor the performance by the Buyer or the Transitory Subsidiary of their respective obligations hereunder or thereunder, nor the consummation by the Buyer or the Transitory Subsidiary of the transactions contemplated hereby or thereby, will (a) conflict with or violate any provision of the charter or By-laws of the Buyer or the Transitory Subsidiary, each as amended and restated to date, (b) require on the part of the Buyer or the Transitory Subsidiary any notice to or filing with, or permit, authorization, consent or approval of, any Governmental Entity, (c) conflict with, result in breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of obligations under, create in any party any right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, Security Interest or other agreement to which the Buyer or the Transitory Subsidiary is a party or by which either is bound or to which any of their assets are subject, or (d) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Buyer or the Transitory Subsidiary or any of their properties or assets.

4.4 Broker's Fees. The Buyer has no liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

4.5 Sufficiency of Funds. The Buyer has access to sufficient funds to deliver the payments to be made on the Closing Date as set forth in Article I and to perform its obligations under this Agreement.

4.6 Investment Representation. The Buyer is acquiring the Company Shares from each Company Stockholder for its own account for investment and not with a view to, or for sale in connection with, any distribution thereof, nor with any present intention of distributing or selling the same; and, except as contemplated by this Agreement and the agreements contemplated herein, the Buyer has no present or contemplated agreement, undertaking, arrangement, obligation, indebtedness or commitment providing for the disposition thereof.

4.7 Disclosure. No representation or warranty by the Buyer contained in this Agreement, and no statement contained in any other document, certificate or other instrument delivered or to be delivered by or on behalf of the Buyer pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements herein or therein not misleading.

ARTICLE V
COVENANTS

5.1 Closing Efforts. Each of the Parties shall use its Reasonable Best Efforts to take all actions and to do all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement, including using its Reasonable Best Efforts to ensure that (a) each of their respective representations and warranties remain true and correct through the Closing Date and (b) the conditions to the obligations of the other Parties to consummate the Merger are satisfied.

5.2 Spin-Off Transaction. Prior to the Closing, the Company and each Subsidiary shall take all actions and to do all things necessary in order to consummate the Spin-Off Transaction in accordance with the provisions of the Distribution Agreement and the Plan of Recapitalization. Upon consummation of the Spin-Off Transaction and prior to the Closing, the Company shall deliver to the Buyer an update to Section 2.1(b) of the Disclosure Schedule setting forth the number of issued and outstanding Company Shares of each class as of immediately prior to the Effective Time.

5.3 Governmental and Third-Party Notices and Consents.

(a) Each Party shall use its Reasonable Best Efforts to obtain, at its expense, all waivers, permits, consents, approvals or other authorizations from Governmental Entities, and to effect all registrations, filings and notices with or to Governmental Entities, as may be required for such Party to consummate the transactions contemplated by this Agreement.

(b) The Company and the Subsidiaries shall use their Reasonable Best Efforts to obtain, at its expense, all such waivers, consents or approvals from third parties, and to give all such notices to third parties, as are listed or required to be listed in the Disclosure Schedule.

5.4 Stockholder Approval.

(a) As expeditiously as possible following the execution of this Agreement and in any event within one (1) business day after the execution of this Agreement, the Company shall initiate the delivery of the Disclosure Statement to the Company Stockholders, which shall be subject to review and approval by the Buyer, which approval shall not be unreasonably withheld or delayed. The Disclosure Statement shall include (i) a summary of the Distribution Agreement, (ii) a summary of the Spin-Off Transaction, (iii) a summary of the Merger and this Agreement (which summary shall include a summary of the terms relating to the indemnification obligations of the Company Participating Equity Holders, the escrow arrangements and the authority of the Representative, and a statement that the adoption of this Agreement by the stockholders of the Company shall constitute approval of such terms) and (iv) a statement that appraisal rights are available for the Company Shares pursuant to Section 262 of the Delaware General Corporation Law and a copy of such Section 262. As expeditiously as possible following the execution of this Agreement, and in any event within one (1) business day after the execution of this Agreement, the Company shall use all commercially reasonable efforts to secure and cause to be filed with the Company consents from Company Stockholders necessary to secure the Requisite

Stockholder Approval, which consents shall be in a form that is reasonably acceptable to the Buyer. As expeditiously as possible following the receipt of the Requisite Stockholder Approval, the Company shall deliver to the Buyer a certificate executed on behalf of the Company by its Secretary and certifying that the Requisite Stockholder Approval has been obtained. The Company shall also send, pursuant to Sections 228 and 262(d) of the Delaware General Corporation Law, a written notice to all stockholders of the Company that did not execute such written consent informing them that this Agreement and the Merger were adopted and approved by the stockholders of the Company and that appraisal rights are available for their Company Shares pursuant to Section 262 of the Delaware General Corporation Law (which notice shall include a copy of such Section 262), and shall promptly inform the Buyer of the date on which such notice was sent.

(b) The Company, acting through its Board of Directors, shall include in the Disclosure Statement the unanimous recommendation of its Board of Directors that the stockholders of the Company vote in favor of the adoption of this Agreement and the approval of the Merger.

(c) The Company shall ensure that the Disclosure Statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading (provided that the Company shall not be responsible for the accuracy or completeness of any information concerning the Buyer or the Transitory Subsidiary furnished by the Buyer in writing for inclusion in the Disclosure Statement). The Company shall promptly (i) advise the Buyer in writing if at any time prior to the Closing, the Company shall obtain actual Knowledge of any facts that might make it necessary or appropriate to amend or supplement the Disclosure Statement in order to make statements contained or incorporated by reference therein not misleading in any material respect or to comply with applicable law and (ii) deliver such amendment or supplement to the Company Stockholders, which amendment or supplement shall be subject to the Buyer's prior review and approval, which approval shall not be unreasonably withheld or delayed.

(d) The Company shall not include in the Disclosure Statement any information with respect to the Buyer, the form and content of which shall not have been consented to in writing by Buyer prior to such inclusion (which consent shall not be unreasonably withheld or delayed except as required by applicable law). The Buyer shall ensure that any information furnished by the Buyer to the Company in writing for inclusion in the Disclosure Statement does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(e) Certain Company Stockholders have as of the date hereof entered into a Stockholder Voting Agreement in the form attached hereto as Exhibit C (the "Voting Agreement"), pursuant to which such Company Stockholders have agreed (i) to vote all Company Shares that are beneficially owned by them in favor of the adoption of this Agreement and the approval of the Merger, (ii) not to vote any Company Shares in favor of any other acquisition (whether by way of merger, consolidation, share exchange, stock purchase or asset purchase) of all or a majority of the outstanding capital stock or assets of the Company and (iii) otherwise to use their Reasonable Best Efforts to obtain the Requisite Stockholder Approval.

5.5 Operation of Business. Except as expressly contemplated by this Agreement, the Distribution Agreement and the declaration and payment of the Dividend and the Redemption, during the period from the date of this Agreement to the Closing or the earlier termination of this Agreement in accordance with Article X hereof (the "Pre-Closing Period"), the Company shall, and shall cause each Subsidiary to, conduct its operations only in the Ordinary Course of Business and in compliance in all material respects with all applicable U.S. federal, foreign, regional, state, provincial, county and local laws and regulations and, to the extent consistent therewith, use its Reasonable Best Efforts to preserve intact its current business organization, keep its physical assets in good working condition, keep available the services of its current officers and employees and preserve its relationships with customers, suppliers and others having business dealings with it. Without limiting the generality of the foregoing, except as expressly contemplated by the Distribution Agreement and the declaration and payment of the Dividend and the Redemption, during the Pre-Closing Period the Company shall not, and shall cause each Subsidiary not to, without the written consent of the Buyer:

(a) issue or sell any stock or other securities of the Company or any Subsidiary or any options, warrants or rights to acquire any such stock or other securities (except pursuant to the exercise or conversion of Preferred Shares, Options, Warrants or Notes outstanding on the date hereof), or amend any of the terms of (including the vesting of) any Options, Warrants, Notes or restricted stock agreements, or repurchase or redeem any stock or other securities of the Company (except from former employees, directors or consultants in accordance with agreements in place on September 12, 2008 and providing for the repurchase of shares at their original issuance price in connection with any termination of employment with or services to the Company or any Subsidiary);

(b) split, combine or reclassify any shares of its capital stock; or declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of its capital stock;

(c) create, incur or assume any indebtedness (including obligations in respect of capital leases) other than in the Ordinary Course of Business; assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other person or entity; or make any loans, advances or capital contributions to, or investments in, any other person or entity;

(d) enter into, adopt or amend any Employee Benefit Plan or any employment or severance agreement or arrangement of the type described in Section 2.22(k) or (except for normal salary increases in the Ordinary Course of Business for employees who are not Affiliates) increase in any manner the compensation or fringe benefits of, or materially modify the employment terms of, its directors, officers or employees, generally or individually, or pay any bonus or other benefit to its directors, officers or employees (except for existing payment obligations listed in Section 2.22(k) or (n) of the Disclosure Schedule) or hire any new officers or (except in the Ordinary Course of Business) any new employees or consultants;

(e) acquire, sell, lease, license or dispose of any material assets or property (including any shares or other equity interests in or securities of any Subsidiary or any other corporation, partnership, association or other business organization or division thereof), other than purchases and sales of assets to customers in the Ordinary Course of Business;

(f) mortgage or pledge any of its property or assets or subject any such property or assets to any Security Interest;

(g) discharge or satisfy any Security Interest or pay any obligation or liability other than in the Ordinary Course of Business;

(h) amend its certificate of incorporation, by-laws or other organizational documents;

(i) sell, assign, transfer, license or sublicense any Company Intellectual Property, other than pursuant to licenses with customers entered into in the Ordinary Course of Business;

(j) change the nature or scope of its business being carried on as of the date of this Agreement or commence any new business not being ancillary or incidental to such business or take any action to alter its organizational or management structure;

(k) change its accounting methods, principles or practices, except insofar as may be required by a generally applicable change in GAAP;

(l) make or change any Tax election, change an annual accounting period, file any amended Tax Return, enter into any closing agreement, waive or extend any statute of limitations with respect to Taxes, settle or compromise any Tax liability, claim or assessment, surrender any right to claim a refund of Taxes or take any other similar action relating to the filing of any Tax Return or the payment of any Tax;

(m) enter into, amend, terminate, take or omit to take any action that would constitute a violation of or default under, or waive any material rights under, any contract or agreement of a nature required to be listed in Section 2.12, Section 2.13 or Section 2.15 of the Disclosure Schedule;

(n) amend, terminate, take or omit to take any action that would constitute a violation of or default under, or waive any rights under, modify or supplement, the Distribution Agreement or the Plan of Recapitalization;

(o) make or commit to make any capital expenditure in excess of $25,000 per item or $50,000 in the aggregate;

(p) institute or settle any Legal Proceeding;

(q) take any action or fail to take any action permitted by this Agreement with the knowledge that such action or failure to take action would result in (i) any of the representations and warranties of the Company, I-B, A-C or Spinco set forth in this Agreement becoming untrue or (ii) any of the conditions to the Merger set forth in Article VI not being satisfied;

(r) fail to take any action necessary to preserve the validity of any Company Intellectual Property or Permit; or

(s) agree in writing or otherwise to take any of the foregoing actions.

In addition, during the Pre-Closing Period, the Company shall and shall cause each of its Subsidiaries to (A) accept customer orders in the Ordinary Course of Business, and (B) shall continue to make regularly scheduled payments pursuant to the terms of any Contract with respect to any indebtedness, if any, in existence as of the date of this Agreement.

5.6 Access to Information.

(a) During the Pre-Closing Period, the Company shall (and shall cause each Subsidiary to) afford the officers, attorneys, accountants, tax advisors, lenders and other authorized representatives of the Buyer free and full access upon reasonable notice and during normal business hours to all personnel, offices, properties, books and records of the Company and the Subsidiaries, so that the Buyer may have full opportunity to make such investigation as it shall desire to make of the management, business, properties and affairs of the Company and the Subsidiaries, and the Buyer shall be permitted to make abstracts from, or copies of, all such books and records; provided that the Buyer conducts such investigation in a manner intended to minimize any material disruption of the businesses and operations of the Company and the Subsidiaries. The Company shall (and shall cause each Subsidiary to) furnish to the Buyer such financial and operating data and other information as to the business of the Company and the Subsidiaries as the Buyer shall reasonably request.

(b) Within 5 days after the end of each month ending prior to the Closing, beginning with October, 1, 2008, the Company shall furnish to the Buyer an unaudited income statement for such month and a balance sheet as of the end of such month, prepared on a basis consistent with the Financial Statements. Such financial statements shall present fairly the consolidated financial condition and results of operations of the Company and its Subsidiaries as of the dates thereof and for the periods covered thereby, and shall be consistent with the books and records of the Company and its Subsidiaries.

5.7 Notice of Breaches. During the Pre-Closing Period, the Company shall promptly deliver to the Buyer supplemental information concerning events or circumstances occurring subsequent to the date hereof which would render any representation, warranty or statement of the Company, I-B, A-C or Spinco in this Agreement or the Disclosure Schedule inaccurate or incomplete in any material respect at any time after the date of this Agreement until the Closing. No such supplemental information shall be deemed to avoid or cure any misrepresentation or breach of warranty or constitute an amendment of any representation, warranty or statement in this Agreement or the Disclosure Schedule.

5.8 Exclusivity.

(a) Other than as specifically provided for in the Distribution Agreement, or, prior to the receipt of the Requisite Stockholder Approval, as required by fiduciary obligations under applicable law, during the Pre-Closing Period, the Company shall not, and the Company shall require each of its officers, directors, employees, representatives and agents not to, directly or indirectly, through any officer, director, employee, Affiliate, agent or representative or otherwise, (i) initiate, solicit, encourage or otherwise facilitate any inquiry, proposal, offer or discussion with any party (other than the Buyer or its representatives) concerning any acquisition, equity or debt financing, joint venture, merger, reorganization, consolidation, recapitalization, business combination, liquidation, dissolution, share exchange, sale of stock, sale of material assets or similar business transaction involving the Company or any Subsidiary, (ii) furnish any information concerning the business, properties or assets of the Company or any Subsidiary or the Company Shares to any party (other than the Buyer or its representatives) or (iii) engage in negotiations or enter into any agreement with any party (other than the Buyer or its representatives) concerning any such transaction.

(b) The Company shall immediately notify any party with which discussions or negotiations of the nature described in paragraph (a) above were pending that the Company are terminating such discussions or negotiations. If the Company receives any inquiry, proposal or offer of the nature described in paragraph (a) above, the Company shall, within one business day after such receipt, notify the Buyer of such inquiry, proposal or offer, including the identity of the other party and the terms of such inquiry, proposal or offer.

5.9 Expenses. Except as otherwise expressly provided herein, the Buyer will pay all fees and expenses (including legal and accounting fees and expenses) incurred by it in connection with the transactions contemplated hereby. All Company Third Party Expenses shall be deducted from the Total Consideration and paid by the Buyer in accordance with the provisions of Sections 1.3(g) and 1.10 of this Agreement.

5.10 Access to Customers and Suppliers. The Company shall, if requested by the Buyer, introduce the Buyer to customers and suppliers of the Company and A-C for the purpose of facilitating the post-Closing integration of the Company and A-C and their businesses into that of the Buyer.

5.11 Financial Statements. Following the completion of the Spin-Off Transaction, but prior to the Closing, the Company shall deliver to the Buyer its most recent regularly prepared consolidated balance sheet of the Company and all of its Subsidiaries other than Spinco.

5.12 Payoff of Silicon Valley Bank Loan. Prior to the Closing, the Company shall deliver to the Buyer a payoff letter setting forth the amount required to satisfy and discharge in full the Silicon Valley Bank Loan on the Closing Date (the "SVB Payoff Letter").

5.13 280G Covenant. Prior to the Closing Date, the Company shall submit to a stockholder vote the right of any "disqualified individual" (as defined in Section 280G(c) of the Code) to receive any and all payments (or other benefits) contingent on the consummation of the transactions contemplated by this Agreement (within the meaning of Section 280G(b)(2)(A)(i) of the Code) to the extent necessary so that no payment received by such "disqualified individual" would be a "parachute payment" under Section 280G(b) of the Code (determined without regard to Section 280G(b)(4) of the Code), in a manner that satisfies the stockholder approval requirements under Section 280G(b)(5)(B) of the Code and regulations promulgated thereunder. Such vote shall establish the "disqualified individual's" right to the payment or other compensation. In addition, before the vote is submitted to stockholders, the Company shall provide adequate disclosure to Company Stockholders that hold voting Company Shares of all material facts concerning all payments that, but for such vote, could be deemed "parachute payments" to a "disqualified individual" under Section 280G of the Code in a manner that satisfies Section 280G(b)(5)(B)(ii) of the Code and regulations promulgated thereunder. The Buyer and its counsel shall have the right to review and comment on all documents to be delivered to the Company Stockholders in connection with such vote.

5.14 FIRPTA. Prior to the Closing, (a) the Company shall deliver to the Buyer notices that the Company Shares are not "U.S. real property interests" in accordance with Treasury Regulations under Sections 897 and 1445 of the Code, or (b) each of the Company Stockholders shall deliver to the Buyer certifications that they are not foreign persons in accordance with the Treasury Regulations under Section 1445 of the Code. If the Buyer has received neither the notices nor the certifications described above on or before the Closing Date, the Buyer, the Transitory Subsidiary, or the Paying Agent shall be permitted to withhold from the payments to be made pursuant to this Agreement any required withholding Tax under Section 1445 of the Code.

5.15 Indemnification and Insurance. For a period of six (6) years after the Closing Date, the Surviving Corporation will, and Buyer shall cause the Surviving Corporation to, (a) indemnify and hold harmless, against any costs or expenses (including attorney's fees), judgments, fines, losses, claims, damages, or liabilities incurred in connection with any claim, action, suit, proceeding, or investigation, whether civil, criminal, administrative, or investigative, and provide advancement of expenses to, all past and present directors and officers of the Company and its Subsidiaries, to the same extent (and subject to such limitations as are imposed by applicable law) such persons are indemnified or have the right to advancement of expenses on the date of this Agreement by the Company or such Subsidiary pursuant to the Company's and such Subsidiary's Certificate of Incorporation, By-laws (or other comparable organizational documents), and indemnification agreements in existence on the date of this Agreement with any directors and officers of the Company or its Subsidiaries, in each case for acts or omissions at or prior to the Closing Date (including acts or omissions occurring in connection with the approval of this Agreement and the consummation of the transactions contemplated by this Agreement); and (b) to the extent permitted by law, include and cause to be maintained in effect in the Company's and each Subsidiary's (or any respective successor's) certificate of incorporation and bylaws (or other comparable organizational documents) for a period of six (6) years after the Closing Date, or otherwise cause to be performed by the Company and each Subsidiary, the current provisions regarding elimination of liability of directors, indemnification of officers and directors and advancement of expenses contained in the Company's and its respective Subsidiaries' Certificate of Incorporation and By-laws (or other comparable organizational documents). Notwithstanding the foregoing provisions, in no event shall the Buyer or the Surviving Corporation have any obligation to indemnify and hold harmless, or to provide advancement of expenses to, any past or present directors or officers of the Company and its Subsidiaries if any such claim, action, suit, proceeding, or investigation does not relate solely to the business and operations of A-C. Prior to the Effective Time, the Company shall procure six (6) year insurance "tail" policies with respect to directors' and officers' liability insurance and fiduciary liability insurance with respect to matters existing or occurring at or prior to the Effective Time (including the transactions contemplated by this Agreement) in an amount and scope at least as favorable as the coverage applicable to directors and officers as of the date hereof under the Company's directors' and officers' liability insurance policy. The Buyer agrees not to take any action to cancel, or cause the Surviving Corporation to take any action to cancel, such "tail" policies for a period of six (6) years following the Closing Date. The provisions of this Section 5.15 are in addition to, and not in substitution for, any other rights to indemnification that any such Person may have against any Person other than the Buyer, the Company, the Surviving Corporation or any of their respective Affiliates, by contract or otherwise. In the event that the Surviving Corporation or any of its successors or assigns transfers all or substantially all of its properties and assets to any Person, the Buyer shall not take any action in connection with such transfer to prevent the transfer of the provisions of this Section 5.15 to the acquirer of such properties and assets.

5.16 Change in Control Of Spinco. If at any time on or before the date that is three (3) years after the filing of the federal income Tax Return of the Company for the taxable period ending on the Closing Date, there is a Change in Control Transaction with respect to Spinco, then on the date of the closing of such Change of Control Transaction, Spinco shall deliver to the Escrow Agent an amount, to be added to the Special Escrow Fund, such that the Special Escrow Fund shall be equal to (a) 38.85% of (i) the aggregate consideration paid in connection with such Change in Control Transaction minus (ii) $33,000,000, minus (b) the amount of the Initial Special Escrow Fund.

5.17 Employees. From and after the Effective Time, the Buyer will, or will cause the Surviving Corporation to, cause each employee of the Company or its Subsidiaries as of the Effective Time (the "Company Employees") that become employees of the Buyer or the Surviving Corporation at the Effective Time to be covered by employee benefit plans that provide benefits that are substantially similar to the benefits provided to similarly situated employees of the Buyer. To the extent permitted under the terms of the Buyer's employee benefits plans, from and after the Effective Time, the Buyer will, or will cause the Surviving Corporation to, recognize the prior

service with the Company or its Subsidiaries of each Company Employee in connection with all employee benefit plans of the Buyer or the Surviving Corporation in which Company Employees are eligible to participate following the Effective Time, for purposes of eligibility, vesting, and levels of benefits (but not for purposes of benefit accruals or benefit amounts under any defined benefit pension plan or to the extent that such recognition would result in duplication of benefits). To the extent permitted under the terms of the Buyer's employee benefits plans, from and after the Effective Time, the Buyer will, or will cause the Surviving Corporation to, use reasonable efforts to (a) cause any pre-existing conditions or limitations and eligibility waiting periods (to the extent that such waiting periods would be applicable, taking into account service with the Company) under any group health, dental, or vision plans of the Buyer to be waived with respect to Company Employees and their eligible dependents and (b) give each Company Employee credit for the plan year in which the Effective Time occurs towards applicable deductibles and annual out-of-pocket limits for expenses incurred prior to the Effective Time for which evidence of payment is provided to the Buyer.

ARTICLE VI
CONDITIONS TO CONSUMMATION OF MERGER

6.1 Conditions to Obligations of the Buyer and the Transitory Subsidiary. The obligation of each of the Buyer and the Transitory Subsidiary to consummate the Merger is subject to the satisfaction of the following conditions precedent, each of which may be waived in writing in the sole discretion of the Buyer:

(a) the number of Company Shares still eligible under Delaware law to become Dissenting Shares shall not exceed 5% of the Total Company Shares;

(b) the Company shall have obtained at its own expense (and shall have provided copies thereof to the Buyer) all of the waivers, permits, consents, approvals or other authorizations, and effected all of the registrations, filings and notices, set forth on Schedule 6.1(b) and all other waivers, permits, consents, approvals or other authorizations, and effected all of the registrations, filings and notices, which are necessary for the consummation of the transactions contemplated by the Agreement or are material to the conduct of the Company's business and A-C's business;

(c) the representations and warranties of the Company, I-B, A-C and Spinco set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and shall be true and correct in all material respects as of the Closing as though made as of the Closing;

(d) each of the Company, I-B, A-C and Spinco shall have performed or complied with its agreements and covenants required to be performed or complied with under this Agreement as of or prior to the Closing;

(e) there shall have occurred no change, event, circumstance or development which, individually or taken together with all other changes, events, circumstances or developments, has had, or would reasonably be expected in the future to have, a Company Material Adverse Effect or a Spinco Material Adverse Effect;

(f) no Legal Proceeding shall be pending or threatened in writing wherein an unfavorable judgment, order, decree, stipulation or injunction would (i) prevent consummation of the transactions contemplated by this Agreement, the Distribution Agreement or the Spin-Off Transaction, (ii) cause the transactions contemplated by this Agreement, the Distribution Agreement or the Spin-Off Transaction to be rescinded following consummation of any such transaction or (iii) have, individually or in the aggregate, a Company Material Adverse Effect or a Spinco Material Adverse Effect, and no such judgment, order, decree, stipulation or injunction shall be in effect;

(g) the Buyer shall have received evidence reasonably satisfactory to the Buyer that the Spin-Off Transaction has been consummated in accordance with the Distribution Agreement and the Plan of Recapitalization no later than immediately prior to the Effective Time;

(h) all applicable waiting periods (and any extensions thereof) under any applicable U.S. or foreign antitrust laws shall have expired or otherwise been terminated;

(i) the Company shall have delivered to the Buyer and the Transitory Subsidiary the Company Certificate;

(j) the Buyer shall have received copies of the resignations, effective as of the Closing, of each director and officer of the Company and its Subsidiaries (other than any such resignations which the Buyer designates, by written notice to the Company, as unnecessary);

(k) the Buyer shall have received a counterpart of the Escrow Agreement executed by the Escrow Agent and the Representative;

(l) the Buyer shall have received from Holme Roberts & Owen LLP, counsel to the Company, an opinion in the form attached hereto as Exhibit D addressed to the Buyer and dated as of the Closing Date;

(m) the Buyer shall have received evidence that this Agreement and the Merger have received the Requisite Stockholder Approval;

(n) the Buyer shall have received evidence that all prior stockholder, investor rights and similar agreements among any of the Company Stockholders have been terminated prior to the Closing Date; and

(o) the Buyer shall have received such other certificates and instruments (including certificates of good standing of the Company and its Subsidiaries in their jurisdictions of organization and the various foreign jurisdictions in which they are qualified, certified charter documents, certificates as to the incumbency of officers and the adoption of authorizing resolutions) as it shall reasonably request in connection with the Closing.

6.2 Conditions to Obligations of the Company. The obligation of the Company, I-B, A-C and Spinco to consummate the Merger is subject to the satisfaction of the following conditions precedent, each of which may be waived in writing in the sole discretion of the Company and the Representative:

(a) the representations and warranties of the Buyer and the Transitory Subsidiary set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and shall be true and correct in all material respects as of the Closing as though made as of the Closing;

(b) each of the Buyer and the Transitory Subsidiary shall have performed or complied with its agreements and covenants required to be performed or complied with under this Agreement as of or prior to the Closing;

(c) the Buyer shall have delivered to the Company and Spinco the Buyer Certificate;

(d) the Company and Spinco shall have received a counterpart of the Escrow Agreement executed by the Buyer and the Escrow Agent;

(e) the Company and Spinco shall have received evidence of delivery of the Escrow Fund and the Special Escrow Fund to the Escrow Agent;

(f) no Legal Proceeding brought by any Governmental Entity seeking to prevent consummation of the transactions contemplated by this Agreement shall be pending and no judgment, order, decree, stipulation or injunction enjoining or preventing consummation of the transactions contemplated by this Agreement shall be in effect; and

(g) the Company and Spinco shall have received such other certificates and instruments (including certificates of good standing of the Buyer and the Transitory Subsidiary in their jurisdiction of organization, certified charter documents, certificates as to the incumbency of officers and the adoption of authorizing resolutions) as it shall reasonably request in connection with the Closing.

ARTICLE VII
INDEMNIFICATION

7.1 Indemnification by the Company Participating Equity Holders. The Company Participating Equity Holders shall, from and after the Effective Time and on the basis and subject to the limitations set forth in this Article VII, on a basis providing for equal culpability (except as otherwise provided in clause (c) below), indemnify the Buyer in respect of, and hold it harmless against, any and all Damages incurred or suffered by the Company, the Surviving Corporation, the Buyer or any Affiliate thereof resulting from, relating to or constituting:

(a) any breach, as of the date of this Agreement or as of the Closing Date, of any representation or warranty contained in Article II or Article III of this Agreement or any certificate delivered by the Company to the Buyer in satisfaction of the conditions set forth in Section 6.1;

(b) any failure to perform any (i) pre-Closing covenant or agreement of the Company, I-B or A-C contained in this Agreement or (ii) covenant or agreement of Spinco contained in this Agreement;

(c) any failure of any Company Stockholder to have good, valid and marketable title to the issued and outstanding Company Shares issued in the name of such Company Stockholder, free and clear of all Security Interests (with respect to which the Company Participating Equity Holders' indemnification obligation shall be several and not joint);

(d) any claim by a stockholder or former stockholder of the Company, or any other person or entity, seeking to assert, or based upon: (i) the Spin-Off Transaction, (ii) ownership or rights to ownership of any shares of stock of the Company; (iii) any rights of a stockholder (other than the right to receive the Merger Consideration pursuant to this Agreement), including any option, preemptive rights or rights to notice or to vote; (iv) any rights under the Certificate of Incorporation or By-laws of the Company (other than any claim by an officer or director of the Company or any of its Subsidiaries for indemnification in accordance with, and subject to the limitations set forth in, Section 5.15 hereof); or (v) any claim that his, her or its shares were wrongfully repurchased by the Company;

(e) any breach of the representations and warranties set forth in Sections 2.2(c) and 2.2(d) hereof without regard to any qualifications set forth in the Disclosure Schedule;

(f) any Damages resulting from any contract or agreement identified in the Disclosure Schedule as "copy of agreement not available" or "informal understanding with I-Behavior Inc.;"

(g) any I-B Obligation; or

(h) any claim arising under Section 8.2.

7.2 Indemnification by Spinco. Spinco shall, from and after the Effective Time and on the basis and subject to the limitations set forth in this Article VII, indemnify the Buyer in respect of, and hold it harmless against, any and all Damages incurred or suffered by the Company, the Surviving Corporation, the Buyer or any Affiliate thereof resulting from, relating to or constituting:

(a) any breach, as of the date of this Agreement or as of the Closing Date, of any representation contained in Article III of this Agreement;

(b) any I-B Obligation; or

(c) any claim arising under Section 8.2.

7.3 Indemnification Claims.

(a) The Buyer shall give written notification to the Notified Party of the commencement of any Third Party Action. Such notification shall be given within 20 days after receipt by the Buyer of notice of such Third Party Action, and shall describe in reasonable detail (to the extent then known by the Buyer) the facts constituting the basis for such Third Party Action and the amount of the claimed damages. No delay or failure on the part of the Buyer in so notifying the Notified Party shall relieve the Company Participating Equity Holders or Spinco, as applicable, of any liability or obligation hereunder except to the extent of any damage or liability caused by or arising out of such delay or failure. Within 20 days after delivery of such notification, the Notified Party may, upon written notice thereof to the Buyer, assume control of the defense of such Third Party Action with counsel reasonably satisfactory to the Buyer; provided that (i) the Notified Party may only assume control of such defense if (A) it acknowledges in writing to the Buyer that any damages, fines, costs or other liabilities that may be assessed against the Buyer in connection with such Third Party Action constitute, subject to the limitations set forth in this Article VII, Damages for which the Buyer shall be indemnified pursuant to this Article VII, (B) the damages claimed in such Third Party Action, taken together with the estimated costs of defense thereof and the Claimed Amount with respect to any unresolved claims for indemnification then pending, is less than or equal to the current balance of the Escrow Fund or the Special Escrow Fund, as applicable, unless the Notified Party (x) provides reasonable assurance to the Buyer of the financial capability to meet its obligations for the defense of such Third Party Action and (y) agrees to satisfy, and provides reasonable assurance to the Buyer of the financial capability to meet its obligations to satisfy, any damages, fines, costs or other liabilities that the Buyer or any of its Affiliates may incur in connection with such Third Party Action in excess of the current balance of the Escrow Fund or the Special Escrow Fund, as applicable, and (C) an adverse resolution of the Third Party Action would not have a material adverse effect on the goodwill or reputation of the Buyer or the business, operations or future conduct of the Buyer and (ii) the Notified Party may not assume control of the defense of any Third Party Action involving Taxes or criminal liability or in which equitable relief is sought against the Buyer. If the Notified Party does not, or is not permitted under the terms hereof to, so assume control of the defense of a Third Party Action, the Buyer shall control such defense. The Non-controlling Party may participate in such defense at its own expense. The Controlling Party shall keep the Non-controlling Party advised of the status of such Third Party Action and the defense thereof and shall consider in good faith recommendations made by the Non-controlling Party with respect thereto. The Non-controlling Party shall furnish the Controlling Party with such information as it may have with respect to such Third Party Action (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) and shall otherwise cooperate with and assist the Controlling Party in the defense of such Third Party Action. The reasonable fees and expenses of counsel to the Buyer with respect to a Third Party Action shall be considered Damages for purposes of this Agreement if (x) the Buyer controls the defense of such Third Party Action pursuant to the terms of this Section 7.3(a) or (y) the Notified Party assumes control of such defense and the Buyer reasonably concludes that the Notified Party and the Buyer have conflicting interests or different defenses available with respect to such Third Party Action. The Notified Party shall not agree to any settlement of, or the entry of any judgment arising from, any Third Party Action without the prior written consent of the Buyer, which shall not be unreasonably withheld, conditioned or delayed; provided that the consent of the Buyer shall not be required if the Notified Party agrees in writing to pay any amounts payable pursuant to such settlement or judgment and such settlement or judgment includes a complete release of the Buyer from further liability and has no other adverse effect on the Buyer. Except as otherwise expressly provided in Section 7.3(f) below, the Buyer shall not agree to any settlement of, or the entry of any judgment arising from, any such Third Party Action without the prior written consent of the Notified Party, which shall not be unreasonably withheld, conditioned or delayed.

(b) In order to seek indemnification under this Article VII, the Buyer shall deliver a Claim Notice to the Notified Party.

(c) Within 30 days after delivery of a Claim Notice, the Notified Party shall deliver to the Buyer a Response, in which the Notified Party shall: (i) agree that the Buyer is entitled to receive all of the Claimed

Amount (in which case (A) if the indemnification was sought pursuant to Section 7.1, subject to exceeding the Threshold Amount with respect to a claim pursuant to Section 7.1(a), the Response shall be accompanied by a letter from the Representative instructing the Escrow Agent to disburse to the Buyer from the Escrow Fund or the Special Escrow Fund, as applicable, an amount in cash equal the Claimed Amount or (b) if the indemnification was sought pursuant to Section 7.2, the Response shall be accompanied by an amount in immediately available funds equal the Claimed Amount), (ii) agree that the Buyer is entitled to receive the Agreed Amount (in which case (A) if the indemnification was sought pursuant to Section 7.1, subject to exceeding the Threshold Amount with respect to a claim pursuant to Section 7.1(a), the Response shall be accompanied by a letter from the Representative instructing the Escrow Agent to disburse to the Buyer from the Escrow Fund or the Special Escrow Fund, as applicable, an amount in cash equal to the Agreed Amount or (b) if the indemnification was sought pursuant to Section 7.2, the Response shall be accompanied by an amount in immediately available funds equal to the Agreed Amount) or (iii) dispute that the Buyer is entitled to receive any of the Claimed Amount. The Notified Party may contest the payment of all or a portion of the Claimed Amount only based upon a good faith belief that all or such portion of the Claimed Amount does not constitute Damages for which the Buyer is entitled to indemnification under this Article VII. If no Response is delivered by the Notified Party within such 30-day period, and (i) indemnification was sought by the Buyer pursuant to Section 7.1, the Company Participating Equity Holders shall be deemed to have agreed that, subject to exceeding the Threshold Amount with respect to a claim pursuant to Section 7.1(a), all of the Claimed Amount is owed to the Buyer or (ii) indemnification was sought by the Buyer pursuant to Section 7.2, Spinco shall be deemed to have agreed that all of the Claimed Amount is owed to the Buyer. Acceptance by the Buyer of partial payment of any Claimed Amount shall be without prejudice to the Buyer's right to claim the balance of any such Claimed Amount.

(d) During the 30-day period following the delivery of a Response that reflects a Dispute, the Notified Party and the Buyer shall use good faith efforts to resolve the Dispute. If the Dispute is not resolved within such 30-day period, the Notified Party and the Buyer shall discuss in good faith the submission of the Dispute to binding arbitration, and if the Notified Party and the Buyer agree in writing to submit the Dispute to such arbitration, then the provisions of Section 7.3(e) shall become effective with respect to such Dispute. The provisions of this Section 7.3(d) shall not obligate the Notified Party and the Buyer to submit to arbitration or any other alternative dispute resolution procedure with respect to any Dispute, and in the absence of an agreement by the Notified Party and the Buyer to arbitrate a Dispute, such Dispute shall be resolved in the Delaware Court of Chancery, New Castle County, or if that court does not have jurisdiction, a federal court sitting in the State of Delaware, in accordance with Section 11.11. If the Buyer is seeking to enforce the claim that is the subject of the Dispute pursuant to the Escrow Agreement, the Representative and the Buyer shall deliver to the Escrow Agent, promptly following the resolution of the Dispute (whether by mutual agreement, arbitration, judicial decision or otherwise), a written notice executed by both parties instructing the Escrow Agent as to what (if any) portion of the Escrow Fund or the Special Escrow Fund, as applicable, shall be distributed to the Buyer (which notice shall be consistent with the terms of the resolution of the Dispute). If the Buyer is seeking to enforce the claim pursuant to Section 7.2 of this Agreement, Spinco shall deliver to the Buyer, promptly following the resolution of the Dispute (whether by mutual agreement, arbitration, judicial decision or otherwise), an amount in immediately available funds equal to the amount provided for in the resolution of the Dispute).

(e) If, as set forth in Section 7.3(d), the Buyer and the Notified Party agree to submit any Dispute to binding arbitration, the arbitration shall be conducted by a single arbitrator (the "Arbitrator") in accordance with the Commercial Rules in effect from time to time and the following provisions:

(i) In the event of any conflict between the Commercial Rules in effect from time to time and the provisions of this Agreement, the provisions of this Agreement shall prevail and be controlling;

(ii) Either party shall commence the arbitration by filing a written submission with the Wilmington, Delaware office of the AAA in accordance with Commercial Rule 5 (or any successor provision);

(iii) All depositions or other discovery shall be conducted pursuant to the applicable U.S. federal rules relating to discovery;

(iv) Not later than 30 days after the conclusion of the arbitration hearing, the Arbitrator shall prepare and distribute to the parties a writing setting forth the arbitral award and the Arbitrator's reasons therefor. Any award rendered by the Arbitrator shall be final, conclusive and binding upon the parties, and judgment thereon may be entered and enforced in any court of competent jurisdiction (subject to Section 11.11);

(v) The Arbitrator shall have no power or authority, under the Commercial Rules or otherwise, to (x) modify or disregard any provision of this Agreement, including the provisions of this Section 7.3(e), or (y) address or resolve any issue not submitted by the parties; and

(vi) In connection with any arbitration proceeding pursuant to this Agreement, each party shall bear its own costs and expenses, except that the fees and costs of the AAA and the Arbitrator, the costs and expenses of obtaining the facility where the arbitration hearing is held, and such other costs and expenses as the Arbitrator may determine to be directly related to the conduct of the arbitration and appropriately borne jointly by the parties (which shall not include any party's attorneys' fees or costs, witness fees (if any), costs of investigation and similar expenses) shall be shared equally by (i) the Buyer and the Company Participating Equity Holders, if the indemnification was sought by the Buyer pursuant to Section 7.1 of this Agreement, and (ii) the Buyer and Spinco, if the indemnification was sought by the Buyer pursuant to Section 7.2 of this Agreement.

(f) Notwithstanding the other provisions of this Section 7.3, if a third party customer or vendor asserts (other than by means of a lawsuit) that the Buyer is liable to such third party for a monetary or other obligation which may constitute or result in Damages, not in excess of $125,000 individually or $250,000 in the aggregate, for which the Buyer may be entitled to indemnification pursuant to this Article VII, and the Buyer reasonably determines that it has a valid business reason to fulfill such obligation, then (i) the Buyer shall be entitled to satisfy such obligation, without prior notice to or consent from the Notified Party, (ii) the Buyer may subsequently make a claim for indemnification in accordance with the provisions of this Article VII, and (iii) the Buyer shall be reimbursed, in accordance with the provisions of this Article VII, for any such Damages for which it is entitled to indemnification pursuant to this Article VII (subject to the right of the Notified Party to dispute both the Buyer's entitlement to indemnification and the amount, if any, for which it is entitled to indemnification, under the terms of this Article VII).

(g) The Representative shall have full power and authority on behalf of each Company Participating Equity Holder to take any and all actions on behalf of, execute any and all instruments on behalf of, and execute or waive any and all rights of, the Company Participating Equity Holders under this Article VII. The Representative shall have no liability to any Company Participating Equity Holders for any action taken or omitted on behalf of the Company Participating Equity Holders pursuant to this Article VII.

(h) In the event that the Buyer is entitled to indemnification pursuant to Section 7.1(c) of this Agreement, the Representative shall deliver to the Buyer, with a copy to the Escrow Agent, a revised Schedule I to the Merger Agreement which shall reflect the following adjustments: (i) a deduction, in an amount equal to the Damages for which Buyer is entitled to indemnification pursuant to Section 7.1(c) (the "7.1(c) Amount"), from the amounts otherwise distributable from the Escrow Fund to the Company Participating Equity Holders or Company Participating Equity Holders responsible (on a several basis) for satisfaction of any such indemnification claim or claim(s) pursuant to Section 7.1(c) (a "Section 7.1(c) Breaching Equity Holder") and (ii) a re-allocation of the amount remaining in the Escrow Fund, after the deduction of the Section 7.1(c) Amount, to all Company Participating Equity Holders (other than any such Section 7.1(c) Breaching Equity Holder) in accordance with their Pro Rata Share. For purposes of this Section 7.3(h), "Pro Rata Share" shall mean an amount (expressed as a percentage) that is equal to (A) the Company Participating Equity Equivalent held by such Company Participating Equity Holder divided by (B) the total Company Participating Equity Equivalents held by all Company Participating Equity Holders (but excluding, in the case of (i) and (ii), any Company Participating Equity Equivalent which any Section 7.1(c) Breaching Equity Holder holds).

7.4 Survival of Representations and Warranties.

(a) Unless otherwise specified in this Section 7.4 or elsewhere in this Agreement, all provisions of this Agreement shall survive the Closing and the consummation of the transactions contemplated hereby and shall continue forever in full force and effect in accordance with their terms. Except for claims based on fraud or knowing misrepresentation, all representations and warranties in this Agreement shall survive until and expire at 5:00 p.m. (Eastern time) on the date that is the 18 month anniversary of the Closing Date; provided, however, that the representations and warranties set forth in: (i) Sections 2.9 and, to the extent relating to Taxes, 2.22 (collectively, the "Tax Related Representations") shall survive until and expire at 5:00 p.m. (Eastern time) on the 30th day following the expiration of the applicable statute of limitations, (ii) Sections 2.13, 2.23 and 2.28 shall survive until and expire at 5:00 p.m. (Eastern time) on the date that is the 36 month anniversary of the Closing Date and (iii) Sections 2.2, 2.3, 3.2, 3.3 and 3.4 shall survive indefinitely. All matters described in this Section 7.4(a) that survive the expiration of the 18-month survival period are collectively referred to herein as "Permitted Matters." The representations and warranties contained in Sections 2.2, 2.3, 3.2, 3.3 and 3.4 collectively referred to herein as "Constitutive Representations."

(b) If the Buyer delivers to the Notified Party, before expiration of a representation, warranty, covenant or agreement, either a Claim Notice based upon a breach of such representation, warranty, covenant or agreement or an Expected Claim Notice based upon a breach of such representation, warranty, covenant or agreement then the applicable representation, warranty, covenant or agreement shall survive until, but only for purposes of, the resolution of the matter covered by such Claim Notice or Expected Claim Notice, as applicable. If the legal proceeding or written claim with respect to which an Expected Claim Notice has been given is definitively withdrawn or resolved in favor of the Buyer, the Buyer shall promptly so notify the Notified Party. The rights to indemnification set forth in this Article VII shall not be affected by (i) any investigation conducted by or on behalf of the Buyer or any knowledge acquired (or capable of being acquired) by the Buyer, whether before or after the date of this Agreement or the Closing Date, with respect to the inaccuracy or noncompliance with any representation, warranty, covenant or obligation which is the subject of indemnification hereunder, or (ii) any waiver by the Buyer of any closing condition relating to the accuracy of representations and warranties or the performance of or compliance with agreements and covenants.

7.5 Limitations.

(a) With respect to claims for Damages arising pursuant to a claim for indemnification under Section 7.1(a) or Section 7.2(a), the Company Participating Equity Holders shall not be liable for any such Damages until the aggregate amount of all such Damages exceeds $450,000 (the "Threshold Amount") (at which point the Buyer shall be entitled to recovery for all Damages under Section 7.1(a) or Section 7.2(a), and not just amounts in excess of the Threshold Amount); provided that the limitation set forth in this sentence shall not apply to (i) claims based on fraud or knowing misrepresentation or (ii) any claim pursuant to Section 7.1(a) or Section 7.2(a) relating to a breach of the representations and warranties set forth in Sections 2.2, 2.3, 2.9, 2.13, 2.23, 2.28, 3.2, 3.3, 3.4 and, to the extent relating to Taxes, 2.22.

(b) Except for claims based on (i) fraud or knowing misrepresentation, (ii) a breach of the Tax Related Representations or Section 8.2, (iii) a breach of the Constitutive Representations and (iv) the I-B Obligations, the Escrow Fund shall be the exclusive means for the Buyer to collect any Damages for which it is entitled to indemnification under this Agreement. Notwithstanding the foregoing, except in the case of fraud or knowing misrepresentation, the Buyer shall not attempt, and shall not have a right, to collect any Damages directly from any Company Participating Equity Holder for a breach of the Constitutive Representations (which, for the avoidance of doubt, are the only matters for which the Buyer may seek recovery under this Agreement directly from the Company Participating Equity Holders except in the case of fraud or knowing misrepresentation) unless and until there are insufficient unclaimed Escrow Funds remaining to satisfy such Damages pursuant to the Escrow Agreement. In addition, for the avoidance of doubt, except in the case of fraud or knowing misrepresentation, the Buyer shall not have a right to recovery beyond the Escrow Fund (and, with respect to the I-B Obligations, also the Special Escrow Fund) directly against any Company Participating Equity Holder for a claim relating to a breach of the Tax Related Representations, Section 8.2 or the I-B Obligations (unless and only, in the case of a claim with respect to the I-B Obligations made under clause (ii) or (iv) above, such Company Participating Equity Holder is a successor to or assign of all or a material portion of the I-B Business), but shall have the rights specified in Section 7.5(c) and 7.5(d), respectively.

(c) With respect to claims relating to a breach of the Tax Related Representations and Section 8.2, on the basis and subject to the limitations set forth in this Article VII, the Escrow Agreement shall be the non-exclusive means for the Buyer to collect any Damages for which it is entitled to indemnification under this Agreement. In addition, in connection with any claims relating to a breach of the Tax Related Representations or Section 8.2, Spinco shall indemnify the Buyer for any such Damages arising therefrom; provided, however, that the Buyer shall not be entitled to collect any Damages from Spinco for any claims relating to a breach of the Tax Related Representations or Section 8.2, unless there are insufficient unclaimed Escrow Funds remaining to satisfy such Damages pursuant to the Escrow Agreement. Notwithstanding any other provision of this Section 7.5(c) or Section 8.2, except for claims based on fraud or knowing misrepresentation of a Tax Related Representation, in no event shall the Buyer be entitled to receive Damages, whether from the Escrow Fund, any Company Participating Equity Holder or Spinco, with respect to claims relating to a breach of the Tax Related Representations or Section 8.2 that exceed an amount equal to the excess of (i) the aggregate Merger Consideration and Earn-out Consideration, if any, that the Company Participating Equity Holders are entitled to receive under this Agreement minus (ii) the amount, if any, recovered by the Buyer from the Escrow Fund for any other claims under this Agreement other than claims with respect to fraud, knowing misrepresentation or the I-B Obligations.

(d) With respect to claims relating to the I-B Obligations, on the basis and subject to the limitations set forth in this Article VII, the Escrow Agreement shall be the non-exclusive means for the Buyer to collect any Damages for which it is entitled to indemnification under this Agreement. In addition, with respect to claims relating to the I-B Obligations, Spinco shall be liable to the Buyer for any such Damages arising therefrom; provided, however, the Buyer shall not be entitled to assert any claims relating to the I-B Obligations against Spinco prior to the depletion or release of the Special Escrow Fund.

(e) Notwithstanding anything to the contrary herein, except for claims based on fraud or knowing misrepresentation, the aggregate liability of each Company Participating Equity Holder for Damages under this Agreement shall not exceed the lesser of (i) 100% of the aggregate Merger Consideration and Earn-out Consideration, if any, such Company Participating Equity Holder is entitled to receive pursuant to this Agreement and (ii) 100% of such Company Participating Equity Holder's pro rata share (based upon the ratio that the aggregate Merger Consideration and Earn-out Consideration, if any, payable to such Company Participating Equity Holder bears to the aggregate Merger Consideration and Earn-out Consideration, if any) of such Damages.

(f) No Company Participating Equity Holder shall have any right of contribution against the Company, I-B, A-C or the Surviving Corporation with respect to any breach by the Company, I-B or A-C of any of its representations, warranties, covenants or agreements.

(g) Except with respect to claims based on fraud or knowing misrepresentation, claims arising under Section 8.2 and claims asserted pursuant to the Distribution Agreement, from and after the Effective Time, the rights of the Buyer under this Article VII shall be the sole and exclusive remedy of the Buyer with respect to claims resulting from or relating to any misrepresentation, breach of warranty or failure to perform any covenant or agreement of the Company, I-B or A-C contained in this Agreement.

(h) In the event the Buyer is entitled to recover the same Damages under more than one provision of this Agreement, the Buyer shall only be permitted to recover such Damages one time, and without duplication.

(i) The amount of any Damages payable under this Article VII shall be net of amounts actually recovered by the Company, the Surviving Corporation, the Buyer or any Affiliate thereof under applicable insurance policies. If the Company, the Surviving Corporation, the Buyer or any Affiliate thereof receives any amounts under applicable insurance policies subsequent to an indemnification payment by the Company Participating Equity Holders or Spinco, as the case may be, and provided the Buyer has collected all sums due from the Company Participating Equity Holders or Spinco, as the case may be, then the amount of Damages to be recovered by the Buyer shall be recalculated, taking into account the limitations of this Section 7.5, as if such insurance proceeds had been made prior to the collection of any Damages under this Agreement and any excess Damages previously collected after such recalculation shall be repaid to the Escrow Fund or the Special Escrow

Fund, as the case may be, or after the release of the Escrow Fund or the Special Escrow Fund, as the case may be, such amount shall be paid to Spinco or the Paying Agent for distribution to the Company Participating Equity Holders, as applicable. Notwithstanding the foregoing or anything to the contrary set forth herein, in no event shall the Buyer be required to pursue any insurance coverage in order to seek indemnification under this Article VII.

(j) Notwithstanding anything herein to the contrary, the Buyer shall not have any right to indemnification under this Article VII, Section 8.1 or Section 8.2 for any Damages to the extent such Damages have been included in the determination of the Adjusted Merger Consideration pursuant to Section 1.10 of this Agreement.

ARTICLE VIII
TAX MATTERS

8.1 Preparation and Filing of Tax Returns; Payment of Taxes.

(a) The Company shall cause to be prepared and timely filed all Tax Returns of the Company and its Subsidiaries required to be filed (taking into account extensions) prior to the Closing Date; provided, however, that the Company shall provide the Buyer with copies of all such Tax Returns prior to their filing, and shall not file any such Tax Returns without the consent of the Buyer, which consent shall not be unreasonably withheld. The Company shall make or cause to be made all payments required with respect to any such Tax Returns.

(b) The Buyer shall prepare and timely file or shall cause to be prepared and timely filed all other Tax Returns and any Tax Returns which were required to be filed before the Closing Date but were not filed with respect to the Company and each Subsidiary (other than Spinco) or in respect of their businesses, assets or operations. The Buyer shall make all payments required with respect to any such Tax Returns as provided in, and subject to, Section 8.1(c).

(c) Any Tax Return to be prepared and filed by the Buyer for taxable periods beginning before the Closing Date shall be prepared on a basis consistent with the last previous similar Tax Return, if any. With respect to any such Tax Return, the Buyer shall deliver a copy of a draft Tax Return to the Representative no later than ten (10) days prior to the due date, shall provide the Representative with reasonable opportunity to comment, and shall not file the final Tax Return without the consent of the Representative, which shall not be unreasonably withheld or delayed. With respect to the federal and state income Tax Returns of the Company and each Subsidiary (other than Spinco) for the short taxable year ending at the Effective Time, (i) Buyer shall file such Tax Returns on the due date for such Tax Returns, without extension, or as promptly thereafter as is reasonably possible, (ii) such Tax Returns shall report the distribution of the Spinco Stock pursuant to the Redemption as a redemption by the Company of Company Shares treated as an exchange under Section 302(a) of the Code, and no Party shall take an inconsistent position therewith on any Tax Return or in connection with any Tax Proceeding, (iii) such Tax Returns shall report the Distribution Transaction (including the Dividend), the conversion of Spinco to a Delaware corporation, the Recapitalization and the Redemption in accordance with Schedule 8.1(c), and (iv) upon filing of such Tax Returns, (A) the Buyer shall pay all Taxes shown to be due on such Tax Returns subject to the provisions of this Agreement allowing the Buyer to recover amounts in excess of the Tax Estimate, and (B) if the Tax Estimate exceeds the difference between the actual U.S. federal and state income Taxes as referenced on such Tax Returns and the amount of U.S. federal and state income Taxes that would be owing had the Spin-Off Transaction not occurred, then the Buyer shall deliver to the Paying Agent, for distribution to the Company Participating Equity Holders, the amount of such excess. The Paying Agent shall pay to each Company Participating Equity Holder that portion of such excess equal to (x) the amount of such excess divided by the Company Participating Equity Equivalents multiplied by (y) the number of Company Participating Equity Equivalents owned by such Company Participating Equity Holder immediately prior to the Effective Time. Notwithstanding the payment by Buyer of Taxes shown to be due on any such Tax Returns, the Company Participating Equity Holders, on the basis and subject to the limitations and procedures set forth in Section 1.10 and Article VII, shall reimburse the Buyer for the aggregate Taxes due and payable pursuant to the Tax Returns of the Company or any Subsidiary (other than Spinco) for any period ending (or deemed pursuant to Section 8.3(b) to end) on or before the Closing Date, other than Taxes recoverable from the Special Escrow Fund, but only to the extent

such Taxes exceed the sum of (xi) the Tax Estimate (reduced by any amounts paid by Buyer pursuant to Section 8.1(c)(iv)(B)), (xii) the amount of credits for estimated taxes arising from payments made by the Company or any Subsidiary (other than Spinco) prior to the Closing Date, (xiii) and the amount of the accruals for Taxes (excluding accruals and reserves for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the Closing Balance Sheet. If the Initial Option Consideration and the Option Tax Amount are not deducted in full on the Tax Returns for the taxable period that ends (or is deemed pursuant to Section 8.3(b) to end) on or before the Closing Date, then when, as and if the Buyer (or any Affiliate thereof, including A-C) actually realizes a Tax benefit (including a reduction in Taxes, refund, credit against Tax or otherwise) from the deduction of the Initial Option Consideration and the Option Tax Amount, the Buyer shall pay any amounts so realized to the Paying Agent. The Paying Agent shall pay to each Company Participating Equity Holder that portion of such realized Tax benefit equal to (i) the amount of such realized Tax benefit divided by the Company Participating Equity Equivalents multiplied by (ii) the number of Company Participating Equity Equivalents owned by such Company Participating Equity Holder immediately prior to the Effective Time.

(d) If, following the Closing, the Company or any Subsidiary receives any refund of Taxes attributable to periods ending (or deemed pursuant to Section 8.3(b) to end) on or prior to the Closing Date (including without limitation any Tax refund attributable to the Spin-Off Transaction), the Buyer shall promptly deliver an amount equal to such Tax refund to the Paying Agent for distribution to the Company Participating Equity Holders. The Paying Agent shall pay to each Company Participating Equity Holder that portion of such Tax refund equal to (i) the amount of such Tax refund divided by the Company Participating Equity Equivalents multiplied by (ii) the number of Company Participating Equity Equivalents owned by such Company Participating Equity Holder immediately prior to the Effective Time.

8.2 Tax Indemnification by the Company Participating Equity Holders and Spinco.

(a) From and after the Effective Time and on the basis and subject to the limitations and procedures set forth in Article VII, Spinco and, solely to the extent of the Escrow Fund and the Special Escrow Fund and to the extent as specified in Article VII, the Company Participating Equity Holders shall indemnify the Buyer, the Company, the Surviving Corporation and the Subsidiaries (other than Spinco) in respect of, and hold the Buyer, the Company, the Surviving Corporation and the Subsidiaries (other than Spinco) harmless from and against, without duplication of any obligation covered by Article VII, the following Taxes with respect to the Surviving Corporation, the Company and the Subsidiaries (other than Spinco with respect to any period after the Closing):

(i) Without duplication, any and all Taxes due and payable by the Surviving Corporation, the Company or any Subsidiary for any taxable period that ends (or is deemed pursuant to Section 8.3(b) to end) on or before the Closing Date, in excess of the sum of (A) the Tax Estimate (reduced by any amounts paid by the Buyer pursuant to Section 8.1(c)(iv)(B)), (B) the amount of credits for estimated taxes arising from payments made by the Company or any Subsidiary (other than Spinco) prior to the Closing Date and (C) any accruals for current Taxes (excluding accruals and reserves for deferred Taxes established to reflect timing differences between book and Tax income) on the Closing Balance Sheet; provided, that neither Spinco nor the Company Participating Equity Holders shall have any liability for, and no claim shall be made against the Escrow Fund or the Special Escrow Fund for, any Taxes attributable to any election made by the Buyer, or the Company or any Subsidiary (other than Spinco), after the Effective Time, including without limitation any election under Section 338(g) of the Code, except as to any election required to be made under applicable law or regulation;

(ii) Any liability of such entities for Taxes of other entities (other than the Company or any Subsidiary) whether pursuant to Treasury Regulation Section 1.1502-6 (or comparable or similar provision under state, local or foreign law), as transferee or successor or pursuant to any contractual obligation for any taxable period that ends (or is deemed pursuant to Section 8.3(b) to end) on or before the Closing Date; and

(iii) Any sales, use, transfer, stamp, conveyance, value added, recording, registration, documentary, filing or other similar Taxes and fees, whether levied on the Buyer, the Company Participating Equity Holders, the Company, any Subsidiary or any of their respective Affiliates, resulting from the Merger or otherwise on account of this Agreement or the transactions contemplated hereby.

8.3 Allocation of Certain Taxes.

(a) If the Surviving Corporation or the Company is permitted, but not required, under applicable foreign, state or local Tax laws to treat the Closing Date as the last day of a taxable period, such day shall be treated as the last day of a taxable period.

(b) The portion of any Taxes for a taxable period beginning before and ending after the Closing allocable to the portion of such period ending on the Closing Date shall be deemed to equal (i) in the case of Taxes that (x) are based upon or related to income or receipts or (y) imposed in connection with any sale or other transfer or assignment of property, other than Taxes described in Section 8.2(a)(iii), the amount which would be payable if the taxable year ended with the Closing Date, and (ii) in the case of other Taxes imposed on a periodic basis (including property Taxes), the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of calendar days in the period ending with the Closing Date and the denominator of which is the number of calendar days in the entire period. For purposes of the provisions of Section 8.2, each portion of such period shall be deemed to be a taxable period (whether or not it is in fact a taxable period). For purposes of computing the Taxes attributable to the two portions of a taxable period pursuant to this Section 8.3(b), the amount of any item that is taken into account only once for each taxable period (e.g., the benefit of graduated tax rates, exemption amounts, etc.) shall be allocated between the two portions of the period in proportion to the number of days in each portion.

8.4 Cooperation on Tax Matters.

(a) The Buyer and the Representative shall cooperate in (i) the preparation of all Tax Returns for any Tax periods and (ii) the conduct of any Tax Proceeding for which one party could reasonably require the assistance of the other party in obtaining any necessary information. Such cooperation shall include, but not be limited to, furnishing prior years' Tax Returns or return preparation packages illustrating previous reporting practices or containing historical information relevant to the preparation of such Tax Returns, furnishing such other information within such party's possession requested by the other party as is relevant to the preparation of the Tax Returns or the conduct of the Tax Proceeding, and, in the case of the preparation of any Tax Return for the Company and any Affiliate for any period ending on or before the Closing Date, shall include, but not be limited to, Spinco's causing Joseph Bossone to provide to the Buyer within 30 days after the Closing Date all information necessary to prepare each such Tax Return, including the particular items of information identified in Schedule 8.4. Such cooperation and information also shall include without limitation promptly forwarding copies of appropriate notices and forms or other communications received from or sent to any Governmental Entity which relate to the Surviving Corporation, the Company or any Subsidiary (other than Spinco with respect to any period after the Closing), and providing copies of all relevant Tax Returns, together with accompanying schedules and related work papers, documents relating to rulings or other determinations by any Governmental Entity and records concerning the ownership and tax basis of property, which the requested party may possess.

(b) The Buyer shall control any Tax Proceeding with respect to the Surviving Corporation, the Company or any Subsidiary (other than Spinco with respect to any period after the Closing); provided that, with respect to any item the adjustment of which would cause any Company Participating Equity Holder to become obligated to make any payment pursuant to Section 8.2 hereof, the Buyer shall consult with the Representative and not settle any such issue without the consent of the Representative, which consent shall not be unreasonably withheld, conditioned or delayed.

8.5 Termination of Tax-Sharing Agreements. All Tax sharing agreements or similar arrangements with respect to or involving the Company or any Subsidiary (other than Spinco), other than such agreements described in Section 2.9(a) of the Disclosure Schedule, shall be terminated prior to the Closing Date. Neither the Company nor any Subsidiary (other than Spinco) shall be bound thereby or have any liability under the agreement so terminated for amounts due in respect of periods ending on or before the Closing Date.

8.6 Scope of Article VIII. Any claim by the Buyer under this Article VIII shall be pursued in accordance with the procedures for indemnification claims, and shall otherwise be subject to the terms and

conditions, set forth in Article VII. Notwithstanding the foregoing or any other term or condition of Article VII, (i) claims under this Article VIII may be made by the Buyer any time prior to the 30th day after the expiration of the statute of limitations applicable to the Tax matter to which the claim relates and (ii) to the extent there is any inconsistency between the terms of Article VII and this Article VIII with respect to the allocation of responsibility between the Company Participating Equity Holders and Spinco, on the one hand, and the Buyer, on the other hand, for Taxes, the provisions of this Article VIII shall govern.

8.7 Tax Treatment of Indemnity Payments. The Parties agree to treat any indemnity payment made pursuant to Article VII, Section 8.1 or Section 8.2 as an adjustment to the Adjusted Merger Consideration for federal, state, local and foreign income tax purposes.

ARTICLE IX
TERMINATION

9.1 Termination of Agreement. The Parties may terminate this Agreement prior to the Closing (whether before or after Requisite Stockholder Approval), as provided below:

(a) the Parties may terminate this Agreement by mutual written consent;

(b) the Buyer may terminate this Agreement by giving written notice to the Company in the event the Company, Spinco, I-B or A-C is in breach of any representation, warranty or covenant contained in this Agreement, and such breach, individually or in combination with any other such breach, (i) would cause the conditions set forth in clauses (c), (d), (e) or (g) of Section 6.1 not to be satisfied and (ii) is not cured within 30 days following delivery by the Buyer to the Company of written notice of such breach;

(c) the Company may terminate this Agreement by giving written notice to the Buyer in the event the Buyer or the Transitory Subsidiary is in breach of any representation, warranty or covenant contained in this Agreement, and such breach, individually or in combination with any other such breach, (i) would cause the conditions set forth in clauses (a) or (b) of Section 6.2 not to be satisfied and (ii) is not cured within 30 days following delivery by the Company to the Buyer of written notice of such breach;

(d) the Buyer may terminate this Agreement by giving written notice to the other Parties at any time after the stockholders of the Company have voted on whether to approve this Agreement and the Merger in the event this Agreement and the Merger failed to receive the Requisite Stockholder Approval;

(e) the Buyer may terminate this Agreement by giving written notice to the Company if the Closing shall not have occurred on or before December 31, 2008, by reason of the failure of any condition precedent under Section 6.1 (unless the failure results primarily from a breach by the Buyer or the Transitory Subsidiary of any representation, warranty or covenant contained in this Agreement); or

(f) the Company may terminate this Agreement by giving written notice to the Buyer and the Transitory Subsidiary if the Closing shall not have occurred on or before December 31, 2008, by reason of the failure of any condition precedent under Section 6.2 (unless the failure results primarily from a breach by the Company, I-B, A-C or Spinco of any representation, warranty or covenant contained in this Agreement).

9.2 Effect of Termination. If any Party terminates this Agreement pursuant to Section 9.1, all obligations of the Parties hereunder shall terminate without any liability of any Party to any other Party (except for any liability of any Party for willful or knowing breaches of this Agreement).

ARTICLE X
DEFINITIONS

For purposes of this Agreement, each of the following terms shall have the meaning set forth below.

"7.1(c) Amount" shall have the meaning set forth in Section 7.3(h).

"AAA" shall mean the American Arbitration Association.

"A-C" shall have the meaning set forth in the first paragraph of this Agreement.

"A-C Options" shall mean the Options held by the Company Employees.

"Additional Threshold Payment" shall have the meaning set forth in Section 1.6(a).

"Adjusted Merger Consideration" shall have the meaning set forth in Section 1.10(f).

"Affiliate" shall mean any affiliate, as defined in Rule 12b-2 under the Exchange Act.

"Aggregate Liquidation Preference" shall mean the portion of the Merger Consideration payable to the holders of (a) Series A-1 Non-Redeemable Shares, (b) Series B-1 Non-Redeemable Shares, (c) Series C-1 Non-Redeemable Shares and (d) Series D-1 Non-Redeemable Shares in accordance with the provisions of Section 1.5 of this Agreement.

"Agreed Amount" shall mean part, but not all, of the Claimed Amount.

"Agreement" shall have the meaning set forth in the first paragraph hereto.

"Applicable Specified Consideration" shall have the meaning set forth in Section 1.7(a).

"Arbitrator" shall have the meaning set forth in Section 7.3(e).

"Assumed Liabilities" shall mean all of the liabilities of I-B which are assumed by Spinco pursuant to the Distribution Agreement.

"Buyer" shall have the meaning set forth in the first paragraph of this Agreement.

"Buyer Certificate" shall mean a certificate delivered by the Buyer (without qualification as to knowledge, materiality or otherwise), signed on behalf of the Buyer by an authorized officer of the Buyer, to the effect that each of the conditions specified in clauses (a) and (b) of Section 6.2 is satisfied in all respects.

"Buyer Common Shares" shall mean the common stock, par value $0.01 per share, of the Buyer.

"Buyer Stock Price" shall mean the average of the closing price per share of the Buyer Common Shares on the NASDAQ Global Select Market for the ten trading days ending one business day prior to the Closing Date.

"CERCLA" shall mean the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

"Certificate of Merger" shall mean the certificate of merger or other appropriate documents prepared and executed in accordance with Section 251(c) of the Delaware General Corporation Law in connection with the Merger.

"Change of Control Transaction" shall mean a transaction or series of related transactions as a result of which (a) the Company Stockholders (or any of their Affiliates) immediately prior to the Effective Time cease to own at least fifty percent (50%) of the outstanding capital stock of or other equity interests in Spinco or (b) Spinco sells all or substantially all of the assets of Spinco to any person or entity that is not an Affiliate of Spinco at the Effective Time.

"Claim Notice" shall mean written notification which contains (a) a description of the Damages incurred or reasonably expected to be incurred by the Buyer and the Claimed Amount of such Damages, to the extent then known, (b) a statement that the Buyer is entitled to indemnification under Article VII for such Damages and a reasonable explanation of the basis therefor, and (c) a demand for payment in the amount of such Damages.

"Claimed Amount" shall mean the amount of any Damages incurred or reasonably expected to be incurred by the Buyer in connection with a claim for indemnification pursuant to Article VII.

"Closing" shall mean the closing of the Merger contemplated by this Agreement.

"Closing Balance Sheet" shall mean the balance sheet of the Company as of the Closing Date (after giving effect to the Spin-Off Transaction) prepared in accordance with the provisions of Section 1.10 hereof.

"Closing Date" shall mean the date two business days after (a) in the case of the Buyer and the Transitory Subsidiary, the satisfaction or waiver of all of the conditions to the obligations of the Buyer and the Transitory Subsidiary to consummate the Merger set forth in Section 6.1 (excluding the delivery at the Closing of any of the documents set forth in Section 6.1) and (b) in the case of the Company, I-B, A-C and Spinco, the satisfaction or waiver of all of the conditions to the obligations of the Company, I-B, A-C and Spinco to consummate the Merger set forth in Section 6.2 (excluding the delivery at the Closing of any of the documents set forth in Section 6.2), or such other date as may be mutually agreeable to the Parties.

"Closing Net Asset Value Adjustment" shall mean the amount of the difference between the Net Asset Value on the Closing Balance Sheet and the Preliminary Net Asset Value, as it may be adjusted pursuant to the resolution of any disputes resolved pursuant to Section 1.10(d). The Closing Net Asset Value Adjustment shall be expressed as a positive number if the Net Asset Value on the Closing Balance Sheet is greater than the Preliminary Net Asset Value and as a negative number if the Net Asset Value on the Closing Balance Sheet is less than the Preliminary Net Asset Value.

"Closing Net Asset Value Shortfall" shall have the meaning set forth in Section 1.10(f)(i).

"Closing Net Asset Value Surplus" shall have the meaning set forth in Section 1.10(f)(iii).

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Commercial Rules" shall mean the Commercial Arbitration Rules of the AAA.

"Common Non-redeemable Shares" shall mean the shares of Non-redeemable Common Stock, par value $0.01 per share, of the Company.

"Common Redeemable Shares" shall mean the Redeemable Class A Common Shares and the Redeemable Class B Common Shares.

"Common Shares" shall mean the shares of common stock, par value $0.01 per share, of the Company, including the Common Redeemable Shares and the Common Non-redeemable Shares.

"Company" shall have the meaning set forth in the first paragraph of this Agreement.

"Company Certificate" shall mean a certificate delivered by the Company (without qualification as to knowledge, materiality or otherwise), signed on behalf of the Company by the President and the Chief Financial Officer of the Company, to the effect that each of the conditions specified in clauses (a) through (h) of Section 6.1 is satisfied in all respects.

"Company Employees" shall have the meaning set forth in Section 5.17.

"Company Gross Margins" shall mean, with respect to any period, (a) the Company Revenue for such period less the costs of good sold for such period, divided by (b) the Company Revenue for such period, in each case determined in accordance with GAAP applied consistently with the Company's past practices (to the extent such past practices are consistent with GAAP), expressed as a percentage of Company Revenue for such period.

"Company Intellectual Property" shall mean the Company Owned Intellectual Property and the Company Licensed Intellectual Property.

"Company Licensed Intellectual Property" shall mean all Intellectual Property that is licensed to the Company or a Subsidiary by any third party.

"Company Material Adverse Effect" shall mean any material adverse change, event, circumstance or development with respect to, or material adverse effect on, (a) the business, assets, liabilities, condition (financial or other), or results of operations of the Company and its Subsidiaries (other than Spinco), take as a whole, other than any change, event, circumstance or development resulting from (i) changes in the United States economy in general, so long as such changes do not disproportionately affect the business of the Company and its Subsidiaries taken as a whole, (ii) changes in the industry in which the Company and its Subsidiaries (other than Spinco) operate, so long as such changes do not disproportionately affect the business of the Company and its Subsidiaries (other than Spinco) taken as a whole, (iii) the announcement or pendency of the Merger or (iv) the taking of any action expressly required by this Agreement (other than any action taken in accordance with the first sentence of Section 5.5), (b) the ability of the Buyer to operate the business of the Company and its Subsidiaries (other than Spinco) immediately after the Closing or (c) the ability of the officers of the Buyer, following the Closing, to certify without qualification to the Buyer's financial statements or filings made with the SEC as they relate to the business or operations previously conducted by the Company and its Subsidiaries. For the avoidance of doubt, the parties agree that the terms "material," "materially" and "materiality" as used in this Agreement with an initial lower case "m" shall have their respective customary and ordinary meanings, without regard to the meaning ascribed to Company Material Adverse Effect. The transfer of the Contributed Assets by I-B to Spinco and the assumption of the Assumed Liabilities by Spinco, each in accordance with the Distribution Agreement, the payment of the Dividend by I-B and the Redemption shall not, for purposes of this definition, constitute a Company Material Adverse Effect.

"Company Optionholder" shall mean the holders of vested Options immediately prior to the Effective Time.

"Company Owned Intellectual Property" shall mean all Intellectual Property owned or purported to be owned by the Company or a Subsidiary, in whole or in part.

"Company Participating Equity Equivalent" shall mean the sum of (a) the number of Common Shares and Participating Preferred Shares outstanding immediately prior to the Effective Time plus (b), the number of Company Shares that would be issuable with respect to vested Options outstanding immediately prior to the Effective Time.

"Company Participating Equity Holders" shall mean the Participating Company Stockholders and the Company Optionholders.

"Company Plan" shall mean any Employee Benefit Plan maintained, or contributed to, by the Company, any Subsidiary or any ERISA Affiliate.

"Company Registrations" shall mean Intellectual Property Registrations that are registered or filed in the name of the Company or any Subsidiary, alone or jointly with others.

"Company Revenue" shall mean revenue recognized by the Company and its Subsidiaries (other than I-B and Spinco) in accordance with GAAP applied consistently with the Company's past practices (to the extent such past practices are consistent with GAAP).

"Company Shares" shall mean the Common Shares and the Preferred Shares.

"Company Source Code" shall mean the source code for any Software included in the Customer Offerings or Internal Systems or other confidential information constituting, embodied in or pertaining to such Software.

"Company Stock Plan" shall mean any stock option plan or other stock or equity-related plan of the Company.

"Company Stockholders" shall mean the stockholders of record of the Company immediately prior to the Effective Time.

"Company Third Party Expenses" shall mean all fees and expenses incurred by the Company or any Subsidiary in connection with the Merger, the Spin-Off Transaction and the other transactions contemplated by this Agreement, including all legal, accounting, investment banking, financial advisory, consulting and all other fees and expenses of third parties incurred in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the consummation of the transactions contemplated hereby and items referenced as Transaction Expenses in Note 1 of the Most Recent Balance Sheet.

"Contributed Assets" shall mean all of the assets transferred and conveyed by I-B to Spinco pursuant to the Distribution Agreement.

"Constitutive Representations" shall have the meaning set forth in Section 7.4(a) of this Agreement.

"Contract" shall have the meaning set forth in Section 2.15(a).

"Controlling Party" shall mean the party controlling the defense of any Third Party Action.

"Customer Offerings" shall mean (a) the products (including Software and Documentation) that the Company or any Subsidiary (i) currently develops, manufactures, markets, distributes, makes available, sells or licenses to third parties, or (ii) has developed, manufactured, marketed, distributed, made available, sold or licensed to third parties within the previous six years, or (iii) currently plans to develop, manufacture, market, distribute, make available, sell or license to third parties in the future and (b) the services that the Company or any Subsidiary (i) currently provides or makes available to third parties, or (ii) has provided or made available to third parties within the previous six years, or (iii) currently plans to provide or make available to third parties in the future. A true and complete list of all Customer Offerings is set forth in Section 2.13(c) of the Disclosure Schedule.

"Damages" shall mean any and all claims, debts, obligations and other liabilities (whether absolute, accrued, contingent, fixed or otherwise, or whether known or unknown, or due or to become due or otherwise), diminution in value, monetary damages, fines, fees, penalties, interest obligations, deficiencies, losses and expenses (including amounts paid in settlement, interest, court costs, costs of investigators, reasonable fees and expenses of attorneys, accountants, financial advisors and other experts, and other expenses of litigation, arbitration or other dispute resolution procedures), other than those costs and expenses of arbitration of a Dispute which are to be shared equally by the Buyer and the Company Participating Equity Holders or Spinco, as the case may be, as set forth in Sections 1.6(e), 1.10(e) and 7.3(e)(vi).

"Disclosure Schedule" shall mean the disclosure schedule provided by the Company to the Buyer on the date hereof.

"Disclosure Statement" shall mean a written proxy or information statement containing the information prescribed by Section 5.4(a).

"Dispute" shall mean the dispute resulting if the Notified Party in a Response disputes the liability of the Company Participating Equity Holders or Spinco, as applicable, for all or part of a Claimed Amount.

"Dispute Notice" shall have the meaning set forth in Section 1.10(d).

"Dissenting Shares" shall mean Company Shares held as of the Effective Time by a Company Stockholder who has neither voted such Company Shares in favor of the Merger nor consented thereto in writing pursuant to Section 228 of the Delaware General Corporation Law and with respect to which appraisal shall have been duly demanded and perfected in accordance with Section 262 of the Delaware General Corporation Law and not effectively withdrawn or forfeited prior to the Effective Time.

"Distribution Agreement" shall have the meaning set forth in Recital A.

"Distribution Documents" shall mean the Distribution Agreement, together with the documents and instruments attached as exhibits thereto to be executed and delivered thereunder.

"Distribution Transaction" shall have the meaning set forth in Recital A.

"Dividend" shall have the meaning set forth in Recital B.

"Documentation" shall mean printed, visual or electronic materials, reports, white papers, documentation, specifications, designs, flow charts, code listings, instructions, user manuals, frequently asked questions, release notes, recall notices, error logs, diagnostic reports, marketing materials, packaging, labeling, service manuals and other information describing the use, operation, installation, configuration, features, functionality, pricing, marketing or correction of a product, whether or not provided to end users.

"DOL" shall have the meaning set forth in Section 2.21(e).

"EAD" shall have the meaning set forth in Section 2.21(e).

"Earn-out Consideration" shall have the meaning set forth in Section 1.6(a).

"Earn-out Dispute Notice" shall have the meaning set forth in Section 1.6(d).

"Effective Time" shall mean the time at which the Surviving Corporation files the Certificate of Merger with the Secretary of State of the State of Delaware.

"EKS&H" means Erhardt Keefe Steiner & Hoffman PC.

"Employee Amount" shall mean the aggregate amount payable pursuant to any change in control bonus plan or severance, change of control, retention or similar arrangement of the Company or any of its Subsidiaries in connection with the Merger, the Spin-Off Transaction and the other transactions contemplated by this Agreement, including the amount of any Taxes incurred by the Buyer, the Company or any of their Subsidiaries in connection with the payment of such amounts. For the avoidance of doubt, the Employee Amount shall not include any amounts (a) paid in severance under any policy or plan of the Buyer as a result of the termination of any employee at the Buyer's direction or request, (b) attributable to the unvested A-C Options assumed by the Buyer pursuant to Section 1.9 or (c) constituting the portion of the Total Consideration paid in satisfaction of those Options that were accelerated by the transactions contemplated hereby and set forth in Section 2.2(c) of the Disclosure Schedule and identified as "change of control" options.

"Employee Benefit Plan" shall mean any "employee pension benefit plan" (as defined in Section 3(2) of ERISA), any "employee welfare benefit plan" (as defined in Section 3(1) of ERISA) and any other written or oral plan, agreement or arrangement involving direct or indirect compensation, including insurance coverage, severance benefits, disability benefits, deferred compensation, bonuses, stock options, stock purchase, phantom stock, stock appreciation or other forms of incentive compensation or post-retirement compensation, and all severance agreements, written or otherwise, for the benefit of or relating to any current or former employee or independent contractor of the Company, any Subsidiary or any ERISA Affiliate.

"Environmental Law" shall mean any federal, state or local law, statute, rule, order, directive, judgment, Permit or regulation or the common law relating to the environment, occupational health and safety, or exposure of

persons or property to Materials of Environmental Concern, including any statute, regulation, administrative decision or order pertaining to: (a) the presence of or the treatment, storage, disposal, generation, transportation, handling, distribution, manufacture, processing, use, import, export, labeling, recycling, registration, investigation or remediation of Materials of Environmental Concern or documentation related to the foregoing; (b) air, water and noise pollution; (c) groundwater and soil contamination; (d) the release, threatened release, or accidental release into the environment, the workplace or other areas of Materials of Environmental Concern, including emissions, discharges, injections, spills, escapes or dumping of Materials of Environmental Concern; (e) transfer of interests in or control of real property which may be contaminated; (f) community or worker right-to-know disclosures with respect to Materials of Environmental Concern; (g) the protection of wild life, marine life and wetlands, and endangered and threatened species; (h) storage tanks, vessels, containers, abandoned or discarded barrels and other closed receptacles; and (i) health and safety of employees and other persons. As used above, the term "release" shall have the meaning set forth in CERCLA.

"Equity Holders" shall mean the Company Stockholders, the Company Optionholders and the holders of any unvested A-C Options outstanding immediately prior to the Effective Time.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" shall mean any entity which is, or at any applicable time was, a member of (a) a controlled group of corporations (as defined in Section 414(b) of the Code), (b) a group of trades or businesses under common control (as defined in Section 414(c) of the Code), or (c) an affiliated service group (as defined under Section 414(m) of the Code or the regulations under Section 414(o) of the Code), any of which includes or included the Company or a Subsidiary.

"Escrow Agent" shall mean U.S. Bank National Association.

"Escrow Agreement" shall mean the Escrow Agreement in the form attached hereto as Exhibit E by and among the Buyer, the Representative and the Escrow Agent.

"Escrow Fund" shall mean the Initial Escrow Fund plus any additional amounts deposited in escrow pursuant to Section 1.6(f) and Section 1.10(f)(iii).

"Escrow Period" shall mean the period during which Escrow Fund is to be held in escrow, as set forth in the Escrow Agreement.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Expected Claim Notice" shall mean a notice that, as a result of a legal proceeding instituted by or written claim made by a third party, the Buyer reasonably expects to incur Damages for which it is entitled to indemnification under Article VII.

"Exploit" shall mean develop, design, test, modify, make, use, sell, have made, used and sold, import, reproduce, market, distribute, commercialize, support, maintain, correct and create derivative works of.

"Financial Statements" shall mean:

(a) the consolidated audited balance sheets and statements of income, changes in stockholders' deficit and cash flows of I-B and A-C as of the end of and for each of the fiscal years ended December 31, 2006 and 2007, as certified without qualification by EKS&H, the Company's independent public accountants;

(b) the consolidated unaudited balance sheet of the Company and its Subsidiaries as of August 31, 2008, and the related consolidated unaudited statements of operations, changes in stockholders' equity (deficit) and cash flows for the eight month period ended August 31, 2008, which has been reviewed by EKS&H; and

(c) the unaudited balance sheet of A-C as of August 31, 2008, and the related unaudited statements of operations, changes in stockholders' deficit and cash flows for the eight month period ended August 31, 2008.

"GAAP" shall mean United States generally accepted accounting principles.

"Governmental Entity" shall mean any domestic or foreign court, arbitrational tribunal, administrative agency or commission or other domestic or foreign governmental or regulatory authority or agency.

"Grant Date" shall have the meaning set forth in Section 2.2(e) of this Agreement.

"Gross Margins Target" shall mean 60.3%.

"HRO" shall have the meaning set forth in Section 11.13.

"I-B" shall have the meaning set forth in the first paragraph of this Agreement.

"I-B Business" shall mean the business operations conducted using, in whole or in part, the Contributed Assets.

"I-B Obligation" shall mean (a) all Tax and other liabilities of the Company or its Subsidiaries arising out of or related to the Spin-Off Transaction (provided, that with respect to federal and state income Taxes attributable to the Spin-Off Transaction, such Taxes shall represent an I-B Obligation to the extent, and only to the extent, (i) the aggregate amount of such Taxes exceed (ii) the amount of the Tax Estimate, reduced by any amounts paid by the Buyer pursuant to Section 8.1(c)(iv)(B)), (b) all liabilities or obligations arising out of or relating to I-B or the conduct of the I-B Business and (c) all claims of any nature relating to any of the foregoing. For the avoidance of doubt, the term "I-B Obligation" shall not include (i) the "Retained Liabilities" (as defined in the Distribution Agreement) or (ii) any Taxes arising from or attributable to any election made by the Buyer, or by the Company or any Subsidiary (other than Spinco), after the Effective Time, including without limitation any election under Section 338(g) of the Code, except as to any election required to be made under applicable law or regulation.

"I-B Options" shall mean all Options that are not A-C Options.

"Initial Escrow Fund" shall mean the $11,500,000 deposited in escrow pursuant to Section 1.3(h), Section 1.7(b) and Section 1.11(a) and held and disposed of in accordance with the terms of the Escrow Agreement.

"Initial Merger Consideration" shall mean, with respect to each Common Share and Participating Preferred Share, the Per Share Participating Initial Consideration, and with respect to each Preferred Share (other than a Participating Preferred Share), the Applicable Specified Consideration.

"Initial Option Consideration" shall mean, with respect to each applicable vested Option outstanding immediately prior to the Effective Time, the Per Share Participating Initial Consideration minus the exercise price of such Option.

"Initial Performance Payment" shall have the meaning set forth in Section 1.6(a).

"Initial Special Escrow Fund" shall mean the $1,285,317 deposited in escrow pursuant to Sections 1.3(h), Section 1.7(b) and Section 1.11(b) and held and disposed of in accordance with the terms of the Escrow Agreement.

"Intellectual Property" shall mean the following subsisting throughout the world:

(a) Patent Rights;

(b) Trademarks and all goodwill in the Trademarks

(c) copyrights, designs, data and database rights and registrations and applications for registration thereof, including moral rights of authors;

(d) mask works and registrations and applications for registration thereof and any other rights in semiconductor topologies under the laws of any jurisdiction;

(e) inventions, invention disclosures, statutory invention registrations, trade secrets and confidential business information, know-how, manufacturing and product processes and techniques, research and development information, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, whether patentable or nonpatentable, whether copyrightable or noncopyrightable and whether or not reduced to practice; and

(f) other proprietary rights relating to any of the foregoing (including remedies against infringement thereof and rights of protection of interest therein under the laws of all jurisdictions).

"Intellectual Property Registrations" shall mean Patent Rights, registered Trademarks, registered copyrights and designs, mask work registrations and applications for each of the foregoing.

"Internal Systems" shall mean the Software and Documentation and the computer, communications and network systems (both desktop and enterprise-wide), laboratory equipment, reagents, materials and test, calibration and measurement apparatus used by the Company or any Subsidiary in their business or operations or to develop, manufacture, fabricate, assemble, provide, distribute, support, maintain or test the Customer Offerings, whether located on the premises of the Company or a Subsidiary or hosted at a third party site. All Internal Systems that are material to the business of the Company or its Subsidiaries is listed and described in Section 2.13(c) of the Disclosure Schedule.

"Knowledge of the Company", "Company's Knowledge" and phrases of like import shall mean the knowledge of Christopher Dice, President of the Company, Joseph Bossone, Treasurer and Secretary of the Company, Tom Sperry, President of A-C, David Hinton, the Vice President and Chief Operating Officer of A-C, Peter Kools, the Chief Technology Officer of A-C, and Matthew Karasick, the Vice President of Strategy and Operations of A-C. The above named individuals will be deemed to have knowledge of a particular fact, circumstance, event or other matter if (a) such individual has actual knowledge of such fact, circumstance, event or other matter or (b) such fact, circumstance, event or other matter would be known to such individual had he or she made reasonable inquiry.

"Lease" shall mean any lease or sublease pursuant to which the Company or any Subsidiary (other than Spinco) leases or subleases from another party any real property.

"Legal Proceeding" shall mean any action, suit, proceeding, claim, complaint, hearing, arbitration or investigation before any Governmental Entity or before any arbitrator.

"Litigation Matter" shall mean any Legal Proceedings in which the Company or any Subsidiary is a party at the Closing Date.

"Materials of Environmental Concern" shall mean any: pollutants, contaminants or hazardous substances (as such terms are defined under CERCLA), pesticides (as such term is defined under the Federal Insecticide, Fungicide and Rodenticide Act), solid wastes and hazardous wastes (as such terms are defined under the Resource Conservation and Recovery Act), chemicals, other hazardous, radioactive or toxic materials, oil, petroleum and petroleum products (and fractions thereof), or any other material (or article containing such material) listed or subject to regulation under any law, statute, rule, regulation, order, Permit, or directive due to its potential, directly or indirectly, to harm the environment or the health of humans or other living beings.

"Merger" shall mean the merger of the Transitory Subsidiary with and into the Company in accordance with the terms of this Agreement.

"Merger Consideration" shall mean the aggregate payments which the Company Stockholders are entitled to receive pursuant to Section 1.5 of this Agreement and the Company Optionholders are entitled receive pursuant to Section 1.9 of this Agreement, as such amounts may be adjusted pursuant to Section 1.10.

"Most Recent Balance Sheet" shall mean the unaudited balance sheet of the Company as of the Most Recent Balance Sheet Date.

"Most Recent Balance Sheet Date" shall mean August 31, 2008.

"Net Asset Value" shall mean the total assets (other than goodwill and deferred tax assets) of the Company and the Subsidiaries (other than Spinco) less the total liabilities of the Company and the Subsidiaries (other than Spinco) as shown on the Preliminary Closing Balance Sheet or the Closing Balance Sheet, as the case may be; provided, however, for the purposes of determining the Net Asset Value, the Spin-Off Transaction shall be deemed to have been completed immediately prior to the date of the Preliminary Closing Balance Sheet or the Closing Balance Sheet, as the case may be.

"Net Total Consideration" shall mean (a) the Total Consideration minus (b) the sum of (i) the Representative Expense Amount, (ii) the Initial Escrow Fund and (iii) the Initial Special Escrow Fund.

"Neutral Accountant" shall have the meaning set forth in Section 1.6(d).

"Non-controlling Party" shall mean the party not controlling the defense of any Third Party Action.

"Notified Party" shall mean, either (i) the Representative, in the event that the Buyer asserts a claim for indemnification pursuant to Section 7.1, or (ii) Spinco, in the event that the Buyer asserts a claim for indemnification pursuant to Section 7.2.

"Open Source Materials" shall mean all Software, Documentation or other material that is distributed as "free software", "open source software" or under a similar licensing or distribution model, including, but not limited to, the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), or any other license described by the Open Source Initiative as set forth on www.opensource.org.

"Option" shall mean each option to purchase or acquire Company Shares.

"Option Consideration" shall mean, with respect to each vested Option outstanding immediately prior to the Effective Time, the sum of (a) (i) the Per Share Participating Initial Consideration minus (ii) the exercise price of such Option; and, if the amount in clause (a) is positive, (b) the Per Share Participating Earn-Out Consideration; (c) the Per Share Positive Closing Net Surplus, if any; (d) the Per Share Escrow Fund Interest; when and if payable; (e) the Per Share Special Escrow Fund Interest, when and if payable, in each case, without any interest thereon; and (f) the Per Share Representative Expense Amount Surplus, if any.

"Option Plan" shall mean the Company's Amended and Restated 1999 Stock Compensation Plan.

"Option Proceeds Credit" shall mean the aggregate exercise price of the vested Options outstanding immediately prior to the Effective Time.

"Option Tax Amount" shall mean all Taxes incurred by the Buyer, the Company or any of their Subsidiaries in connection with the payment of the Initial Option Consideration to the Company Optionholders.

"Ordinary Course of Business" shall mean the ordinary course of business consistent with past custom and practice (including with respect to frequency and amount).

"Participating Company Stockholders" shall mean the holders of Common Shares and Participating Preferred Shares outstanding immediately prior to the Effective Time.

"Participating Initial Consideration" shall mean (a) the Net Total Consideration plus (b) the Option Proceeds Credit minus (c) the Aggregate Liquidation Preference.

"Participating Preferred Shares" shall mean the Series A-2 Redeemable Participating Shares, Series B-2 Redeemable Participating Shares, Series C-2 Redeemable Participating Shares, and Series D-2 Redeemable Participating Shares.

"Party" and "Parties" shall have the meaning set forth in the first paragraph of this Agreement.

"Patent Rights" shall mean all patents, patent applications, utility models, design registrations and certificates of invention and other governmental grants for the protection of inventions or industrial designs (including all related continuations, continuations-in-part, divisionals, reissues and reexaminations).

"Paying Agent" shall mean U.S. Bank National Association.

"Per Share Escrow Fund Interest" shall mean the dollar amount determined by dividing (a) (i) the amount of the Escrow Fund, when and to the extent released to Company Participating Equity Holders pursuant to the terms of the Escrow Agreement, less (ii) any Taxes incurred by the Buyer, the Company, or any of their Subsidiaries as a result of the payment of such amounts to the Company Optionholders by (b) the Company Participating Equity Equivalents.

"Per Share Participating Earn-Out Consideration" shall mean the dollar amount determined by dividing (a) (i) 86.2% of the finally determined Earn-Out Consideration less (ii) any Taxes incurred by the Buyer, the Company, or any of their Subsidiaries as a result of the payment of such amounts to the Company Optionholders by (b) the Company Participating Equity Equivalents.

"Per Share Participating Initial Consideration" shall mean the dollar amount determined by dividing (a) the Participating Initial Consideration by (b) the Total Equity.

"Per Share Positive Closing Net Surplus" shall mean the dollar amount determined by dividing (a) (i) 87.5% of the Closing Net Asset Value Surplus less (ii) any Taxes incurred by the Buyer, the Company, or any of their Subsidiaries as a result of the payment of such amounts to the Company Optionholders by (b) the Company Participating Equity Equivalents.

"Per Share Special Escrow Amount" shall mean the dollar amount determined by dividing (a) the Initial Special Escrow Fund by (b) the Company Participating Equity Equivalents.

"Per Share Special Escrow Fund Interest" shall mean the dollar amount determined by dividing (a) (i) the amounts of the Special Escrow Fund, when and to the extent released to Company Participating Equity Holders pursuant to the terms of the Escrow Agreement, less (ii) any Taxes incurred by the Buyer, the Company, or any of their Subsidiaries as a result of the payment of such amounts to the Company Optionholders by (b) the Company Participating Equity Equivalents.

"Per Share Representative Expense Amount Surplus" shall mean the dollar amount determined by dividing (a) (i) the Representative Expense Amount Surplus less (ii) any Taxes incurred by the Buyer, the Company, or any of their Subsidiaries as a result of the payment of such amounts to the Company Optionholders by (b) the Company Participating Equity Equivalents.

"Permits" shall mean all permits, licenses, registrations, certificates, orders, approvals, franchises, variances and similar rights issued by or obtained from any Governmental Entity (including those issued or required under Environmental Laws and those relating to the occupancy or use of owned or leased real property).

"Permitted Matters" shall have the meaning set forth in Section 7.4(a).

"Plan of Recapitalization" shall have the meaning set forth in Recital C.

"Pre-Closing Period" shall have the meaning set forth in Section 5.5.

"Preferred Shares" shall mean the shares of preferred stock, par value $0.01 per share, of the Company.

"Preliminary Closing Net Asset Value Shortfall" shall mean the amount, if any, by which the Target Amount exceeds the estimated Net Asset Value as reflected on the Preliminary Closing Balance Sheet.

"Preliminary Closing Net Asset Value Surplus" shall mean the amount, if any, by which the estimated Net Asset Value as reflected on the Preliminary Closing Balance Sheet exceeds the Target Amount.

"Preliminary Closing Balance Sheet" shall have the meaning set forth in Section 1.10(a).

"Preliminary Closing Balance Sheet Date" shall have the meaning set forth in Section 1.10(a).

"Preliminary Net Asset Value" shall have the meaning set forth in Section 1.10(a).

"Pro Rata Share" shall have the meaning set forth in Section 7.3(h).

"Reasonable Best Efforts" shall mean best efforts, to the extent commercially reasonable.

"Recapitalization" shall have the meaning set forth in Recital C.

"Redeemable Class A Common Shares" shall mean the shares of Redeemable Class A common stock, par value $0.01 per share, of the Company.

"Redeemable Class B Common Shares" shall mean the shares of Redeemable Class B common stock, par value $0.01 per share, of the Company.

"Redemption" shall have the meaning set forth in Recital D.

"Representative" shall mean Shareholder Representative Service, LLC, a Colorado limited liability company.

"Representative Expense Amount" shall mean $200,000.

"Representative Expense Amount Surplus" shall have the meaning set forth in Section 1.12(b).

"Requisite Stockholder Approval" shall mean the adoption of this Agreement and the approval of the Merger, whether at a meeting duly called and held by the Company Stockholders or by written consent of the stockholders, by the holders of (a) a majority of the Company Shares (on an as converted to Common Share basis), (b) a majority of each of the Series A Shares, Series B Shares, Series C Shares and Series D Shares and (c) two-thirds of the outstanding Series D Shares, in each case to the extent such shares are entitled to vote on the adoption of this Agreement and the approval of the Merger.

"Response" shall mean a written response containing the information provided for in Section 7.3(c).

"Revenue Target" shall mean $9,000,000.

"SEC" shall mean the United States Securities and Exchange Commission.

"Section 7.1(c) Breaching Equity Holder" shall have the meaning set forth in Section 7.3(h).

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Security Interest" shall mean any mortgage, pledge, security interest, encumbrance, charge or other lien (whether arising by contract or by operation of law), other than (a) mechanic's, material men's and similar liens, (b) liens arising under worker's compensation, unemployment insurance, social security, retirement and similar legislation, and (c) liens on goods in transit incurred pursuant to documentary letters of credit, in each case arising in the Ordinary Course of Business of the Company and its Subsidiaries and not material to the Company and its Subsidiaries, taken as a whole.

"Seller Group" shall have the meaning set forth in Section 11.13.

"Series A Shares" shall mean the Series A Preferred Stock, par value $0.01 per share, of the Company.

"Series A-1 Non-Redeemable Shares" shall mean the Series A-1 Non-Voting, Non-Redeemable Preferred Liquidation Stock, par value $0.01 per share, of the Company.

"Series A-2 Redeemable Participating Shares" shall mean the Series A-2 Redeemable Participating Preferred Stock, par value $0.01 per share, of the Company.

"Series B Shares" shall mean the Series B Preferred Stock, par value $0.01 per share, of the Company.

"Series B-1 Non-Redeemable Shares" shall mean the Series B-1 Non-Voting, Non-Redeemable Preferred Liquidation Stock, par value $0.01 per share, of the Company.

"Series B-2 Redeemable Participating Shares" shall mean the Series B-2 Redeemable Participating Preferred Stock, par value $0.01 per share, of the Company.

"Series C Shares" shall mean the Series C Preferred Stock, par value $0.01 per share, of the Company.

"Series C-1 Non-Redeemable Shares" shall mean the Series C-1 Non-Voting, Non-Redeemable Preferred Liquidation Stock, par value $0.01 per share, of the Company.

"Series C-2 Redeemable Participating Shares" shall mean the Series C-2 Redeemable Participating Preferred Stock, par value $0.01 per share, of the Company.

"Series D Shares" shall mean the Series D Preferred Stock, par value $0.01 per share, of the Company.

"Series D Warrants" shall mean the warrants of the Company exerciseable for Series D Non-Redeemable Shares and Series D-2 Redeemable Participating Shares.

"Series D-1 Non-Redeemable Shares" shall mean the Series D-1 Non-Voting, Non-Redeemable Preferred Liquidation Stock, par value $0.01 per share, of the Company.

"Series D-2 Redeemable Participating Shares" shall mean the Series D-2 Redeemable Participating Preferred Stock, par value $0.01 per share, of the Company.

"Silicon Valley Bank Loan" shall mean (a) the Loan and Security Agreement by and among Silicon Valley Bank, I-B and A-C, dated December 11, 2007, as amended, modified and supplemented, (b) the Consent, dated as of July 9, 2008, delivered by I-B and A-C to Silicon Valley Bank, (c) the Unconditional Guaranty, dated as of July 9, 2008, of the Company in favor of Silicon Valley Bank, (d) the Security Agreement, dated as of July 9, 2008, between the Company and Silicon Valley Bank, and (e) all other documents and instruments related to the foregoing.

"Software" shall mean computer software code, applications, utilities, development tools, diagnostics, databases and embedded systems, whether in source code, interpreted code or object code form.

"Special Escrow Period" shall mean the period during which the Special Escrow Fund is to be held in escrow, as set forth in the Escrow Agreement.

"Special Escrow Fund" shall mean the Initial Special Escrow Fund plus any additional amounts deposited in escrow pursuant to Section 5.16.

"Spin-Off Transaction" shall have the meaning set forth in Recital D.

"Spinco" shall have the meaning set forth in the first paragraph of this Agreement.

"Spinco Contract" shall have the meaning set forth in Section 3.9(a) of this Agreement.

"Spinco Financial Statements" shall mean the pro forma unaudited opening balance sheet of I-B as of August 31, 2008, and the related pro forma unaudited statement of operations and cash flows for the eight month period ended August 31, 2008, prepared in accordance with GAAP.

"Spinco Material Adverse Effect" shall mean any material adverse change, event, circumstance or development with respect to, or material adverse effect on, the business, the Contributed Assets (in the condition delivered to Spinco in accordance with the Distribution Agreement), any other assets, the Assumed Liabilities (as such Assumed Liabilities were assumed Spinco in accordance with the Distribution Agreement), any other liabilities, or the capitalization, condition (financial or other), or results of operations of Spinco, other than any change, event, circumstance or development resulting from (a) changes in the United States economy in general, so long as such changes do not disproportionately affect the business of Spinco, (b) changes in the industry in which Spinco operates, so long as such changes do not disproportionately affect the business of Spinco, (c) the announcement or pendency of the Merger or (d) the taking of any action expressly required by this Agreement (other than any action taken in accordance with the first sentence of Section 5.5). For the avoidance of doubt, the Parties agree that the terms "material," "materially" and "materiality" as used in this Agreement with an initial lower case "m" shall have their respective customary and ordinary meanings, without regard to the meaning ascribed to Spinco Material Adverse Effect.

"Spinco Option" shall mean each option to purchase or acquire Spinco Common Shares or Spinco Preferred Shares.

"Spinco Stock" shall have the meaning set forth in Recital D.

"Subsidiary" shall mean any corporation, partnership, trust, limited liability company or other non-corporate business enterprise in which the Company (or another Subsidiary) holds stock or other ownership interests representing (a) more than 50% of the voting power of all outstanding stock or ownership interests of such entity or (b) the right to receive more than 50% of the net assets of such entity available for distribution to the holders of outstanding stock or ownership interests upon a liquidation or dissolution of such entity.

"Surviving Corporation" shall mean the Company, as the surviving corporation in the Merger.

"SVB Payoff Letter" shall have the meaning set forth Section 5.12.

"Target Amount" shall mean $5,175,250.

"Tax Estimate" shall mean $4,337,148**.**

"Tax Proceeding" shall mean any Tax audit, examination or administrative or judicial proceeding, including without limitation any assessment, notice of deficiency, or other adjustment or proposed adjustment relating to Taxes.

"Tax Related Representations" shall have the meaning set forth in Section 7.4(a).

"Tax Returns" shall mean any and all reports, returns, declarations, or statements relating to Taxes, including any schedule or attachment thereto and any related or supporting workpapers or information with respect to any of the foregoing, including any amendment thereof.

"Taxes" shall mean any and all taxes, charges, fees, duties, contributions, levies or other similar assessments or liabilities in the nature of a tax, including, without limitation, income, gross receipts, corporation, ad valorem, premium, value-added, net worth, capital stock, capital gains, documentary, recapture, alternative or add-on minimum, disability, estimated, registration, recording, excise, real property, personal property, sales, use, license, lease, service, service use, transfer, withholding, employment, unemployment, insurance, social security, national insurance, business license, business organization, environmental, workers compensation, payroll, profits, severance, stamp, occupation, windfall profits, customs duties, franchise and other taxes of any kind whatsoever imposed by the United States of America or any state, local or foreign government, or any agency or political subdivision thereof, and any interest, fines, penalties, assessments or additions to tax imposed with respect to such items or any contest or dispute thereof.

"Third Party Action" shall mean any suit or proceeding by a person or entity other than a Party for which indemnification may be sought by the Buyer under Article VII.

"Threshold Amount" shall have the meaning set forth Section 7.5(a).

"Total Company Shares" shall mean the number of Company Shares outstanding immediately prior to the Effective Time.

"Total Consideration" shall mean (a) the sum of (i) $92,000,000 and (ii) the Preliminary Closing Net Asset Value Surplus, if any, minus (b) the sum of (i) the Tax Estimate, (ii) the Employee Amounts, (iii) the amount of the Company Third Party Expenses set forth on the Preliminary Closing Balance Sheet and paid by the Buyer in accordance with the provisions of Section 1.3(g), (iv) all amounts required to pay in full the principal, interest, fees and other charges payable to satisfy and discharge in full the Silicon Valley Bank Loan in accordance with the SVB Payoff Letter and paid by the Buyer in accordance with the provisions of Section 1.3(h), (v) the Preliminary Closing Net Asset Value Shortfall, if any, and (vi) the Option Tax Amount paid by the Buyer in accordance with the provisions of Section 1.3(k).

"Total Equity" shall mean the sum of (a) the number of Common Shares and Participating Preferred Shares outstanding immediately prior to the Effective Time, plus (b) the number of Company Shares that would be issuable with respect to vested Options outstanding immediately prior to the Effective Time, plus (c) the number of Company Shares that would be issuable with respect to unvested A-C Options outstanding immediately prior to the Effective Time, which are assumed by the Buyer pursuant to Section 1.9.

"Total Pending Claims" shall have the meaning set forth in Section 1.6(h).

"Trademarks" shall mean all registered trademarks and service marks, logos, Internet domain names, corporate names and doing business designations and all registrations and applications for registration of the foregoing, common law trademarks and service marks and trade dress.

"Transition Services Agreement" shall mean the Transition Services Agreement in the form attached as Exhibit D to the Distribution Agreement.

"Transitory Subsidiary" shall have the meaning set forth in the first paragraph of this Agreement.

"Unsatisfied Claims" shall have the meaning set forth in Section 1.6(h).

"USCIS" shall have the meaning set forth in Section 2.21(e).

"Warrant" shall mean each warrant or other contractual right to purchase or acquire Company Shares, including the Series D Warrants.

"Work Permit" shall have the meaning set forth in Section 2.21(e).

"Voting Agreement" shall have the meaning set forth in Section 5.4(e).

ARTICLE XI
MISCELLANEOUS

11.1 Press Releases and Announcements. No Party shall issue any press release or public announcement relating to the subject matter of this Agreement without the prior written approval of the other Parties; provided, however, that (a) any Party may make any public disclosure it believes in good faith is required by applicable law, regulation or stock market rule (in which case the disclosing Party shall use reasonable efforts to advise the other Parties and provide them with a copy of the proposed disclosure prior to making the disclosure) and (b) the Buyer and its Affiliates shall not be bound by the provisions of this Section 11.1 following the Closing Date.

11.2 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns other than the persons intended to benefit from Section 5.15, who shall have the right to enforce such provisions directly.

11.3 Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements or representations by or among the Parties, written or oral, with respect to the subject matter hereof; provided that the Confidentiality Agreement dated April 25, 2008, between the Buyer and I-B, shall remain in effect in accordance with its terms.

11.4 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of the other Parties; provided that the Transitory Subsidiary may assign its rights, interests and obligations hereunder to an Affiliate of the Buyer.

11.5 Counterparts and Facsimile Signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile signature.

11.6 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

11.7 Notices. All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly delivered two business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one business day after it is sent for next business day delivery via a reputable nationwide overnight courier service, in each case to the intended recipient as set forth below:

To the Buyer or the Transitory Subsidiary:

Akamai Technologies, Inc.
8 Cambridge Center
Cambridge, MA 02142
Attn: Melanie Haratunian,
Senior Vice President and General Counsel
Telecopy: (617) 444-3695
Telephone: (617) 444-3000

with a copy to:

Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
Attn: Susan W. Murley, Esq.
Telecopy: (617) 526-5000
Telephone: (617) 526-6000

To the Company, I-B, A-C or Spinco:

iB Holdco Inc.
c/o I-Behavior Inc.
2051 Dogwood Street
Louisville, CO 80027
Attn: Mr. Joseph Bossone, Vice President, Chief Financial Officer
Telecopy: (914) 206-4203
Telephone: (303) 228-5000

with a copy to:

Holme Roberts & Owen LLP
1700 Lincoln Street, Suite 4100
Denver, Colorado 80203-4541
Attn: Mark W. Weakley, Esq.
Telecopy: (303) 866-0200
Telephone: (303) 417-8549

To the Representative:

Shareholder Representative Services LLC
855 Folsom Street, Suite 118
San Francisco, California 94107
Attention: Mark Vogel and Paul Koenig
Telecopy: (415) 962-4147
Telephone: (415) 367-9400

with a copy to:

Holme Roberts & Owen LLP
1700 Lincoln Street, Suite 4100
Denver, Colorado 80203-4541
Attn: Mark W. Weakley, Esq.
Telecopy: (303) 866-0200
Telephone: (303) 417-8549

Any Party may give any notice, request, demand, claim or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the party for whom it is intended. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

11.8 Governing Law. This Agreement (including without limitation its interpretation, construction, performance and enforcement), and all claims of causes of action (whether in contract or tort) that may be based upon, arise out of, or relate to this Agreement or the negotiation, execution, or performance of this Agreement (including any claim or cause of action based upon, arising out of, or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the State of Delaware.

11.9 Amendments and Waivers. The Parties may mutually amend any provision of this Agreement at any time prior to the Closing; provided, however, that any amendment effected subsequent to the Requisite Stockholder Approval shall be subject to any restrictions contained in the Delaware General Corporation Law. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the Parties. No waiver of any right or remedy hereunder shall be valid unless the same shall be in writing and signed by the Party giving such waiver. No waiver by any Party with respect to any default, misrepresentation or breach of warranty or covenant hereunder shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

11.10 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making the determination of invalidity or unenforceability shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified.

11.11 Submission to Jurisdiction. Each Party (a) submits to the jurisdiction of the Delaware Court of Chancery, New Castle County, or if that court does not have jurisdiction, a federal court sitting in the State of Delaware in any action or proceeding arising out of or relating to this Agreement (including any action or proceeding for the enforcement of any arbitral award made in connection with any arbitration of a Dispute hereunder), (b) agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, (c) waives any claim of inconvenient forum or other challenge to venue in such court, (d) agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court, and (e) waives any right it may have to a trial by jury with respect to any action or proceeding arising out of or relating to this Agreement; provided in each case that, solely with respect to any arbitration of a Dispute, the Arbitrator shall resolve all threshold issues relating to the validity and applicability of the arbitration provisions of this Agreement, contract validity, applicability of statutes of limitations and issue preclusion, and such threshold issues shall not be heard or determined by such court. Each Party agrees to accept service of any summons, complaint or other initial pleading made in the manner provided for the giving of notices in Section 11.7, provided that nothing in this Section 11.11 shall affect the right of any Party to serve such summons, complaint or other initial pleading in any other manner permitted by law.

11.12 Construction.

(a) The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

(b) Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

(c) Any reference herein to “including” shall be interpreted as “including without limitation”.

(d) Any reference to any Article, Section or paragraph shall be deemed to refer to an Article, Section or paragraph of this Agreement, unless the context clearly indicates otherwise.

(e) Where this Agreement refers to information that was “made available”, that means that such information was either (i) provided directly to the Buyer or its outside counsel or (ii) included in the virtual data site located at https://services.intralinks.com/logon.html?clientID=8368260496 at least two business days prior to the date of this Agreement.

11.13 Legal Representation. Each of the Parties hereto acknowledges and agrees that Holme Roberts & Owen LLP (“HRO”) represents the Company, and not any of the individual Company Participating Equity Holders or any other entities. After the Closing, it is possible that HRO will represent the Company Participating Equity Holders, the Representative and their respective Affiliates (individually and collectively, the “Seller Group”) in connection with the Escrow Fund, the Special Escrow Fund and any claims made thereunder pursuant to this Agreement. The Buyer and the Company hereby agree that HRO (or any successor) may represent the Seller Group in the future in connection with administration of the Escrow Fund, the Special Escrow Fund and any claims that may be made thereunder pursuant to this Agreement. HRO (or any successor) may serve as counsel to the Seller Group in connection with any litigation, claim or obligation arising out of or relating to this Agreement or the transactions contemplated by this Agreement or the Escrow Agreement, and each of the Parties hereto hereby consents thereto and waives any conflict of interest arising therefrom. Each of the Parties hereto acknowledges that such consent and waiver is voluntary, has been carefully considered and the Parties have consulted with counsel or been advised they should do so in this connection.

11.14 Specific Performance. The Parties agree that irreparable damage may occur and that the Parties may not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to seek to enforce specifically the terms and provisions of this Agreement in the Delaware Court of Chancery, New Castle County, or if that court does not have jurisdiction, a federal court sitting in the State of Delaware, this being in addition to any other remedy to which they are entitled at law or in equity

11.15 No Other Representation or Warranty. The Parties each acknowledge that, except as expressly set forth in this Agreement and any certificate delivered by one Party to another in satisfaction of the conditions set forth in Sections 6.1 or 6.2, there are no representations and warranties of any kind, express or implied, by any Party in connection with the Merger; provided, however, that this Section 11.15 shall not be applicable to, and shall in no way limit, any claim by a Party either in law or in equity arising out of or alleging fraud or knowing misrepresentation in connection with this Agreement, the Spin-Off Transaction or the transactions contemplated by this Agreement.

[Remainder of the Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

BUYER:

AKAMAI TECHNOLOGIES, INC.

By: /s/ JD Sherman
Title: Chief Financial Officer

TRANSITORY SUBSIDIARY:

ARROW ACQUISITION CORP.

By: /s/ JD Sherman
Title: Treasurer

COMPANY:

IB HOLDCO INC.

By: /s/ Chris Dice
Title: CEO

I-B:

I-BEHAVIOR INC.

By: /s/ Chris Dice
Title: CEO

A-C:

ACERNO INC.

By: /s/ Chris Dice

SPINCO:

IB SPINCO LLC

By: /s/ Chris Dice
Title: CEO

REPRESENTATIVE:

SHAREHOLDER REPRESENTATIVE SERVICE, LLC

By: /s/ Paul Koenig
Title: Manager