



**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
FORM 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended December 31, 2009

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

Commission file number: 1-14443

**GARTNER, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**P.O. Box 10212**  
**56 Top Gallant Road**  
**Stamford, CT**  
(Address of principal executive offices)

**(203) 316-1111**  
(Registrant's telephone number, including area code)

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

**04-3099750**  
(I.R.S. Employer Identification No.)

**06902-7700**  
(Zip Code)

**Title of each class**

Common Stock, \$.0005 par value per share

**Name of each exchange on which registered**

New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

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

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

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

As of June 30, 2009, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was \$935,105,805 based on the closing sale price as reported on the New York Stock Exchange.

The number of shares outstanding of the registrant's common stock was 95,924,910 as of January 31, 2010.

**DOCUMENTS INCORPORATED BY REFERENCE**

**Document**

Proxy Statement for the Annual Meeting of Stockholders to be held June 3, 2010 (Proxy Statement)

Part III

**Parts Into Which Incorporated**

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## PART I

### ITEM 1. BUSINESS.

#### GENERAL

Gartner, Inc. (NYSE: IT) is the world's leading information technology research and advisory company. Since its founding in 1979, Gartner has established a leading brand in the IT research marketplace. The cornerstones of our strategy are to focus on producing extraordinary research content, deliver innovative and highly differentiated product offerings, enhance our sales capability, provide world class client service, and improve operational effectiveness.

We deliver the technology-related insight necessary for our clients to make the right decisions, every day. From CIOs and senior IT leaders in corporations and government agencies, to business leaders in high-tech and telecom enterprises and professional services firms, to technology investors, to supply chain leaders, and to the front-line professionals in the technology organization, we are the indispensable partner to 60,000 clients in 10,000 distinct organizations in over 80 countries. We work with every client to research, analyze and interpret the business of IT within the context of their individual role.

The foundation for all Gartner products and services is our independent research on IT issues. The findings from this research are delivered through our three customer segments — Research, Consulting and Events:

- **Research** provides insight for CIOs, IT professionals, technology companies and the investment community through reports and briefings, access to our analysts, as well as peer networking services and membership programs designed specifically for CIOs and other senior executives.
- **Consulting** consists primarily of consulting, measurement engagements and strategic advisory services (paid one-day analyst engagements) ("SAS"), which provide assessments of cost, performance, efficiency and quality focused on the IT industry.
- **Events** consists of various symposia, conferences and exhibitions focused on the IT industry.

Gartner is headquartered in Stamford, Connecticut, U.S.A. We have 4,305 associates, including almost 1,200 research analysts and consultants. For more information regarding Gartner and our products and services, visit [www.gartner.com](http://www.gartner.com).

References to "the Company," "we," "our," and "us" are to Gartner, Inc. and its subsidiaries.

#### MARKET OVERVIEW

Today, information technology is critical to the operational and financial success of all business enterprises and other organizations, as well as government and government agencies. Once a support function, IT is now viewed as a strategic component of growth and operating performance. Accordingly, it has become imperative for executives and IT professionals to invest in IT and manage their IT spending and purchasing decisions efficiently and effectively.

As the cost of IT solutions continues to rise, executives and technology professionals have realized the importance of making well-informed decisions and increasingly seek to maximize their returns on IT capital investments. As a result, any IT investment decision in an enterprise is subject to increased financial scrutiny, especially in the current challenging economic climate. In addition, today's IT marketplace is dynamic and complex. Technology providers continually introduce new products with a wide variety of standards and features that are prone to shorter life cycles. Users of technology — a group that encompasses nearly all organizations — must keep abreast of new developments in technology to ensure that their IT systems are reliable, efficient and meet both their current and future needs.

Given the critical nature of technology decision making and spending, business enterprises, organizations, and governments and their agencies are increasingly turning to outside experts for guidance in IT procurement, implementation and operations in order to maximize the value of their IT investments. Accordingly, it is critical that CIOs and other executives and personnel within an IT organization obtain value-added, independent and objective research and analysis of the IT market to assist them in these IT-related decisions.

#### OUR SOLUTION

We provide high-quality, independent and objective research and analysis of the IT industry. Through our entire product portfolio, our global research team provides thought leadership and insight about technology acquisition and deployment to CIOs, executives and other technology leaders and professionals.

We employ a diversified business model that utilizes and leverages the breadth and depth of our intellectual capital. The foundation of our business model is our ability to create and distribute our proprietary research content as broadly as possible via published reports and briefings, consulting and advisory services, and hosting symposia, conferences and exhibitions.

With a base of 720 research analysts, we create timely and relevant technology-related research. In addition, we have 450 experienced consultants who combine our objective, independent research with a practical, business perspective focused on the IT industry. Our events are among the world's largest of their kind, gathering highly qualified audiences of CIOs, senior business executives, IT professionals and purchasers and providers of IT products and services.

### **PRODUCTS AND SERVICES**

Our diversified business model provides multiple entry points and synergies that facilitate increased client spending on our research, consulting and events. A critical part of our long-term strategy is to increase business volume with our most valuable clients, identifying relationships with the greatest sales potential and expanding those relationships by offering strategically relevant research and analysis. We also seek to extend the Gartner brand name to develop new client relationships, and augment our sales capacity and expand into new markets around the world. In addition, we seek to increase our revenue and operating cash flow through more effective pricing of our products and services. These initiatives have created additional revenue streams through more effective packaging, campaigning and cross-selling of our products and services.

Our principal products and services are delivered via our Research, Consulting and Events segments:

- **RESEARCH.** The Gartner core global research product is the fundamental building block for all Gartner services and covers all IT markets, topics and industries. We combine our proprietary research methodologies with extensive industry and academic relationships to create Gartner solutions. Our research agenda is defined by clients' needs, focusing on the critical issues, opportunities and challenges they face every day. Our research analysts are in regular contact with both technology providers and technology users, enabling them to identify the most pertinent topics in the IT marketplace and develop relevant product enhancements to meet the evolving needs of users of our research. Our proprietary research content, presented in the form of reports, briefings, updates and related tools, is delivered directly to the client's desktop via our website and/or product-specific portals.

Our research analysts provide in-depth analysis on all aspects of technology, including hardware; software and systems; services; IT management; market data and forecasts; and vertical industry issues. Clients typically sign contracts that provide access to our research content for individual users over a defined period of time. The research contracts are renewed on an ongoing basis; despite difficult economic conditions, in 2009 we experienced strong research client retention, with 78% of user organizations renewing their contracts, as well as 87% wallet retention, a measure of the dollar amount of contract value we have retained with clients over the prior year.

Our strategy is to align our service and product offerings around individual roles within targeted key client groups. For example, Gartner Executive Programs (EXP) comprises exclusive membership programs designed to help CIOs, senior IT executives and other business executives become more effective in their enterprises. An EXP membership leverages the knowledge and expertise of Gartner in ways that are specific to the CIO's needs and offers role-based offerings and member-only communities for peer-based collaboration. Our 3,700 EXP members also receive advice and counsel from an executive partner who understands their goals and can ensure the most effective level of support from Gartner.

Other programs focus on the needs of the IT end-user market and IT vendors with a variety of product offerings. Gartner for IT Leaders currently provides eight role-based research offerings to assist end-user IT leaders with effective decision making. These products align a client's specific job-related challenges with appropriate Gartner analysts and insight, and connect IT leaders to IT peers who share common business and technology issues. Gartner for Enterprise IT Leaders provides a personalized service consisting of Gartner research, peer-interaction and networking to help senior leaders save time and money, mitigate risk and exploit new opportunities. Gartner for Business Leaders provides a series of role-based offerings to help sales, marketing, product management and professional services leaders successfully manage their organizations and better interact with Gartner analysts.

Our Industry Advisory Services address technology issues and topics with a focus on their impacts on specific vertical industries.

Our Best Practices Councils provide peer networks to senior IT leaders in large organizations, currently in six practice areas, including IT architecture and strategic planning, information security, emerging technology management, infrastructure management, enterprise applications for SAP and IT sourcing management.

Gartner for Technology Investors provides premium research focused on the strategies and behaviors of technology end users and providers to support the activities of institutional investors who invest in technology companies.

- **CONSULTING.** Gartner consultants provide fact-based consulting services to help our clients use and manage IT to enable business performance. We seek to accomplish three major outcomes for our clients: applying IT to drive improvements in business performance; creating sustainable IT efficiency that ensures a constant return on IT investments; and strengthening the

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IT organization and operations to ensure high-value services to the client's lines of business and to enable the client to adapt to business changes.

We deliver our consulting solutions by capitalizing on Gartner assets that are invaluable to IT decision making, including: (1) our extensive research, which ensures that our consulting analyses and advice are based on a deep understanding of the IT environment and the business of IT; (2) our market independence, which keeps our consultants focused on our client's success; and (3) our market-leading benchmarking capabilities, which provide relevant comparisons and best practices to assess and improve performance.

Gartner Consulting provides solutions aimed at IT roles and IT initiatives in various industries. We provide consulting engagements to CIO's and IT executives, and to those professionals responsible for IT applications, enterprise architecture, go-to-market strategies, infrastructure and operations, programs and portfolio management and sourcing and vendor relationships, that are relevant to the role played by the client within the organization. We also provide targeted consulting services to professionals in the banking and investment services, education, energy and utilities, government, healthcare providers and high tech and telecom providers that utilize our in-depth knowledge of the demands of each industry. Finally, we provide actionable solutions for IT Cost Optimization, Technology Modernization and IT Sourcing Optimization initiatives.

- **EVENTS.** Gartner symposia and conferences are gatherings of technology's most senior IT professionals, business strategists and practitioners. Symposia and conferences give clients live access to insights developed from our latest proprietary research in a concentrated way. Informative sessions led by Gartner analysts are augmented with technology showcases, peer exchange, analyst one-on-one meetings, workshops and keynotes by technology's top leaders. Symposia and conferences, which are not limited to Gartner research clients, also provide participants with an opportunity to interact with business executives from the world's leading technology companies. In 2009, we held 54 Gartner events throughout the United States, Europe, Latin America and the Asia/Pacific region that attracted 30,610 attendees.

Gartner conferences attract high-level IT and business professionals who seek in-depth knowledge about technology products and services. Gartner Symposia are large, strategic conferences held in various locations throughout the world for senior IT and business professionals. Symposia are combined with ITxpo, an exhibition where the latest technology products and solutions are demonstrated. Gartner Summits focus on specific topics, technologies and industries, providing IT Professionals with the insight, solutions and networking opportunities to succeed in their job role. At the present time we offer Summits in Applications, Business Intelligence and Information Management, Business Process Improvement, Enterprise Architecture, IT Infrastructure and Operations, Portfolio and Production Management, Security and Risk Management, and Sourcing and Vendor Relationships, among others. Finally, we offer targeted events for CIOs and IT executives.

### **BUSINESS DEVELOPMENTS**

In December 2009, we acquired AMR Research, Inc. ("AMR Research"), which provides information technology research, consulting and events for organizations with supply chain management issues, thereby expanding the breadth and depth of our IT research coverage. Additionally, in the same month, we acquired Burton Group, Inc. ("Burton Group"), which provides a complementary portfolio of research, consulting and events specifically designed to meet the unique needs of front-line technology professionals within IT teams. The acquisition of Burton Group will enable us to meet the demand of our clients and offer a complete solution to every level and functional expert within the IT organization. We believe these companies will greatly enhance Gartner's product and services offerings.

See Note 2 — Acquisitions in the Notes to the Consolidated Financial Statements for additional information regarding these acquisitions.

### **COMPETITION**

We believe that the principal factors that differentiate us from our competitors are:

- **Superior IT Research Content** — We believe that we create the broadest, highest-quality and most relevant research coverage of the IT industry. Our research analysis generates unbiased insight that we believe is timely, thought-provoking and comprehensive, and that is known for its high quality, independence and objectivity.
- **Our Leading Brand Name** — For over 30 years we have been providing critical, trusted insight under the Gartner name.
- **Our Global Footprint and Established Customer Base** — We have a global presence with clients in over 80 countries on six continents. Approximately 45% and 47% of our revenues for 2009 and 2008, respectively, were derived from sales outside of the U.S.

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- **Substantial Operating Leverage in Our Business Model** — We have the ability to distribute our intellectual property and expertise across multiple platforms, including research publications, consulting engagements, conferences and executive programs, to derive incremental revenues and profitability.
- **Experienced Management Team** — Our management team is composed of IT research veterans and experienced industry executives.
- **Vast Network of Analysts and Consultants** — We have almost 1,200 analysts and consultants located around the world. Our analysts alone speak 47 languages and are located in numerous countries, enabling us to cover all aspects of IT on a global basis.

Notwithstanding these differentiating factors, we face competition from a significant number of independent providers of information products and services. We compete indirectly against consulting firms and other information providers, including electronic and print media companies. These indirect competitors could choose to compete directly with us in the future. Additionally, we face competition from free sources of information that are available to our clients through the Internet. Limited barriers to entry exist in the markets in which we do business. As a result, new competitors may emerge and existing competitors may start to provide additional or complementary services. However, we believe the breadth and depth of our research assets position us well versus our competition. Increased competition may result in loss of market share, diminished value in our products and services, reduced pricing and increased sales and marketing expenditures.

### **INTELLECTUAL PROPERTY**

Our success has resulted in part from proprietary methodologies, software, reusable knowledge capital and other intellectual property rights. We rely on a combination of copyright, trademark, trade secret, confidentiality, non-compete and other contractual provisions to protect our intellectual property rights. We have policies related to confidentiality, ownership and the use and protection of Gartner's intellectual property, and we also enter into agreements with our employees as appropriate that protect our intellectual property.

We recognize the value of our intellectual property in the marketplace and vigorously identify, create and protect it. Additionally, we actively monitor and enforce contract compliance by our end users.

### **EMPLOYEES**

As of December 31, 2009, we had 4,305 employees, of which 691 were located at our headquarters in Stamford, Connecticut; 1,945 were located elsewhere in the United States; and 1,669 were located outside of the United States. These amounts include the addition of 290 new employees as a result of the AMR Research and Burton Group acquisitions.

Our employees may be subject to collective bargaining agreements at a company or industry level in those foreign countries where this is part of the local labor law or practice. We have experienced no work stoppages and consider our relations with our employees to be favorable.

### **AVAILABLE INFORMATION**

Our Internet address is [www.gartner.com](http://www.gartner.com) and the investor relations section of our website is located at [www.investor.gartner.com](http://www.investor.gartner.com). We make available free of charge, on or through the investor relations section of our website, printable copies of our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission (the "SEC").

Also available at [www.investor.gartner.com](http://www.investor.gartner.com), under the "Corporate Governance" link, are printable and current copies of our (i) CEO & CFO Code of Ethics which applies to our Chief Executive Officer, Chief Financial Officer, controller and other financial managers, (ii) Code of Business Conduct, which applies to all Gartner officers, directors and employees, (iii) Principles of Ethical Conduct which applies to all Gartner employees, (iv) Board Principles and Practices, the corporate governance principles that have been adopted by our Board and (v) charters for each of the Board's standing committees: Audit, Compensation and Governance/Nominating.

## **ITEM 1A. RISK FACTORS**

### **FACTORS THAT MAY AFFECT FUTURE PERFORMANCE.**

We operate in a very competitive and rapidly changing environment that involves numerous risks and uncertainties, some of which are beyond our control. In addition, we and our clients are affected by global economic conditions. The following section discusses many, but not all, of these risks and uncertainties, but is not intended to be all-inclusive.

## Risks related to our business

*Our operating results could be negatively impacted by general economic conditions.* Our business is impacted by general economic conditions, both domestic and abroad. The global credit crisis and economic downturn that began in 2008 and continued throughout 2009 could negatively and materially affect demand for our products and services. This downturn could materially and adversely affect our business, including the ability to maintain client retention, wallet retention and consulting utilization rates, achieve contract value and consulting backlog growth, and attract attendees and exhibitors to our events. Such developments could negatively impact our financial condition, results of operations, and cash flows.

*We face significant competition and our failure to compete successfully could materially adversely affect our results of operations and financial condition.* We face direct competition from a significant number of independent providers of information products and services, including information available on the Internet free of charge. We also compete indirectly against consulting firms and other information providers, including electronic and print media companies, some of which may have greater financial, information gathering and marketing resources than we do. These indirect competitors could also choose to compete directly with us in the future. In addition, limited barriers to entry exist in the markets in which we do business. As a result, additional new competitors may emerge and existing competitors may start to provide additional or complementary services. Additionally, technological advances may provide increased competition from a variety of sources.

While we believe the breadth and depth of our research assets position us well versus our competition, there can be no assurance that we will be able to successfully compete against current and future competitors and our failure to do so could result in loss of market share, diminished value in our products and services, reduced pricing and increased marketing expenditures. Furthermore, we may not be successful if we cannot compete effectively on quality of research and analysis, timely delivery of information, customer service, and the ability to offer products to meet changing market needs for information and analysis, or price.

*We may not be able to maintain our existing products and services.* We operate in a rapidly evolving market, and our success depends upon our ability to deliver high quality and timely research and analysis to our clients. Any failure to continue to provide credible and reliable information that is useful to our clients could have a material adverse effect on future business and operating results. Further, if our predictions prove to be wrong or are not substantiated by appropriate research, our reputation may suffer and demand for our products and services may decline. In addition, we must continue to improve our methods for delivering our products and services in a cost-effective manner. Failure to increase and improve our electronic delivery capabilities could adversely affect our future business and operating results.

*We may not be able to enhance and develop our existing products and services, or introduce the new products and services, that are needed to remain competitive.* The market for our products and services is characterized by rapidly changing needs for information and analysis on the IT industry as a whole. The development of new products is a complex and time-consuming process. Nonetheless, to maintain our competitive position, we must continue to enhance and improve our products and services, develop or acquire new products and services, deliver all products and services in a timely manner, and appropriately position and price new products and services relative to the marketplace and our costs of producing them. Any failure to achieve successful client acceptance of new products and services could have a material adverse effect on our business, results of operations and financial position. Additionally, significant delays in new product or services releases or significant problems in creating new products or services could adversely affect our business, results of operations and financial position.

*We depend on renewals of subscription-based services and sales of new subscription-based services for a significant portion of our revenue, and our failure to renew at historical rates or generate new sales of such services could lead to a decrease in our revenues.* A large portion of our success depends on our ability to generate renewals of our subscription-based research products and services and new sales of such products and services, both to new clients and existing clients. These products and services constituted 66% and 60% of our revenues for 2009 and 2008, respectively. Generating new sales of our subscription-based products and services, both to new and existing clients, is often a time consuming process. If we are unable to generate new sales, due to competition or other factors, our revenues will be adversely affected.

Our research subscription agreements have terms that generally range from twelve to thirty months. Our ability to maintain contract renewals is subject to numerous factors, including the following:

- delivering high-quality and timely analysis and advice to our clients;
- understanding and anticipating market trends and the changing needs of our clients; and
- delivering products and services of the quality and timeliness necessary to withstand competition.

Additionally, as we implement our strategy to realign our business to client needs, we may shift the type and pricing of our products which may impact client renewal rates. While research client retention rate was 78% at December 31, 2009 and 82% at December 31, 2008, there can be no guarantee that we will continue to maintain this rate of client renewals.

*We depend on non-recurring consulting engagements and our failure to secure new engagements could lead to a decrease in our revenues.* Consulting segment revenues constituted 25% of our total revenues for 2009 and 27% for 2008. These consulting engagements typically are project-based and non-recurring. Our ability to replace consulting engagements is subject to numerous factors, including the following:

- delivering consistent, high-quality consulting services to our clients;
- tailoring our consulting services to the changing needs of our clients; and
- our ability to match the skills and competencies of our consulting staff to the skills required for the fulfillment of existing or potential consulting engagements.

Any material decline in our ability to replace consulting arrangements could have an adverse impact on our revenues and our financial condition.

*The profitability and success of our conferences, symposia and events could be adversely affected by external factors beyond our control.* The global credit crisis and economic downturn that began in 2008 and continued throughout 2009 severely impacted travel budgets of all organizations, which may continue to negatively impact our business. The market for desirable dates and locations for conferences, symposia and events is highly competitive. If we cannot secure desirable dates and locations for our conferences, symposia and events their profitability could suffer, and our financial condition and results of operations may be adversely affected. In addition, because our events are scheduled in advance and held at specific locations, the success of these events can be affected by circumstances outside of our control, such as labor strikes, transportation shutdowns and travel restrictions, economic slowdowns, terrorist attacks, weather, natural disasters and other world events impacting the global economy, the occurrence of any of which could negatively impact the success of the event.

*Our sales to governments are subject to appropriations and may be terminated.* We derive revenues from contracts with the U.S. government, state and local governments, and their respective agencies, as well as foreign governments and their agencies. At December 31, 2009 and 2008, approximately \$182.0 million and \$192.0 million, respectively, of our Research contract value and Consulting backlog was attributable to governments. We believe substantially all of the amount attributable to governments at December 31, 2009 will be filled in 2010. Our U.S. government contracts are subject to the approval of appropriations by the U.S. Congress to fund the agencies contracting for our services, and our contracts at the state and local levels are subject to various government authorizations and funding mechanisms. In general, most if not all of these contracts may be terminated at any time without cause ("termination for convenience"). Should appropriations for the governments and agencies that contract with us be curtailed, or should government contracts be terminated for convenience, we may experience a significant loss of revenue.

*We may not be able to attract and retain qualified personnel which could jeopardize the quality of our products and services.* Our success depends heavily upon the quality of our senior management, research analysts, consultants, sales and other key personnel. We face competition for the limited pool of these qualified professionals from, among others, technology companies, market research firms, consulting firms, financial services companies and electronic and print media companies, some of which have a greater ability to attract and compensate these professionals. Some of the personnel that we attempt to hire are subject to non-compete agreements that could impede our short-term recruitment efforts. Any failure to retain key personnel or hire and train additional qualified personnel as required to support the evolving needs of clients or growth in our business, could adversely affect the quality of our products and services, as well as future business and operating results.

*We may not be able to maintain the equity in our brand name.* We believe that our "Gartner" brand, including our independence, is critical to our efforts to attract and retain clients and that the importance of brand recognition will increase as competition increases. We may expand our marketing activities to promote and strengthen the Gartner brand and may need to increase our marketing budget, hire additional marketing and public relations personnel, expend additional sums to protect the brand and otherwise increase expenditures to create and maintain client brand loyalty. If we fail to effectively promote and maintain the Gartner brand, or incur excessive expenses in doing so, our future business and operating results could be adversely impacted.

*Our international operations expose us to a variety of operational risks which could negatively impact our future revenue and growth.* We have clients in over 80 countries and a significant part of our revenue comes from international sales. Our operating results are subject to the risks inherent in international business activities, including general political and economic conditions in each country, changes in market demand as a result of tariffs and other trade barriers, challenges in staffing and managing foreign

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operations, changes in regulatory requirements, compliance with numerous foreign laws and regulations, differences between U.S. and foreign tax rates and laws, and the difficulty of enforcing client agreements, collecting accounts receivable and protecting intellectual property rights in international jurisdictions. Furthermore, we rely on local distributors or sales agents in some international locations. If any of these arrangements are terminated by our agent or us, we may not be able to replace the arrangement on beneficial terms or on a timely basis, or clients of the local distributor or sales agent may not want to continue to do business with us or our new agent.

*Our international operations expose us to changes in foreign currency exchange rates.* Approximately 45% and 47% of our revenues for 2009 and 2008, respectively, were derived from sales outside of the U.S. Revenues earned outside the U.S. are typically transacted in local currencies, which may fluctuate significantly against the dollar. While we may use forward exchange contracts to a limited extent to seek to mitigate foreign currency risk, our revenues and results of operations could be adversely affected by unfavorable foreign currency fluctuations.

*Catastrophic events or geo-political conditions may disrupt our business.* A disruption or failure of our systems or operations in the event of a major weather event, cyber-attack, terrorist attack or other catastrophic event could cause delays in completing sales, providing services, or performing other mission-critical functions. Our corporate headquarters is located approximately 30 miles from New York City, and we have an operations center located in Ft. Myers, Florida, in a hurricane-prone area. We also operate in numerous international locations. A catastrophic event that results in the destruction or disruption of any of our critical business or information technology systems could harm our ability to conduct normal business operations and negatively impact our operating results. Abrupt political change, terrorist activity, and armed conflict pose a risk of general economic disruption in affected countries, which may increase our operating costs. Additionally, these conditions also may add uncertainty to the timing and budget decisions of our clients.

*We may experience outages and disruptions of our online services if we fail to maintain an adequate operations infrastructure.* Our increasing user traffic and complexity of our products and services demand more computing power. We have spent and expect to continue to spend substantial amounts to maintain data centers and equipment and to upgrade our technology and network infrastructure to handle increased traffic on our websites. However, any inefficiencies or operational failures could diminish the quality of our products, services, and user experience, resulting in damage to our reputation and loss of current and potential users, subscribers, and advertisers, harming our operating results and financial condition.

*Our outstanding debt obligations could impact our financial condition or future operating results.* At December 31, 2009, we had \$329.0 million outstanding under our Credit Agreement, which provides for two amortizing term loans with quarterly payments and a \$300.0 million revolving credit facility. The revolving credit facility may be increased up to an additional \$100.0 million at our lenders' discretion (the "expansion feature"), for a total revolving credit facility of \$400.0 million. However, the \$100.0 million expansion feature may or may not be available to us depending upon prevailing credit market conditions.

The affirmative, negative and financial covenants of the Credit Agreement could limit our future financial flexibility. Additionally, a failure to comply with these covenants could result in acceleration of all amounts outstanding under the Credit Agreement, which would materially impact our financial condition unless accommodations could be negotiated with our lenders. No assurance can be given that we would be successful in doing so in this current financial climate, or that any accommodations that we were able to negotiate would be on terms as favorable as those presently contained in the Credit Agreement.

The associated debt service costs of the borrowing arrangement under our Credit Agreement could impair our future operating results. The outstanding debt may limit the amount of cash or additional credit available to us, which could restrain our ability to expand or enhance products and services, respond to competitive pressures or pursue future business opportunities requiring substantial investments of additional capital.

*We may require additional cash resources which may not be available on favorable terms or at all.* We believe that our existing cash balances, projected cash flow from operations, and the remaining borrowing capacity we have under our revolving credit facility will be sufficient for our expected short-term and foreseeable long-term operating needs.

We may, however, require additional cash resources due to changed business conditions, implementation of our strategy and stock repurchase program, to repay indebtedness or to pursue future business opportunities requiring substantial investments of additional capital. If our existing financial resources are insufficient to satisfy our requirements, we may seek additional borrowings. Prevailing credit market conditions may negatively affect debt availability and cost, and, as a result, financing may not be available in amounts or on terms acceptable to us, if at all. In addition, the incurrence of additional indebtedness would result in increased debt service obligations and could require us to agree to operating and financial covenants that would further restrict our operations.

*If we are unable to enforce and protect our intellectual property rights our competitive position may be harmed.* We rely on a combination of copyright, trademark, trade secret, confidentiality, non-compete and other contractual provisions to protect our intellectual property rights. Despite our efforts to protect our intellectual property rights, unauthorized third parties may obtain and

use technology or other information that we regard as proprietary. Our intellectual property rights may not survive a legal challenge to their validity or provide significant protection for us. The laws of certain countries do not protect our proprietary rights to the same extent as the laws of the United States. Accordingly, we may not be able to protect our intellectual property against unauthorized third-party copying or use, which could adversely affect our competitive position. Our employees are subject to non-compete agreements. When the non-competition period expires, former employees may compete against us. If a former employee chooses to compete against us prior to the expiration of the non-competition period, we seek to enforce these non-compete provisions but there is no assurance that we will be successful in our efforts.

*We have grown, and may continue to grow, through acquisitions and strategic investments, which could involve substantial risks.* We have made and may continue to make acquisitions of, or significant investments in, businesses that offer complementary products and services. The risks involved in each acquisition or investment include the possibility of paying more than the value we derive from the acquisition, dilution of the interests of our current stockholders or decreased working capital, increased indebtedness, the assumption of undisclosed liabilities and unknown and unforeseen risks, the ability to retain key personnel of the acquired company, the time to train the sales force to market and sell the products of the acquired business, the potential disruption of our ongoing business and the distraction of management from our business. The realization of any of these risks could adversely affect our business.

*We face risks related to litigation.* We are, and may in the future be, subject to a variety of legal actions, such as employment, breach of contract, intellectual property-related, and business torts, including claims of unfair trade practices and misappropriation of trade secrets. Given the nature of our business, we are also subject to defamation (including libel and slander), negligence, or other claims relating to the information we publish. Regardless of the merits, responding to any such claim could be time consuming, result in costly litigation and require us to enter into settlements, royalty and licensing agreements which may not be offered or available on reasonable terms. If a successful claim is made against us and we fail to settle the claim on reasonable terms, our business, results of operations or financial position could be materially adversely affected.

*We face risks related to taxation.* We operate in numerous domestic and foreign taxing jurisdictions and our level of operations and profitability in each jurisdiction may have an impact upon the amount of income taxes that we recognize in any given year. In addition, our tax filings for various tax years are subject to audit by the tax authorities in jurisdictions where we conduct business, and in the ordinary course of business, we may be under audit by one or more tax authorities from time to time.

These audits may result in assessments of additional taxes, and resolution of these matters involves uncertainties and there are no assurances that the ultimate resolution will not exceed the amounts we have recorded. Additionally, the results of an audit could have a material effect on our financial position, results of operations, or cash flows in the period or periods for which that determination is made.

### Risks related to our common stock

*Our operating results may fluctuate from period to period and may not meet the expectations of securities analysts or investors or guidance we have given, which may cause the price of our Common Stock to decline.* Our quarterly and annual operating results may fluctuate in the future as a result of many factors, including the timing of the execution of research contracts, the extent of completion of consulting engagements, the timing of symposia and other events, the amount of new business generated, the mix of domestic and international business, currency fluctuations, changes in market demand for our products and services, the timing of the development, introduction and marketing of new products and services, and competition in the industry. An inability to generate sufficient earnings and cash flow, and achieve our forecasts, may impact our operating and other activities. The potential fluctuations in our operating results could cause period-to-period comparisons of operating results not to be meaningful and may provide an unreliable indication of future operating results. Furthermore, our operating results may not meet the expectations of securities analysts or investors in the future or guidance we have given. If this occurs, the price of our stock would likely decline.

*Our stock price may be volatile, and you may not be able to resell shares of our Common Stock at or above the price you paid.* The trading prices of our Common Stock could be subject to significant fluctuations in response to, among other factors, variations in operating results, developments in the industries in which we do business, general economic conditions, general market conditions, changes in the nature and composition of our stockholder base, changes in securities analysts' recommendations regarding our securities and our performance relative to securities analysts' expectations for any quarterly period. Such volatility may adversely affect the market price of our Common Stock.

*Future sales of our Common Stock in the public market could lower our stock price.* Sales of a substantial number of shares of Common Stock in the public market by our current stockholders, or the threat that substantial sales may occur, could cause the market price of our Common Stock to decrease significantly or make it difficult for us to raise additional capital by selling stock. Furthermore, we have various equity incentive plans that provide for awards in the form of stock options, stock appreciation rights, restricted stock, restricted stock units and other stock-based awards. As of December 31, 2009, the aggregate number of shares of our Common Stock issuable pursuant to outstanding grants and awards under these plans was approximately 11.5 million shares (approximately 5.8 million of which have vested). In addition, approximately 7.4 million shares may be issued in connection with future

awards under our equity incentive plans. Shares of Common Stock issued under these plans are freely transferable without further registration under the Securities Act of 1933, as amended (the "Securities Act"), except for any shares held by affiliates (as that term is defined in Rule 144 under the Securities Act). We cannot predict the size of future issuances of our Common Stock or the effect, if any, that future issuances and sales of shares of our Common Stock will have on the market price of our Common Stock.

*Interests of certain of our significant stockholders may conflict with yours.* As of December 31, 2009, ValueAct Capital and affiliates ("ValueAct") owned approximately 21.7% of our Common Stock. To our knowledge, as of the date of this report, four other institutional investors each presently hold over 5% of our Common Stock. Additionally, a representative of ValueAct presently holds one seat on our Board of Directors.

While no stockholder or institutional investor individually holds a majority of our outstanding shares, these significant stockholders may be able, either individually or acting together, to exercise significant influence over matters requiring stockholder approval, including the election of directors, amendment of our certificate of incorporation, adoption or amendment of equity plans and approval of significant transactions such as mergers, acquisitions, consolidations and sales or purchases of assets. In addition, in the event of a proposed acquisition of the company by a third party, this concentration of ownership may delay or prevent a change of control in the Company. Accordingly, the interests of these stockholders may not always coincide with our interests or the interests of other stockholders, or otherwise be in the best interests of the Company or all stockholders.

*Our anti-takeover protections may discourage or prevent a change of control, even if a change in control would be beneficial to our stockholders.* Provisions of our restated certificate of incorporation and bylaws and Delaware law may make it difficult for any party to acquire control of us in a transaction not approved by our Board of Directors. These provisions include:

- the ability of our Board of Directors to issue and determine the terms of preferred stock;
- advance notice requirements for inclusion of stockholder proposals at stockholder meetings; and
- the anti-takeover provisions of Delaware law.

These provisions could discourage or prevent a change of control or change in management that might provide stockholders with a premium to the market price of their Common Stock.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS.**

There are no unresolved written comments that were received from the SEC staff 180 days or more before the end of our fiscal year relating to our periodic or current reports under the Exchange Act.

#### **ITEM 2. PROPERTIES.**

Our corporate headquarters is located in approximately 213,000 square feet of leased office space in three buildings located in Stamford, Connecticut. Our Stamford facility accommodates research and analysis, marketing, sales, client support, production, corporate services, executive offices, and administration. The lease for the Stamford facility expires in October 2010. We have completed negotiations of an amendment and 15 year extension of this lease with the landlord, and expect to execute the amended lease agreement in the first quarter of 2010.

We also have a significant presence in Ft. Myers, Florida and Egham, the United Kingdom. Our Ft. Myers location consists of approximately 62,400 square feet of leased office space located in one building for which the lease expires in January 2013. Our Egham location has approximately 72,000 square feet of leased office space in two buildings for which the leases expire in 2020 and 2025, respectively. We lease an additional 16 domestic and 40 international locations that support our research and analysis, domestic and international sales efforts, and other functions. The Company does not currently own any properties.

We continue to constantly assess our space needs as our business changes, but we believe that our existing facilities are adequate for our current needs and that additional space will be available as needed.

#### **ITEM 3. LEGAL PROCEEDINGS.**

We are involved in legal proceedings and litigation arising in the ordinary course of business. We believe that the potential liability, if any, in excess of amounts already accrued from all proceedings, claims and litigation will not have a material effect on our financial position or results of operations when resolved in a future period.

#### **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.**

We did not submit any matter to a vote of our stockholders during the fourth quarter of the year covered by this Annual Report.

Our 2010 Annual Meeting of Stockholders will be held on June 3, 2010 at the Company's offices in Stamford, Connecticut.

**PART II**

**ITEM 5. MARKET FOR REGISTRANT’S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES.**

As of January 29, 2010, there were 2,585 holders of record of our Common Stock, which is listed on the New York Stock Exchange under the symbol IT. The following table sets forth the high and low sale prices for our common stock as reported on the New York Stock Exchange for the periods indicated:

	2009		2008	
	High	Low	High	Low
Quarter ended March 31	\$ 18.55	\$ 8.33	\$ 21.29	\$ 13.75
Quarter ended June 30	16.54	10.55	24.80	19.50
Quarter ended September 30	18.50	14.14	28.39	19.20
Quarter ended December 31	20.27	16.85	22.80	13.07

**DIVIDEND POLICY**

We currently do not pay cash dividends on our Common Stock. Our Credit Agreement, dated as of January 31, 2007, as amended, contains a negative covenant which may limit our ability to pay dividends.

**SECURITIES AUTHORIZED FOR ISSUANCE UNDER EQUITY COMPENSATION PLANS**

The equity compensation plan information set forth in Part III, Item 12 of this Form 10-K is hereby incorporated by reference into this Part II, Item 5.

**SHARE REPURCHASES**

The Company has a \$250.0 million authorized stock repurchase program that was authorized by the Board of Directors in February 2008. At the present time, as indicated in the table below, approximately \$78.6 million remains available for share repurchases under this program.

Repurchases are primarily made from time-to-time through open market purchases and are subject to the availability of stock, prevailing market conditions, the trading price of the stock, the Company's financial performance and cash needs, and other conditions. Repurchases may also be made from time-to-time in connection with the settlement of shared-based compensation awards. Repurchases may be funded from cash flow from operations and borrowings under the Company's Credit Agreement. All repurchased shares are added to treasury stock. The open market purchases were made by brokers pursuant to purchase programs that complied with Rules 10b5-1 and 10b-18 under the Exchange Act.

The following table provides detail related to repurchases of our Common Stock in the three months ended December 31, 2009:

Period	Total Number of Shares Purchased (#)	Average Price Paid Per Share (\$)	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (#)	Maximum Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (\$000's)
October	321	\$ 19.67	321	
November	—	—	—	
December	229	18.43	229	
Total (1)	550	\$ 19.15	550	\$ 78,636

(1) For the year ended December 31, 2009, the Company repurchased 306,032 shares at an average price of \$12.24 per share for a total cost of approximately \$3.7 million. All of these shares were acquired in connection with the settlement of share-based compensation awards.

**ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA**

The fiscal years presented below are for the respective twelve-month period from January 1 through December 31. Data for all years was derived or compiled from our audited consolidated financial statements included herein or from submissions of our Form 10-K in prior years. The selected consolidated financial data should be read in conjunction with our consolidated financial statements and related notes contained in this Annual Report on Form 10-K.

(In thousands, except per share data)	2009	2008	2007	2006	2005
<b>STATEMENT OF OPERATIONS DATA:</b>					
Revenues:					
Research	\$ 752,505	\$ 781,581	\$ 683,380	\$ 585,656	\$ 536,591
Consulting	286,847	347,404	325,030	305,231	301,074
Events	100,448	150,080	160,065	146,412	126,475
Total revenues	1,139,800	1,279,065	1,168,475	1,037,299	964,140
Operating income	134,477	164,368	129,458	98,039	20,474
Income (loss) from continuing operations	82,964	97,148	70,666	54,258	(6,200)
Income from discontinued operations	—	6,723	2,887	3,934	3,763
Net income (loss)	\$ 82,964	\$ 103,871	\$ 73,553	\$ 58,192	\$ (2,437)
<b>PER SHARE DATA:</b>					
Basic:					
Income (loss) from continuing operations	\$ .88	\$ 1.02	\$ 0.68	\$ 0.48	\$ (0.05)
Income from discontinued operations	—	0.07	0.03	0.03	0.03
Income (loss) per share	\$ .88	\$ 1.09	\$ 0.71	\$ 0.51	\$ (0.02)
Diluted:					
Income (loss) from continuing operations	\$ .85	\$ 0.98	\$ 0.65	\$ 0.47	\$ (0.05)
Income from discontinued operations	—	0.07	0.03	0.03	0.03
Income (loss) per share	\$ .85	\$ 1.05	\$ 0.68	\$ 0.50	\$ (0.02)
Weighted average shares outstanding					
Basic	94,658	95,246	103,613	113,071	112,253
Diluted	97,549	99,028	108,328	116,203	112,253
<b>OTHER DATA:</b>					
Cash and cash equivalents	\$ 116,574	\$ 140,929	\$ 109,945	\$ 67,801	\$ 70,282
Total assets	1,215,279	1,093,065	1,133,210	1,039,793	1,026,617
Long-term debt	124,000	238,500	157,500	150,000	180,000
Stockholders' equity (deficit)	112,535	(21,316)	17,498	26,318	146,588

The following items impact the comparability and presentation of our consolidated data:

- In December 2009 we acquired AMR Research and Burton Group. The results of these businesses are included beginning on the respective dates of acquisition (see Note 2 — Acquisitions in the Notes to the Consolidated Financial Statements). For 2009 we recorded approximately \$2.9 million in pre-tax acquisition and integration charges related to these acquisitions.
- Effective January 1, 2009, the Company eliminated its previously reported "Other" revenue line. The "Other" revenue line primarily consisted of fees earned from Research reprints and other miscellaneous products. These revenues are now included with Research revenues (see Note 1 — Business and Significant Accounting Policies in the Notes to the Consolidated Financial Statements).
- We sold our Vision Events business, which had been part of our Events segment, in early 2008 and have reported the results of operations of this business as a discontinued operation (see Note 3 — Discontinued Operations in the Notes to the Consolidated Financial Statements). The statement of operations and per share data for 2005 — 2007 have been restated to present the results of the Vision Events business as a discontinued operation.
- We acquired META Group, Inc. on April 1, 2005, and the results of that business are included beginning on that date. For 2006 and 2005 we recorded \$1.5 million and \$15.0 million, respectively, in pre-tax integration charges related to this acquisition.
- We repurchased 0.3 million, 9.7 million, 8.4 million, 14.9 million, and 0.8 million of our common shares in 2009, 2008, 2007, 2006 and 2005, respectively.
- We recorded Other charges, which includes costs for severance, excess facilities, litigation, and other items, on a pre-tax basis, of \$9.1 million in 2007 and \$29.2 million in 2005.
- We recorded pre-tax charges for loss on investments, net of \$5.8 million in 2005.

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

The purpose of the following Management's Discussion and Analysis ("MD&A") is to help facilitate the understanding of significant factors influencing the operating results, financial condition and cash flows of Gartner, Inc. Additionally, the MD&A also conveys our expectations of the potential impact of known trends, events or uncertainties that may impact future results. You should read this discussion in conjunction with our consolidated financial statements and related notes included in this report. Historical results and percentage relationships are not necessarily indicative of operating results for future periods. References to "the Company," "we," "our," and "us" are to Gartner, Inc. and its consolidated subsidiaries.

The following items impact the presentation and discussion of results in this MD&A section:

On December 18, 2009 we acquired AMR Research, and on December 30, 2009 we acquired Burton Group. The financial results of these businesses, which were not material to our 2009 results, have been included in our results beginning on their respective dates of acquisition (see Note 2 — Acquisitions in the Notes to the Consolidated Financial Statements). The operating metrics of these acquired businesses have been excluded from our Business Measurements presentations and discussions below for comparability purposes.

Effective January 1, 2009, the Company reclassified certain amounts presented in the Consolidated Statements of Operations. The Company eliminated its previously reported "Other" revenue line. The "Other" revenue line primarily consisted of fees earned from Research reprints and other miscellaneous products, and these revenues and related expenses are now included in the Research segment. In addition, certain expenses that were formerly classified in Selling, general & administrative are now included in Cost of services and product development and are included in Research segment expense. Prior periods have been reclassified in order to be consistent with the current period presentation. (see Note 1 — Business Significant Accounting Policies and Note 16 — Segment Information in the Notes to the Consolidated Financial Statements).

In early 2008 we sold our Vision Events business, which had been part of our Events segment. As a result, the results of operations for this business for 2008 and earlier periods have been reported as a discontinued operation (see Note 3 — Discontinued Operations in the Notes to the Consolidated Financial Statements).

### FORWARD-LOOKING STATEMENTS

In addition to historical information, this Annual Report on Form 10-K contains certain forward-looking statements. Forward-looking statements are any statements other than statements of historical fact, including statements regarding our expectations, beliefs, hopes, intentions or strategies regarding the future. In some cases, forward-looking statements can be identified by the use of words such as "may," "will," "expect," "should," "could," "believe," "plan," "anticipate," "estimate," "predict," "potential," "continue," or other words of similar meaning.

Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those discussed in, or implied by, the forward-looking statements. Factors that might cause such a difference include, but are not limited to, those discussed under Part 1, Item 1A, Risk Factors. Readers should not place undue reliance on these forward-looking statements, which reflect management's opinion only as of the date on which they were made. Except as required by law, we disclaim any obligation to review or update these forward-looking statements to reflect events or circumstances as they occur. Readers should review carefully any risk factors described in our reports filed with the SEC.

### BUSINESS OVERVIEW

Gartner, Inc. is the world's leading information technology research and advisory company that helps executives use technology to build, guide and grow their enterprises. We offer independent and objective research and analysis on the information technology, computer hardware, software, communications and related technology industries. We provide comprehensive coverage of the IT industry to approximately 10,000 client organizations, including approximately 400 of the Fortune 500 companies, in over 80 countries. Our client base consists primarily of CIOs and other senior IT and executives from a wide variety of business enterprises, government agencies and the investment community.

We have three business segments: Research, Consulting and Events.

- **Research** provides insight for CIOs, other IT executives and professionals, business leaders, technology companies and the investment community through research reports and briefings, access to our analysts, as well as peer networking services and membership programs.
- **Consulting** consists primarily of consulting engagements that utilize our research insight, benchmarking data, problem-solving methodologies and hands on experience to improve the return on an organization's IT investment through assessments of cost, performance, efficiency and quality.

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- **Events** consists of various symposia, summits and conferences focused on the IT industry as a whole, as well as IT applicable to particular industries and particular roles within an organization.

### BUSINESS MEASUREMENTS

We believe the following business measurements are important performance indicators for our business segments:

BUSINESS SEGMENT	BUSINESS MEASUREMENTS
Research	<p><b>Contract value</b> represents the value attributable to all of our subscription-related research products that recognize revenue on a ratable basis. Contract value is calculated as the annualized value of all subscription research contracts in effect at a specific point in time, without regard to the duration of the contract.</p> <p><b>Client retention rate</b> represents a measure of client satisfaction and renewed business relationships at a specific point in time. Client retention is calculated on a percentage basis by dividing our current clients, who were also clients a year ago, by all clients from a year ago.</p> <p><b>Wallet retention rate</b> represents a measure of the amount of contract value we have retained with clients over a twelve-month period. Wallet retention is calculated on a percentage basis by dividing the contract value of clients, who were clients one year earlier, by the total contract value from a year earlier, excluding the impact of foreign currency exchange. When wallet retention exceeds client retention, it is an indication of retention of higher-spending clients, or increased spending by retained clients, or both.</p> <p><b>Number of executive program members</b> represents the number of paid participants in executive programs.</p>
Consulting	<p><b>Consulting backlog</b> represents future revenue to be derived from in-process consulting, measurement and strategic advisory services engagements.</p> <p><b>Utilization rates</b> represent a measure of productivity of our consultants. Utilization rates are calculated for billable headcount on a percentage basis by dividing total hours billed by total hours available to bill.</p> <p><b>Billing Rate</b> represents earned billable revenue divided by total billable hours.</p> <p><b>Average annualized revenue per billable headcount</b> represents a measure of the revenue generating ability of an average billable consultant and is calculated periodically by multiplying the average billing rate per hour times the utilization percentage times the billable hours available for one year.</p>
Events	<p><b>Number of events</b> represents the total number of hosted events completed during the period.</p> <p><b>Number of attendees</b> represents the number of people who attend events.</p>

### EXECUTIVE SUMMARY OF OPERATIONS AND FINANCIAL POSITION

We purchased AMR Research and Burton Group in December 2009. We believe each of these companies is recognized as best-in-class for what they do, and will expand our research market opportunity and accelerate our growth rate over time.

We had total revenues of \$1,139.8 million in 2009, a decline of 11% from the prior year. Revenues decreased in all 3 of our business segments and all of our geographic regions. Excluding the impact of foreign currency translation, total revenues were down about 8% in 2009. We attribute the decline in revenue to the global economic downturn that began in 2008.

We had income from continuing operations of \$83.0 million in 2009, or \$0.85 per diluted share, compared to income from continuing operations of \$97.1 million, or \$0.98 per diluted share, for 2008. The decline primarily reflects lower profitability in our Consulting and Events segments.

Research revenues were down 4% year-over-year, to \$752.5 million in 2009 from \$781.6 million in the prior year. Excluding the impact of foreign currency, Research revenues were down 1% year-over-year. Despite the year-over-year decline in Research revenues, gross contribution margin increased by 2 points, primarily due to the tight cost controls we have implemented and to a lesser extent, our ability to implement price increases for our products.

As of December 31, 2009, research contract value was \$784.4 million, client retention was 78%, and wallet retention was 87%. Research contract value at December 31, 2009 was down 6% compared to the prior year end, but adjusted for the impact of foreign currency, was down 1% year-over-year. While down year-over-year, the \$784.4 million of contract value at December 31, 2009 increased 6% from September 30, 2009, reflecting a broad-based increase with all industries, geographies, and client sizes showing improvement during the quarter.

Consulting revenues declined 17% year-over-year, to \$286.8 million in 2009 from \$347.4 million in 2008, primarily due to a decline in core consulting. Excluding the unfavorable impact of foreign currency translation, revenues declined 15%. The Consulting segment contribution margin declined 2 points, primarily due to lower revenue in our contract optimization business and fewer SAS days filled, which have a higher contribution margin than core consulting. Utilization in core consulting was 68% for 2009. Backlog was \$90.9 million at December 31, 2009, a decline of 6% from December 31, 2008.

Events revenues decreased 33% in 2009 compared to the prior year due to discontinued events and a decline in revenue from our on-going events. We discontinued a number of events in 2009 in response to the economic downturn, travel restrictions, and other

factors. We held 54 events in 2009 compared to 70 in 2008, with a 12% decline in attendees at our 51 on-going events. The segment contribution margin declined by 2 points year-over-year, to 41%.

For a more detailed discussion of our segment results, see Segment Results below.

During 2009 we continued our focus on enhancing shareholder value by reducing our outstanding debt. We repaid \$95.3 million of our term loans during 2009, which represented approximately 32% of the amount outstanding. We also used \$104.5 million in cash to acquire AMR Research and Burton Group.

We had \$161.9 million of operating cash flow for the year ended December 31, 2009. Our cash and cash equivalents totaled \$116.6 million as of December 31, 2009 and we had approximately \$170.0 million of available borrowing capacity under our revolving credit facility. We believe that our cash position and borrowing capacity is more than adequate to meet our existing cash and liquidity requirements.

#### **FLUCTUATIONS IN QUARTERLY RESULTS**

Our quarterly and annual revenue, operating income, and cash flow fluctuate as a result of many factors, including: the timing of our SymposiumITxpo series, that normally are held during the fourth calendar quarter, and other events; the amount of new business generated; the mix of domestic and international business; changes in market demand for our products and services; changes in foreign currency rates; the timing of the development, introduction and marketing of new products and services; competition in the industry; and other factors. The potential fluctuations in our operating income could cause period-to-period comparisons of operating results not to be meaningful and could provide an unreliable indication of future operating results.

#### **CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

The preparation of financial statements requires the application of appropriate accounting policies and the use of estimates. Our significant accounting policies are described in Note 1 in the Notes to Consolidated Financial Statements. Management considers the policies discussed below to be critical to an understanding of our financial statements because their application requires complex and subjective management judgments and estimates. Specific risks for these critical accounting policies are also described below.

The preparation of our financial statements also requires us to make estimates and assumptions about future events. We develop our estimates using both current and historical experience, as well as other factors, including the general economic environment and actions we may take in the future. We adjust such estimates when facts and circumstances dictate. However, our estimates may involve significant uncertainties and judgments and cannot be determined with precision. In addition, these estimates are based on our best judgment at a point in time and as such these estimates may ultimately differ from actual results. On-going changes in our estimates could be material and would be reflected in the Company's financial statements in future periods.

Our critical accounting policies are as follows:

**Revenue recognition** – We recognize revenue in accordance with SEC Staff Accounting Bulletin No. 101, Revenue Recognition in Financial Statements ("SAB 101"), and SEC Staff Accounting Bulletin No. 104, Revenue Recognition ("SAB 104"). Once all required criteria for revenue recognition have been met, revenue by significant source is accounted for as follows:

- Research revenues are derived from subscription contracts for research products and are deferred and recognized ratably over the applicable contract term. Fees from research reprints are recognized when the reprint is shipped.
- Consulting revenues are principally generated from fixed fee and time and material engagements. Revenues from fixed fee contracts are recognized on a percentage of completion basis. Revenues from time and materials engagements are recognized as work is delivered and/or services are provided. Revenues related to contract optimization contracts are contingent in nature and are only recognized upon satisfaction of all conditions related to their payment.
- Events revenues are deferred and recognized upon the completion of the related symposium, conference or exhibition.

The majority of research contracts are billable upon signing, absent special terms granted on a limited basis from time to time. All research contracts are non-cancelable and non-refundable, except for government contracts that may have cancellation or fiscal funding clauses, which have not produced material cancellations to date. It is our policy to record the entire amount of the contract that is billable as a fee receivable at the time the contract is signed with a corresponding amount as deferred revenue, since the contract represents a legally enforceable claim.

For those government contracts that permit cancellation, we bill the client the full amount billable under the contract but only record a receivable equal to the earned portion of the contract. In addition, we only record deferred revenue on these government contracts when cash is received. Deferred revenues attributable to government contracts were \$65.3 million and \$61.6 million at December 31, 2009 and December 31, 2008, respectively. In addition, at December 31, 2009 and December 31, 2008, we had

not recognized uncollected receivables or deferred revenues relating to government contracts that permit termination of \$8.3 million and \$12.1 million, respectively.

**Uncollectible fees receivable** – The allowance for losses is composed of a bad debt allowance and a sales reserve. Provisions are charged against earnings, either as a reduction in revenues or an increase to expense. The measurement of likely and probable losses and the allowance for losses is based on historical loss experience, aging of outstanding receivables, an assessment of current economic conditions and the financial health of specific clients. This evaluation is inherently judgmental and requires material estimates. These valuation reserves are periodically re-evaluated and adjusted as more information about the ultimate collectibility of fees receivable becomes available. Circumstances that could cause our valuation reserves to increase include changes in our clients' liquidity and credit quality, other factors negatively impacting our clients' ability to pay their obligations as they come due, and the effectiveness of our collection efforts.

The following table provides our total fees receivable and the related allowance for losses (in thousands):

	2009	December 31, 2008
Total fees receivable	\$ 325,698	\$ 326,311
Allowance for losses	(8,100)	(7,800)
Fees receivable, net	\$ 317,598	\$ 318,511

**Impairment of goodwill and other intangible assets** – The evaluation of goodwill is performed in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 350, which requires goodwill to be assessed for impairment at least annually and whenever events or changes in circumstances indicate that the carrying value may not be recoverable. In addition, an impairment evaluation of our amortizable intangible assets is performed on a periodic basis.

Our annual goodwill assessment requires us to estimate the fair values of our reporting units based on estimates of future business operations and market and economic conditions in developing long-term forecasts. If we determine that the fair value of any reporting unit is less than its carrying amount, we must recognize an impairment charge for a portion of the associated goodwill of that reporting unit against earnings in our financial statements.

Factors we consider important that could trigger a review for impairment include the following:

- Significant under-performance relative to historical or projected future operating results;
- Significant changes in the manner of our use of acquired assets or the strategy for our overall business;
- Significant negative industry or economic trends;
- Significant decline in our stock price for a sustained period; and
- Our market capitalization relative to net book value.

Due to the numerous variables associated with our judgments and assumptions relating to the valuation of the reporting units and the effects of changes in circumstances affecting these valuations, both the precision and reliability of the resulting estimates are subject to uncertainty, and as additional information becomes known, we may change our estimates.

We completed the annual goodwill impairment testing in the quarter ended September 30, 2009 and concluded that the fair values of each of the Company's reporting units substantially exceeded their respective carrying values.

**Accounting for income taxes** – As we prepare our consolidated financial statements, we estimate our income taxes in each of the jurisdictions where we operate. This process involves estimating our current tax expense together with assessing temporary differences resulting from differing treatment of items for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within our consolidated balance sheets. We record a valuation allowance to reduce our deferred tax assets when future realization is in question. We consider the availability of loss carryforwards, existing deferred tax liabilities, future taxable income and ongoing prudent and feasible tax planning strategies in assessing the need for the valuation allowance. In the event we determine that we are able to realize our deferred tax assets in the future in excess of our net recorded amount, an adjustment is made to reduce the valuation allowance and increase income in the period such determination is made. Likewise, if we determine that we will not be able to realize all or part of our net deferred tax asset in the future, an adjustment to the valuation allowance is charged against income in the period such determination is made.

**Accounting for stock-based compensation** – The Company accounts for stock-based compensation in accordance with FASB ASC Topics 505 and 718, as interpreted by SEC Staff Accounting Bulletins No. 107 ("SAB No. 107") and No. 110 ("SAB No. 110"). The Company recognizes stock-based compensation expense, which is based on the fair value of the award on the date of grant,

over the related service period, net of estimated forfeitures (see Note 10 — Stock-Based Compensation in the Notes to the Consolidated Financial Statements).

Determining the appropriate fair value model and calculating the fair value of stock compensation awards requires the input of certain highly complex and subjective assumptions, including the expected life of the stock compensation awards and the Company's Common Stock price volatility. In addition, determining the appropriate amount of associated periodic expense requires management to estimate the rate of employee forfeitures and the likelihood of achievement of certain performance targets. The assumptions used in calculating the fair value of stock compensation awards and the associated periodic expense represent management's best estimates, but these estimates involve inherent uncertainties and the application of judgment. As a result, if factors change and the Company deems it necessary in the future to modify the assumptions it made or to use different assumptions, or if the quantity and nature of the Company's stock-based compensation awards changes, then the amount of expense may need to be adjusted and future stock compensation expense could be materially different from what has been recorded in the current period.

**Restructuring and other accruals** – We may record accruals for severance costs, costs associated with excess facilities that we have leased, contract terminations, asset impairments, and other costs as a result of on-going actions we undertake to streamline our organization, reposition certain businesses and reduce ongoing costs. Estimates of costs to be incurred to complete these actions, such as future lease payments, sublease income, the fair value of assets, and severance and related benefits, are based on assumptions at the time the actions are initiated. These accruals may need to be adjusted to the extent actual costs differ from such estimates. In addition, these actions may be revised due to changes in business conditions that we did not foresee at the time such plans were approved.

We also record accruals during the year for our various employee cash incentive programs. Amounts accrued at the end of each reporting period are based on our estimates and may require adjustment as the ultimate amount paid for these incentives are sometimes not known with certainty until after year end.

**RESULTS OF OPERATIONS**

The following table summarizes the changes in selected line items in our Consolidated Statements of Operation for the periods indicated (dollars in thousands):

	2009 vs. 2008				2008 vs. 2007			
	Twelve Months Ended December 31, 2009 (a)	Twelve Months Ended December 31, 2008	Dollar Increase (Decrease)	Percentage Increase (Decrease)	Twelve Months Ended December 31, 2008	Twelve Months Ended December 31, 2007	Dollar Increase (Decrease)	Percentage Increase (Decrease)
Total revenues	\$ 1,139,800	\$ 1,279,065	\$ (139,265)	(11)%	\$ 1,279,065	\$ 1,168,475	\$ 110,590	9%
Costs and expenses:								
Cost of services and product development	498,363	572,208	73,845	13%	572,208	546,569	(25,639)	(5)%
Selling, general and administrative	477,003	514,994	37,991	7%	514,994	456,975	(58,019)	(13)%
Depreciation	25,387	25,880	493	2%	25,880	24,298	(1,582)	(7)%
Amortization of intangibles	1,636	1,615	(21)	(1)%	1,615	2,091	476	(23)%
Acquisition and integration charges	2,934	—	(2,934)	(100)%	—	—	—	—
Other charges	—	—	—	—	—	9,084	9,084	100%
Operating income	134,477	164,368	(29,891)	(18)%	164,368	129,458	34,910	27%
Interest expense, net	(16,032)	(19,269)	3,237	17%	(19,269)	(22,154)	2,885	13%
Other (expense) income, net	(2,919)	(358)	(2,561)	>(100)%	(358)	3,193	(3,551)	>(100)%
Provision for income taxes	32,562	47,593	15,031	32%	47,593	39,831	(7,762)	(19)%
Income from continuing operations	82,964	97,148	(14,184)	(15)%	97,148	70,666	26,482	37%
Income from discontinued operations, net of taxes	—	6,723	(6,723)	(100)%	6,723	2,887	3,836	>100%
Net income	\$ 82,964	\$ 103,871	\$ (20,907)	(20)%	\$ 103,871	\$ 73,553	\$ 30,318	41%

(a) In December 2009 we acquired AMR Research and Burton Group. The operating results of these businesses are included in our consolidated results beginning on the respective dates of acquisition. The results of these businesses were not material to our 2009 results.

**2009 VERSUS 2008**

TOTAL REVENUES for the twelve months ended December 31, 2009 decreased \$139.3 million, or 11%, compared to the twelve months ended December 31, 2008. Revenues declined across all of our geographic regions and in all three of our business

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segments. The impact of foreign currency had a negative impact on our revenues in 2009, and excluding this impact, total revenues in 2009 were down 8% compared to 2008. Our revenues and operating results were negatively impacted by global economic conditions in 2009.

An overview of our results by geographic region follows:

- Revenues from sales to United States and Canadian clients decreased 8%, to \$663.8 million in 2009 from \$723.2 million in 2008.
- Revenues from sales to clients in Europe, the Middle East and Africa ("EMEA") decreased to \$360.8 million in 2009 from \$430.4 million in 2008, a 16% decrease.
- Revenues from sales to clients in our Other International region decreased 8%, to \$115.2 million in 2009 from \$125.4 million in 2008.

An overview of our results by segment follows:

- **Research** revenues decreased 4% in 2009 to \$752.5 million compared to \$781.6 million in 2008, and comprised approximately 66% and 61% of our total revenues in 2009 and 2008, respectively.
- **Consulting** revenues decreased 17% in 2009 to \$286.8 million, compared to \$347.4 million in 2008, and comprised approximately 25% and 27% of our total revenues in 2009 and 2008, respectively.
- **Events** revenues were \$100.4 million in 2009, a decrease of 33% from \$150.1 million in 2008, and comprised approximately 9% and 12% of our total revenues in 2009 and 2008, respectively.

Please refer to the section of this MD&A below entitled "Segment Results" for a further discussion of revenues and results by segment.

COST OF SERVICES AND PRODUCT DEVELOPMENT decreased \$73.8 million year-over-year, or 13%. The favorable impact of foreign currency translation reduced expense by about \$19.0 million. We had lower conference expenses of \$18.5 million primarily due to discontinued events. We also had reduced travel and internal meeting charges of \$16.7 million and lower personnel costs of about \$12.5 million, primarily due to our tight cost controls. The remaining \$7.1 million net decrease was spread across a number of other expense categories. Cost of services and product development as a percentage of sales declined by 1 point, to 44% in 2009 from 45% in 2008, primarily due to tight expense controls across our businesses.

SELLING, GENERAL AND ADMINISTRATIVE ("SG&A") expense decreased by about \$38.0 million in 2009, or 7%, compared to 2008, despite increasing our sales force. The impact of foreign currency translation reduced expense by about \$18.0 million. We also had lower travel, internal meeting, and recruiting costs of about \$19.0 million, again due to our tight cost controls. The remaining net reduction was spread across a number of other expense categories. Excluding the 60 sales associates that joined us from AMR Research and Burton Group, we had 942 quota-bearing sales associates at December 31, 2009, a 2% increase from the prior year end. This additional investment in sales associates resulted in \$9.0 million of higher payroll and benefits costs, which was offset by lower G&A charges.

DEPRECIATION expense decreased 2% year-over-year which reflects reduced capital spending during 2009. Capital spending decreased to \$15.1 million in 2009 from \$24.3 million in 2008, a 38% decline, which reflects the Company's reduced 2009 capital expenditures.

AMORTIZATION OF INTANGIBLES was \$1.6 million for both 2009 and 2008.

ACQUISITION AND INTEGRATION CHARGES was \$2.9 million in 2009 and zero in 2008. Included is these charges are legal fees and consultant fees in connection with the acquisitions and integration of AMR Research and Burton Group, as well as severance costs related to redundant headcount.

OPERATING INCOME decreased 18% year-over-year, to \$134.5 million in 2009 from \$164.4 million in 2008. Operating income as a percentage of revenues declined 1 point year-over-year, primarily due to lower profitability in our Consulting and Events segments and the \$2.9 million acquisition and integration charge related to AMR Research and Burton Group.

Please refer to the section of this MD&A entitled "Segment Results" below for a further discussion of revenues and results by segment.

INTEREST EXPENSE, NET was \$16.0 million in 2009 and \$19.3 million in 2008, a 17% decline. The 2009 period includes \$1.1 million of expense related to the discontinuance of hedge accounting on an interest rate swap contract (See Note 7 — Debt in the Notes to the Consolidated Financial Statements). Excluding the \$1.1 million charge, Interest expense, net would have

declined approximately 22% year-over-year. The year-over-year decline is primarily attributable to a reduction in the weighted-average amount of debt outstanding.

OTHER (EXPENSE) INCOME, NET of \$(2.9) million in 2009 consisted of net foreign currency exchange losses. The \$(0.4) million Other expense in 2008 primarily consisted of a \$1.2 million gain related to the settlement of a litigation matter offset by net foreign currency exchange losses.

PROVISION FOR INCOME TAXES on continuing operations was \$32.6 million in 2009 as compared to \$47.6 million in 2008. The effective tax rate was 28.2% in 2009 and 32.9% in 2008. The lower effective tax rate in 2009 as compared to 2008 is attributable to several items. The most significant of these items include the following: (a) the release of reserves for uncertain tax positions relating to the expiration of statutes of limitation was larger in 2009 than in 2008 while pretax income was lower, and (b) differences relating to the taxability of life insurance contracts year-over-year.

INCOME FROM DISCONTINUED OPERATIONS, NET OF TAXES, includes the results of the Company's Vision Events business, which we sold in early 2008. The \$6.7 million of income for 2008 includes a net gain on sale of approximately \$7.1 million and a \$(0.4) million operating loss.

NET INCOME was \$83.0 million in 2009 and \$103.9 million in 2008, a decline of \$20.9 million or 20%. The decline was primarily driven by the reduced contributions by our three business segments in the 2009 period and to a lesser extent, the \$2.9 million acquisition and integration charge we recorded related to AMR Research and Burton Group. These decreases were partially offset by lower SG&A charges, a lower effective income tax rate, and reduced interest expense. Also contributing to the year-over-year decline in net income was the \$6.7 million net gain from the sale of the Company's former Vision Events business recorded in the 2008 period.

Basic earnings per share from continuing operations decreased 14% year-over-year. Diluted earnings per share from continuing operations decreased 13% year-over-year.

#### 2008 VERSUS 2007

TOTAL REVENUES for the twelve months ended December 31, 2008 increased \$110.6 million, or 9%, compared to the twelve months ended December 31, 2007. Revenues increased across all of our geographic regions and in our Research and Consulting segments. Excluding the favorable effect of foreign currency translation, total revenues for 2008 would have increased 8% over 2007.

An overview of our results by geographic region follows:

- Revenues from sales to United States and Canadian clients increased 9%, to \$723.2 million in 2008 from \$661.2 million in 2007.
- Revenues from sales to clients in EMEA increased to \$430.4 million in 2008 from \$403.9 million in 2007, a 7% increase.
- Revenues from sales to clients in our Other International region increased 21%, to \$125.4 million in 2008 from \$103.3 million in 2007.

An overview of our results by segment follows:

- **Research** revenues increased 14% in 2008 to \$781.6 million, compared to \$683.4 million in 2007, and comprised approximately 61% and 58% of our total revenues in 2008 and 2007, respectively.
- **Consulting** revenues increased 7% in 2008 to \$347.4 million, compared to \$325.0 million in 2007, and comprised approximately 27% and 28% of our total revenues in 2008 and 2007, respectively.
- **Events** revenues were \$150.1 million in 2008, a decrease of 6% from \$160.1 million in 2007, and comprised approximately 12% and 14% of our total revenues in 2008 and 2007, respectively.

Please refer to the section of this MD&A below entitled "Segment Results" for a further discussion of revenues and results by segment.

COST OF SERVICES AND PRODUCT DEVELOPMENT increased \$25.6 million year-over-year, or 5%. Excluding the unfavorable impact of foreign exchange, Cost of service and product development would have increased by about 4%.

The year-over-year increase was due to several factors. We had \$17.0 million of higher salary, commissions, and other benefit costs, \$5.7 million in additional severance and benefits charges related to our fourth quarter reduction in force, and \$4.0 million in additional Events fulfillment costs. The impact of foreign currency translation added about \$2.1 million of expense. Partially offsetting these higher charges was a decrease of approximately \$3.2 million in lower headcount costs, primarily due to our exit from consulting operations in Asia-Pacific in mid-2007.

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As a percentage of sales, Cost of services and product development was 45% and 47% in 2008 and 2007 respectively, a decrease of 2 points, which is due to a number of factors. These factors include higher revenues coupled with the inherent operating leverage in our Research business, improved productivity in core Consulting, substantially increased revenues in our higher margin contract optimization business in our Consulting segment, and a continued focus on expense management.

SG&A expense increased by \$58.0 million in 2008, or 13%, compared to 2007. The increase in 2008 expense was primarily due to higher investment in our sales organization, severance and benefits charges related to our fourth quarter reduction in force, and increases in other payroll and benefits costs. Growth in our sales organization resulted in approximately \$38.0 million of additional payroll and benefits, commissions, and travel expense in 2008 when compared to 2007. We had 928 quota-bearing sales associates as of December 31, 2008, a 15% increase over December 31, 2007. We had \$2.8 million in severance and benefits charges related to our fourth quarter 2008 reduction in force, while higher payroll and related benefits costs for our other staff added about \$13.0 million in costs. The remaining increase was spread across a number of other cost categories, which was offset to some extent by lower recruiting and stock-based compensation charges.

DEPRECIATION expense increased 7% in 2008, to \$25.9 million compared to \$24.3 million for the prior year. The increase was primarily due to a change in the mix of investment in capital expenditures.

AMORTIZATION OF INTANGIBLES was \$1.6 million in 2008 compared to \$2.1 million in 2007. The decrease was due to certain intangibles becoming fully amortized in 2007.

OTHER CHARGES was zero in 2008 and \$9.1 million in 2007. The \$9.1 million included charges of \$8.7 million related to the settlement of litigation and \$2.7 million of severance costs related to the Company's exit from consulting operations in Asia. Offsetting these charges was a credit of \$2.3 million related to an excess facility which the Company returned to service.

OPERATING INCOME was \$164.4 million and \$129.5 million in 2008 and 2007, respectively, an increase of \$34.9 million, or 27%. Operating income as a percentage of revenues was 13% in 2008 and 11% in 2007, a 2 point increase, which is due to a number of factors, the most significant being the impact from higher revenues in our Research and Consulting businesses. The improved operating margin also reflects our tight focus on expense management, and charges of \$9.1 million in 2007 related to the settlement of litigation and other items.

Please refer to the section of this MD&A entitled "Segment Results" below for a further discussion of revenues and results by segment.

INTEREST EXPENSE, NET was \$19.3 million and \$22.2 million in 2008 and 2007, respectively, a decrease of \$2.9 million. The decrease was primarily due to a decline in the weighted-average interest rate on our outstanding debt. The weighted-average interest rate on our debt, including the impact of our interest rate swaps, was 4.8% in 2008 and 6.0% in 2007. The impact of the lower average rate was partially offset by an increase in the weighted-average amount of debt outstanding of approximately \$50.0 million during 2008. In 2008 we also had about \$0.2 million of additional interest income, as well as a \$0.2 million decrease in the amortization of debt issuance costs, both of which are recorded in Interest Expense, net.

OTHER (EXPENSE) INCOME, NET was \$(0.4) million in 2008 and \$3.2 million in 2007. The \$(0.4) million Other expense in 2008 primarily consisted of a \$1.2 million gain related to the settlement of a litigation matter offset by net foreign currency exchange losses. The \$3.2 million of Other income in 2007 primarily consisted of a \$1.8 million gain from the settlement of a claim and net foreign currency exchange gains.

PROVISION FOR INCOME TAXES on continuing operations was \$47.6 million in 2008 as compared to \$39.8 million 2007. The effective tax rate was 32.9% in 2008 and 36.0% in 2007. The lower effective tax rate in 2008 as compared to 2007 was attributable to several items. The most significant of these items included the following: (a) the Company generated a larger percentage of its income in low tax jurisdictions in 2008 as compared to 2007, and (b) differences relating to the tax impact of repatriated funds in 2008 as compared to 2007.

INCOME FROM DISCONTINUED OPERATIONS, NET OF TAXES, which includes the results of the Company's Vision Events business, was \$6.7 million and \$2.9 million for 2008 and 2007, respectively. The Company sold the Vision Events business, which had been part of the Company's Events segment, in early 2008. The results for 2008 included a net gain on the sale of approximately \$7.1 million and a loss from operations of \$(0.4) million.

NET INCOME was \$103.9 million and \$73.6 million for 2008 and 2007, respectively, an increase of \$30.3 million, or 41%.

Basic earnings per share from continuing operations increased \$0.34 per share year-over-year. Diluted earnings per share from continuing operations increased \$0.33 per share year-over-year.

**SEGMENT RESULTS**

We evaluate reportable segment performance and allocate resources based on gross contribution margin. Gross contribution is defined as operating income excluding certain Cost of services and product development charges, and SG&A, Depreciation, Acquisition and integration charges, Amortization of intangibles, and Other charges. Gross contribution margin is defined as gross contribution as a percentage of revenues.

We acquired AMR Research on December 18, 2009 and Burton Group on December 30, 2009. The financial results of these businesses are included in the Financial Measurements beginning on their respective dates of acquisition. The results of these businesses were not material to our segment results. Business Measurements exclude data applicable to these businesses.

The following sections present the results of our three segments:

*Research*

	2009 vs. 2008				2008 vs. 2007			
	As Of And For The Twelve Months Ended December 31, 2009	As Of And For the Twelve Months Ended December 31, 2008	Increase (Decrease)	Percentage Increase (Decrease)	As Of And For the Twelve Months Ended December 31, 2008	As Of And For the Twelve Months Ended December 31, 2007	Increase (Decrease)	Percentage Increase (Decrease)
<b>Financial Measurements: (1)</b>								
Revenues (2)	\$ 752,505	\$ 781,581	\$ (29,076)	(4)%	\$ 781,581	\$ 683,380	\$ 98,201	14%
Gross contribution (2)	\$ 489,862	\$ 495,440	\$ (5,578)	(1)%	\$ 495,440	\$ 419,639	\$ 75,801	18%
Gross contribution margin	65%	63%	2 points	—	63%	61%	2 points	—
<b>Business Measurements: (3)</b>								
Contract value (2)	\$ 784,443	\$ 834,321	\$ (49,878)	(6)%	\$ 834,321	\$ 752,533	\$ 81,788	11%
Client retention	78%	82%	(4) points	—	82%	82%	—	—
Wallet retention	87%	95%	(8) points	—	95%	98%	(3) points	—
Exec. program members	3,651	3,733	(82)	(2)%	3,733	3,753	(20)	—

(1) Includes the operating results of AMR Research and Burton Group, which we purchased in December 2009. The results of these businesses were not material to our 2009 segment results.

(2) Dollars in thousands.

(3) Excludes AMR Research and Burton Group.

**2009 VERSUS 2008**

Research revenues declined 4% year-over-year, but excluding the unfavorable effect of foreign currency translation, Research revenues were down about 1%.

In spite of lower revenues, the Research contribution margin increased 2 points year-over-year. The improved margin was primarily driven by the tight cost controls we have implemented, which resulted in lower costs concentrated in personnel, travel, and internal meetings, and our ability to implement price increases for our products.

Contract value decreased 6% when comparing December 31, 2009 to December 31, 2008, but excluding the impact of foreign currency translation, contract value was down 1% year-over-year.

While down year-over-year, contract value increased \$42.0 million in the fourth quarter of 2009, or 6%, one of our highest ever quarterly increases, with growth across all industries, geographies, and client sizes. We believe the increase reflects both improved sales effectiveness as well as an improving economic environment.

**2008 VERSUS 2007**

Revenue in our Research business was up 14% in 2008, to \$781.6 million. We had growth across our entire product portfolio in 2008. Foreign currency translation impact was not significant.

Research gross contribution increased to \$495.4 million in 2008 from \$419.6 million in 2007, an 18% increase, while the contribution margin increased 2 points, to 63% from 61%. The year-over-year contribution margin improved primarily due to our stronger revenue performance coupled with the operating leverage inherent in our Research business, along with tight expense management.

Contract value was \$834.3 million as of December 31, 2008, up 11% from \$752.5 million at December 31, 2007. Adjusted for the favorable impact of foreign currency translation, contract value was up approximately 8%.

Consulting

	2009 vs. 2008				2008 vs. 2007			
	As Of And For the Twelve Months Ended December 31, 2009	As Of And For the Twelve Months Ended December 31, 2008	Increase (Decrease)	Percentage Increase (Decrease)	As Of And For the Twelve Months Ended December 31, 2008	As Of And For the Twelve Months Ended December 31, 2007	Increase (Decrease)	Percentage Increase (Decrease)
<b>Financial Measurements: (1)</b>								
Revenues (2)	\$ 286,847	\$ 347,404	\$ (60,557)	(17)%	\$ 347,404	\$ 325,030	\$ 22,374	7%
Gross contribution (2)	\$ 112,099	\$ 141,395	\$ (29,296)	(21)%	\$ 141,395	\$ 128,215	\$ 13,180	10%
Gross contribution margin	39%	41%	(2) points	—	41%	39%	2 points	—
<b>Business Measurements: (3)</b>								
Backlog (2)	\$ 90,891	\$ 97,169	\$ (6,278)	(6)%	\$ 97,169	\$ 121,400	\$ (24,231)	(20)%
Billable headcount	442	499	(57)	(11)%	499	472	27	6%
Consultant utilization	68%	72%	(4) points	—	72%	69%	3 points	—
Average annualized revenue per billable headcount (2)	\$ 435	\$ 460	\$ (25)	(5)%	\$ 460	\$ 430	\$ 30	7%

(1) Includes the operating results of AMR Research and Burton Group, which we purchased in December 2009. The results of these businesses were not material to our 2009 segment results.

(2) Dollars in thousands.

(3) Excludes AMR Research and Burton Group.

**2009 VERSUS 2008**

Consulting revenues declined 17% when comparing 2009 with 2008, with the majority of the decline in core consulting, and to a lesser extent, in our SAS and contract optimization businesses. The decline in core consulting was driven by lower headcount, utilization, and billing rates. The decline in revenue in our contract optimization business reflects a large contract received at the end of 2008 which was not repeated in 2009. SAS revenues declined due to approximately 17% fewer fulfilled SAS days. Excluding the unfavorable impact of foreign currency, overall Consulting revenues were down about 15%.

The 2 point decline in the Consulting contribution margin reflects lower revenue in our SAS and contract optimization businesses, which have higher margins than core consulting. To a lesser extent, the decline also reflects lower utilization and billing rates in core consulting.

We ended 2009 with 442 billable consultants, a decline of 11% from the prior year end as we tightly managed resources to match demand. The decline reflects normal attrition as well as the termination of approximately 30 consultants in January 2009 to better align our delivery resources with lower backlog.

Consulting backlog declined 6% year-over-year but increased 7% sequentially in the fourth quarter of 2009 to \$90.9 million, as demand for our consulting services was solid in the U.S. while demand in Europe lagged.

**2008 VERSUS 2007**

Consulting revenues increased year-over-year by \$22.4 million, or 7%. Excluding the favorable impact of foreign currency translation, revenues for 2008 were up about 6%. The revenue increase was due to strength in both the core consulting and benchmarking businesses and exceptionally strong results in our contract optimization business. Contributing to the year-over-year revenue increase in our contract optimization business was the completion of one large contract in the fourth quarter of 2008 which resulted in approximately \$11.0 million of revenue.

Consulting gross contribution increased by \$13.1 million while the gross contribution margin improved by 2 points. These improvements were driven by improved utilization on higher headcount and higher billing rates, and higher revenues in our contract optimization business, which has a higher margin than our core consulting business.

Consulting backlog, which represents future revenues to be recognized from in-process consulting, measurement and SAS, was \$97.2 million at December 31, 2008, compared to \$121.4 million at December 31, 2007, as bookings slowed in the fourth quarter of 2008 due to the weaker economic environment.

Events

	2009 vs. 2008				2008 vs. 2007			
	As Of And For the Twelve Months Ended December 31, 2009	As Of And For the Twelve Months Ended December 31, 2008	Increase (Decrease)	Percentage Increase (Decrease)	As Of And For the Twelve Months Ended December 31, 2008	As Of And For the Twelve Months Ended December 31, 2007	Increase (Decrease)	Percentage Increase (Decrease)
<b>Financial Measurements: (1)</b>								
Revenues <sup>(2)</sup>	\$ 100,448	\$ 150,080	\$ (49,632)	(33)%	\$ 150,080	\$ 160,065	\$ (9,985)	(6)%
Gross contribution <sup>(2)</sup>	\$ 40,945	\$ 64,954	\$ (24,009)	(37)%	\$ 64,954	\$ 81,908	\$ (16,954)	(21)%
Gross contribution margin	41%	43%	(2) points	—	43%	51%	(8) points	—
<b>Business Measurements: (3)</b>								
Number of events	54	70	(16)	(23)%	70	62	(8)	(13)%
Number of attendees	30,610	41,352	(10,742)	(26)%	41,352	44,216	(2,864)	(6)%

(1) Includes the operating results of AMR Research and Burton Group, which we purchased in December 2009. The results of these businesses were not material to our 2009 segment results.

(2) Dollars in thousands.

(3) Excludes AMR Research and Burton Group.

**2009 VERSUS 2008**

Events revenue was down \$49.6 million, or 33% in 2009 due to the impact of discontinued events and a decline in revenue from our on-going events. We held 54 events in 2009, a decline of 16 events compared to the prior year. The 54 events held in 2009 consisted of 51 on-going events and 3 new events. The number of attendees at our 51 on-going events was down 12% while the number of exhibitors was down 31%. Excluding the unfavorable impact of foreign currency, Events revenues were down 32% year-over-year.

Approximately \$24.0 million of the revenue decrease was due to 19 discontinued events, including our Spring Symposium, which was a significant event in prior years. We discontinued these events in 2009 in response to the difficult operating environment, with tight travel restrictions and budget cuts at many companies due to the weak economy. We also had a \$30.0 million decline in revenue from our 51 on-going events. These declines were slightly offset by approximately \$4.0 million in higher revenue from new event launches and other miscellaneous events revenues. The Events contribution margin was down 2 points year-over-year primarily due to lower average attendee and exhibitor revenue at our 51 on-going events.

While the number of attendees was down significantly year-over-year, this trend began to show improvement in the fourth quarter of 2009 with attendance at our on-going events up 2%. We also began to see improvement in exhibitor participation. We believe these trends reflect a loosening of corporate travel budgets, resumed growth in marketing spend by technology companies, and our continuing efforts to increase client retention by enhancing the value and experience that our clients derive from our events.

**2008 VERSUS 2007**

Events revenues decreased 6% year-over-year, or \$10.0 million, reflecting lower revenues from both attendees and exhibitors. Excluding the favorable impact of foreign currency translation, events revenues were down approximately 7% year-over-year. We held 70 events in 2008 compared to 62 events in 2007, with overall attendance down about 6%, to 41,352 in 2008 from 44,216 in 2007.

The 70 events held in 2008 included 59 on-going events and 11 new events. During 2008, the number of exhibitors at our on-going events declined by approximately 13%, while attendance was 38,961 as compared to 42,554 attendees in 2007, an 8% decrease. Average revenue at these on-going events declined slightly for attendees but increased slightly for exhibitors. Revenues from the 11 new events we held in 2008 was only slightly higher than the events we discontinued. The majority of the year-over-year revenue shortfall occurred in our fourth quarter, as travel restrictions, cuts in marketing budgets, and other expense controls at many companies took effect in response to the credit crisis and weakening global economy.

Events gross contribution was \$65.0 million in 2008 compared to \$81.9 million for 2007, while the year-over-year gross contribution margin declined by 8 points, to 43% from 51%. The decrease in the gross contribution margin was primarily due to lower revenues, higher fulfillment costs, the impact of lower margin new events, and severance charges related to our reduction in force.

**LIQUIDITY AND CAPITAL RESOURCES**

We finance our operations primarily through cash generated from our on-going operating activities. As of December 31, 2009, we had \$116.5 million of cash and cash equivalents and \$170.0 million of available borrowing capacity under our revolving credit facility (not including the \$100.0 million expansion feature). Our cash and cash equivalents are held in numerous locations throughout the world, with approximately 60% held outside the United States as of December 31, 2009.

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We repaid \$95.3 million of our term loans in 2009, thus reducing the amount of term loans outstanding by about 32%. We paid \$104.5 million in cash in December 2009 and \$13.1 million in January 2010 for the acquisitions of AMR Research and Burton Group.

We believe that we have adequate liquidity and that the cash we expect to earn from our on-going operating activities, our existing cash balances, and the borrowing capacity we have under our revolving credit facility will be sufficient for our expected short-term and foreseeable long-term operating needs.

The following table summarizes the Company's changes in cash and cash equivalents for the three years ending December 31, 2009:

	2009 vs. 2008			2008 vs. 2007		
	Twelve Months Ended December 31, 2009	Twelve Months Ended December 31, 2008	Dollar Increase (Decrease)	Twelve Months Ended December 31, 2008	Twelve Months Ended December 31, 2007	Dollar Increase (Decrease)
Cash provided by operating activities	\$ 161,937	\$ 184,350	\$ (22,413)	\$ 184,350	\$ 148,335	\$ 36,015
Cash used by investing activities	(119,665)	(16,455)	(103,210)	(16,455)	(24,136)	7,681
Cash used in financing activities	(73,780)	(119,835)	46,055	(119,835)	(93,695)	(26,140)
Net (decrease) increase	(31,508)	48,060	(79,568)	48,060	30,504	17,556
Effects of exchange rates	7,153	(17,076)	24,229	(17,076)	11,640	(28,716)
Beginning cash and cash equivalents	140,929	109,945	30,984	109,945	67,801	42,144
Ending cash and cash equivalents	\$ 116,574	\$ 140,929	\$ (24,355)	\$ 140,929	\$ 109,945	\$ 30,984

### 2009 VERSUS 2008

#### Operating

Our operating cash flow decreased by 12% in 2009, or \$22.4 million. We had a decline of approximately \$23.0 million in cash from our core operations, along with \$14.5 million more in cash taxes paid and \$8.0 million in higher severance payments due to the workforce reduction completed in early January 2009. Partially offsetting the declines were \$14.8 million in lower interest payments on our debt, bonus payments, and payments on our excess facilities, and an \$8.3 million improvement in working capital. The improved working capital primarily reflects improved cash collection on receivables.

#### Investing

We used an additional \$103.2 million of cash in our investing activities in 2009 due to the \$104.5 million of cash used for the acquisitions of AMR Research and Burton Group. We had \$15.1 million of capital expenditures in 2009, a decline of 38% compared to the \$24.3 million of capital expenditures in 2008. The decline reflects the Company's tight focus on reducing costs. We also realized \$7.8 million of cash proceeds in 2008 from the sale of our Vision Events business.

#### Financing

Cash used in financing activities declined by \$46.1 million, primarily due to a significant decline in the use of cash for stock repurchases. Cash used for stock repurchases declined by about \$197.1 million. Offsetting the decline in cash used for share repurchases was an increase in the use of cash to repay debt of about \$108.7 million and a decline in cash proceeds from option exercises and excess tax benefits from equity compensation of approximately \$42.3 million.

### 2008 VERSUS 2007

#### Operating

Cash provided by operating activities increased \$36.1 million, or 24%, in 2008 compared to 2007. The increase in cash flow from operating activities was primarily due to substantially increased cash from our core operations and improvement in our working capital, which together added approximately \$45.0 million in higher operating cash flow. Our working capital improved primarily due to improved collection of receivables. Also contributing to the improved cash flow was \$12.0 million in lower cash payments related to severance, excess facilities, and settlement of litigation, and about \$2.0 million less in interest paid on our debt as interest rates declined. The improved operating cash flow in 2008 was somewhat offset by higher cash payments for taxes and bonuses of approximately \$23.0 million.

#### Investing

Cash used in investing activities was \$16.5 million for the year ended December 31, 2008, compared to cash used of \$24.1 million in 2007. We had capital expenditures of \$24.3 million in the year ended December 31, 2008, which was offset by net cash proceeds from the sale of our Vision Events business of approximately \$7.8 million. We had capital expenditures of \$24.2 million in 2007.

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### Financing

Cash used in financing activities totaled \$119.8 million in 2008 compared to cash used of \$93.7 million in 2007, an increase in cash used of \$26.1 million. The increased use of cash was primarily due to a significantly higher use of cash for stock repurchases in 2008. We used an additional \$34.0 million of cash to repurchase our shares in 2008, to \$200.8 million in 2008 compared to \$166.8 million in 2007. Partially offsetting the additional use of cash used for stock repurchases was an increase of \$10.2 million in cash proceeds from stock issued for stock plans, which rose to \$44.7 million in 2008 compared to \$34.5 million in 2007, driven by higher option exercises.

### OBLIGATIONS AND COMMITMENTS

At December 31, 2009, we had \$329.0 million outstanding under our Credit Agreement, which provides for two amortizing term loans and a \$300.0 million revolving credit facility. The revolving credit facility may be increased up to an additional \$100.0 million at our lenders' discretion (the "expansion feature"), for a total revolving credit facility of \$400.0 million. However, the \$100.0 million expansion feature may or may not be available to us depending upon prevailing credit market conditions.

The term loans are being repaid in consecutive quarterly installments plus a final payment due on January 31, 2012, and may be prepaid at any time without penalty or premium at our option. The revolving loan facility may be borrowed, repaid and reborrowed until January 31, 2012, at which time all amounts borrowed must be repaid. See Note 7 — Debt in the accompanying notes to the consolidated financial statements for additional information regarding the Credit Agreement.

### Commitments

The following table presents our contractual cash commitments due after December 31, 2009 (in thousands):

Commitment Type:	Total	Less Than 1 Year	1-3 Years	4-5 Years	More Than 5 Years
Operating leases (1)	\$ 137,158	\$ 33,946	\$ 39,309	\$ 19,821	\$ 44,082
Debt outstanding (2)	329,000	77,000	252,000	—	—
Acquisition payables (3)	13,059	13,059	—	—	—
Deferred compensation arrangement (4)	22,996	1,878	3,722	2,518	14,878
Tax liabilities (5)	1,310	1,310	—	—	—
Totals	\$503,523	\$ 127,193	\$ 295,031	\$ 22,339	\$ 58,960

(1) The Company leases various facilities, furniture, and computer equipment expiring between 2010 and 2025.

(2) Represent amounts due under the Credit Agreement. Amounts due under the revolver are classified in the 1-3 Years category since the amounts are not contractually due until January 31, 2012.

Interest payments on our outstanding debt are excluded from the amounts payable due to the variable nature of the interest rates and resulting payment amounts. Information regarding current interest rates on the Company's debt is contained in Note 7 — Debt in the Notes to the Consolidated Financial Statements. For the years ended December 31, 2009, 2008 and 2007, cash interest paid on our debt was \$13.9 million, \$22.4 million, and \$24.1 million, respectively.

(3) Includes amounts payable consisting primarily of a portion of the purchase price related to our acquisition of Burton Group on December 30, 2009. These amounts were paid in January 2010.

(4) Represents a liability under the Company's supplemental deferred compensation arrangement. Amounts payable to active employees whose payment date is unknown have been included in the More Than 5 Years category since the Company cannot determine when the amounts will be paid.

(5) Includes interest and penalties. In addition to the \$1.3 million liability, approximately \$13.8 million of unrecognized tax benefits have been recorded as liabilities, and we are uncertain as to if or when such amounts may be settled. Related to the unrecognized tax benefits not included in the table, the Company has also recorded a liability for potential interest and penalties of \$1.5 million.

### QUARTERLY FINANCIAL DATA

The following tables present our quarterly operating results for the two year period ended December 31, 2009:

(In thousands, except per share data)  
2009

	First	Second	Third	Fourth
Revenues	\$ 273,533	\$ 269,971	\$ 267,469	\$ 328,827
Operating income	34,451	30,761	27,521	41,744
Net income	19,996	17,185	20,067	25,716
Net income per share(1)				
Basic	\$ 0.21	\$ 0.18	\$ 0.21	\$ 0.27
Diluted	\$ 0.21	\$ 0.18	\$ 0.21	\$ 0.26

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(In thousands, except per share data)  
2008

	First	Second	Third	Fourth
Revenues	\$ 290,099	\$ 343,939	\$ 297,706	\$ 347,321
Operating income	26,330	47,575	34,682	55,781
Net income	21,544	29,900	18,781	33,646
Net income per share (1)				
Basic:				
From continuing operations	\$ 0.15	\$ 0.32	\$ 0.20	\$ 0.36
From discontinued operations (2)	0.07	—	—	—
	\$ 0.22	\$ 0.32	\$ 0.20	\$ 0.36
Diluted:				
From continuing operations	\$ 0.14	\$ 0.30	\$ 0.19	\$ 0.35
From discontinued operations (2)	0.07	—	—	—
	\$ 0.21	\$ 0.30	\$ 0.19	\$ 0.35

(1) The aggregate of the four quarters' basic and diluted earnings per common share may not equal the reported full calendar year amounts due to the effects of share repurchases, dilutive equity compensation, and rounding.

(2) The first quarter of 2008 includes \$0.07 per share from gain on disposal of discontinued operations.

### NEW ACCOUNTING STANDARDS

In January 2010, the FASB issued ASU 2010-6, *Improving Disclosures About Fair Value Measurements*, which requires reporting entities to make new disclosures about recurring or nonrecurring fair-value measurements including significant transfers into and out of Level 1 and Level 2 fair-value measurements and information on purchases, sales, issuances, and settlements on a gross basis in the reconciliation of Level 3 fair-value measurements. ASU 2010-6 is effective for annual reporting periods beginning after December 15, 2009, except for Level 3 reconciliation disclosures which are effective for annual periods beginning after December 15, 2010. We do not expect the adoption of ASU 2010-6 to have a material impact on our consolidated financial statements.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

### INTEREST RATE RISK

We have exposure to changes in interest rates resulting from the \$201.0 million outstanding on our two term loans and \$128.0 million outstanding on our revolver as of December 31, 2009. All of these borrowings are floating rate, which may be either prime-based or LIBOR-based. Interest rates under these borrowings include a base rate plus a margin currently between 0.00% and 0.75% on prime borrowings and between .625% and 1.75% on LIBOR-based borrowings.

As of December 31, 2009 the annualized interest rates on the original term loan, the 2008 term loan, and the revolver were 1.0%, 1.26%, and 1.0%, respectively. The rates on the original and 2008 term loans consisted of a three-month LIBOR base rate plus margins of 0.75% and 1.00%, respectively. The rate on the revolver consisted of a one-month LIBOR base rate plus a margin of 0.75%.

We have an interest rate swap contract which effectively converts the floating base rate on the original term loan to a fixed rate. As a result, our exposure to interest rate risk on the original term loan is capped. Including the effect of the interest rate swap, the annualized interest rate on the original term loan was 5.81% as of December 31, 2009.

The Company does not hedge the interest rate risk on the 2008 term loan and the revolver. Accordingly, we are exposed to interest rate risk on this debt. A 25 basis point increase or decrease in interest rates would change pre-tax annual interest expense on the \$300.0 million revolver and the \$80.0 million outstanding on the 2008 term loan by approximately \$1.0 million.

#### **FOREIGN CURRENCY EXCHANGE RISK**

We have clients in over 80 countries and as a result we conduct business in numerous currencies other than the U.S. dollar. Among the major foreign currencies in which we conduct business are the Euro, the British Pound, the Japanese Yen, the Australian dollar, and the Canadian dollar. Our foreign currency exposure results in both translation risk and transaction risk:

#### **TRANSLATION RISK**

We are exposed to foreign currency translation risk since the functional currencies of our foreign operations are generally denominated in the local currency. Translation risk arises since the assets and liabilities that we report for our foreign subsidiaries are translated into U.S. dollars at the exchange rates in effect at the balance sheet dates, and these exchange rates fluctuate over time. These foreign currency translation adjustments are deferred and are recorded as a component of stockholders' equity and do not impact our operating results.

A measure of the potential impact of foreign currency translation on our Consolidated Balance Sheets can be determined through a sensitivity analysis of our cash and cash equivalents. As of December 31, 2009, we had \$116.6 million of cash and cash equivalents, of which approximately \$70.0 million was denominated in foreign currencies. If foreign exchange rates in comparison to the U.S. dollar changed by 10%, the amount of cash and cash equivalents we would have reported on December 31, 2009 would have increased or decreased by approximately \$4.0 million.

Our foreign subsidiaries generally operate in a local functional currency that differs from the U.S. dollar. Revenues and expenses in these foreign currencies translate into higher or lower revenues and expenses in U.S. dollars as the U.S. dollar continuously weakens or strengthens against these other currencies. Therefore, changes in exchange rates may affect our consolidated revenues and expenses (as expressed in U.S. dollars) from foreign operations. Historically, this impact on our consolidated earnings has not been material since foreign currency movements in the major currencies in which we operate tend to impact our revenues and expenses fairly equally.

#### **TRANSACTION RISK**

We also have foreign exchange transaction risk since we typically enter into transactions in the normal course of business that are denominated in foreign currencies that differ from local functional currencies in which the foreign subsidiaries operate.

We typically enter into foreign currency forward exchange contracts to offset the effects of this foreign currency transaction risk. These contracts are normally short term in duration. Unrealized and realized gains and losses are recognized in earnings. At December 31, 2009, we had 19 foreign currency forward contracts outstanding with a total notional amount of \$117.3 million and a net unrealized gain of approximately \$0.7 million. All of these contracts matured by the end of January 2010.

#### **CONCENTRATION OF CREDIT RISK**

Financial instruments that potentially subject the Company to concentration of credit risk consist primarily of short-term, highly liquid investments classified as cash equivalents, accounts receivable, and interest rate swap contracts. The majority of the Company's cash equivalent investments and its two interest rate swap contracts are with investment grade commercial banks that are participants in the Company's Credit Agreement. Accounts receivable balances deemed to be collectible from customers have limited concentration of credit risk due to our diverse customer base and geographic dispersion.

#### **ITEM 8. CONSOLIDATED FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.**

Our consolidated financial statements for 2009, 2008, and 2007, together with the reports of KPMG LLP, our independent registered public accounting firm, are included herein in this Annual Report on Form 10-K.

#### **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.**

None.

#### **ITEM 9A. CONTROLS AND PROCEDURES**

##### **DISCLOSURE CONTROLS AND PROCEDURES**

Management conducted an evaluation, as of December 31, 2009, of the effectiveness of the design and operation of our disclosure controls and procedures, (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act")) under the supervision and with the participation of our chief executive officer and chief financial officer. Based upon that evaluation, our chief executive officer and chief financial officer have concluded that our disclosure controls and procedures are effective in alerting them in a timely manner to material Company information required to be disclosed by us in reports filed or submitted under the Act.

**MANAGEMENT'S ANNUAL REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

Gartner management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Exchange Act Rules 13a-15(f) and 15d-15(f). Gartner'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 accounting principles generally accepted in the United States.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions and that the degree of compliance with the policies or procedures may deteriorate. Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2009. In making this assessment, management used the criteria set forth in the Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Management's assessment was reviewed with the Audit Committee of the Board of Directors.

Based on its assessment of internal control over financial reporting, management has concluded that, as of December 31, 2009, Gartner's internal control over financial reporting was effective.

The effectiveness of management's internal control over financial reporting as of December 31, 2009 has been audited by KPMG LLP, an independent registered accounting firm, as stated in their report which is included in this Annual Report on Form 10-K in Part IV, Item 15.

**CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING**

There were no changes in our internal controls over financial reporting during the quarter ended December 31, 2009 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

**ITEM 9B. OTHER INFORMATION**

Not applicable.

### **PART III**

#### **ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information required to be furnished pursuant to this item will be set forth under the captions "Proposal One: Election of Directors," "Executive Officers," "Corporate Governance," "Section 16(a) Beneficial Ownership Reporting Compliance" and "Miscellaneous — Available Information" in the Company's Proxy Statement to be filed with the SEC no later than April 30, 2010. If the Proxy Statement is not filed with the SEC by April 30, 2010, such information will be included in an amendment to this Annual Report filed by April 30, 2010. See also Item 1. Business — Available Information.

#### **ITEM 11. EXECUTIVE COMPENSATION.**

The information required to be furnished pursuant to this item is incorporated by reference from the information set forth under the caption "Executive Compensation" in the Company's Proxy Statement to be filed with the SEC no later than April 30, 2010. If the Proxy Statement is not filed with the SEC by April 30, 2010, such information will be included in an amendment to this Annual Report filed by April 30, 2010.

#### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.**

The information required to be furnished pursuant to this item will be set forth under the caption "Security Ownership of Certain Beneficial Owners and Management" in the Company's Proxy Statement to be filed with the SEC by April 30, 2010. If the Proxy Statement is not filed with the SEC by April 30, 2010, such information will be included in an amendment to this Annual Report filed by April 30, 2010.

#### **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE.**

The information required to be furnished pursuant to this item will be set forth under the captions "Transactions With Related Persons" and "Corporate Governance — Director Independence" in the Company's Proxy Statement to be filed with the SEC by April 30, 2010. If the Proxy Statement is not filed with the SEC by April 30, 2010, such information will be included in an amendment to this Annual Report filed by April 30, 2010.

#### **ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES.**

The information required to be furnished pursuant to this item will be set forth under the caption "Principal Accountant Fees and Services" in the Company's Proxy Statement to be filed with the SEC no later than April 30, 2010. If the Proxy Statement is not filed with the SEC by April 30, 2010, such information will be included in an amendment to this Annual Report filed by April 30, 2010.

**PART IV****ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.**

## (a) 1. and 2. Consolidated Financial Statements and Schedules

The reports of our independent registered public accounting firm and consolidated financial statements listed in the Index to Consolidated Financial Statements herein are filed as part of this report.

All financial statement schedules not listed in the Index have been omitted because the information required is not applicable or is shown in the consolidated financial statements or notes thereto.

## 3. Exhibits

<b>EXHIBIT NUMBER</b>	<b>DESCRIPTION OF DOCUMENT</b>
3.1a(1)	Restated Certificate of Incorporation of the Company.
3.1b(2)	Certificate of Designation, Preferences and Rights of Series A Junior Participating Preferred Stock of the Company, dated November 27, 2006.
3.2(3)	Bylaws as amended through May 1, 2007.
4.1(1)	Form of Certificate for Common Stock as of June 2, 2005.
4.2(4)	Credit Agreement, dated as of January 31, 2007, among the Company, the several lenders from time to time parties thereto, and JPMorgan Chase Bank, N.A. as administrative agent (the "Credit Agreement").
4.3(12)	First Amendment dated as of April 9, 2008 to the Credit Agreement.
10.1*	Agreement of Merger among Gartner, Inc., Clover Acquisition Corporation and AMR Research, Inc. dated as of November 29, 2009.
10.2(13)	Agreement of Merger among Gartner, Inc., Jasmine Acquisition Corporation and Burton Group, Inc. dated as of December 30, 2009.
10.3(5)	Lease dated December 29, 1994 between Soundview Farms and the Company for premises at 56 Top Gallant Road, 70 Gatehouse Road, and 88 Gatehouse Road, Stamford, Connecticut.
10.4(6)	Lease dated May 16, 1997 between Soundview Farms and the Company for premises at 56 Top Gallant Road, 70 Gatehouse Road, 88 Gatehouse Road and 10 Signal Road, Stamford, Connecticut (amendment to lease dated December 29, 1994, see exhibit 10.3).
10.5(7)+	1991 Stock Option Plan as amended and restated on October 19, 1999.
10.6(8)+	2002 Employee Stock Purchase Plan, as amended and restated effective June 1, 2008.
10.7(1)+	1994 Long Term Stock Option Plan, as amended and restated on October 12, 1999.
10.8(9)+	1999 Stock Option Plan.
10.10(14)+	2003 Long-Term Incentive Plan, as amended and restated on June 4, 2009.
10.11(15)+	2008-1 Amendment to 2003 Long-Term Incentive Plan dated October 28, 2008.
10.12(15)+	2008-2 Amendment to 2003 Long-Term Incentive Plan dated October 28, 2008.
10.13(15)+	Amended and Restated Employment Agreement between Eugene A. Hall and the Company dated as of December 31, 2008.
10.14(10)+	Restricted Stock Agreement by and between Eugene A. Hall and the Company dated November 9, 2005.
10.15(15)+	Company Deferred Compensation Plan, effective January 1, 2009.
10.17(11)+	Form of Stock Appreciation Right Agreement for executive officers.
10.18(11)+	Form of Restricted Stock Unit Agreement for executive officers.
21.1*	Subsidiaries of Registrant.
23.1*	Consent of Independent Registered Public Accounting Firm
24.1	Power of Attorney (see Signature Page).
31.1*	Certification of chief executive officer under Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of chief financial officer under Section 302 of the Sarbanes-Oxley Act of 2002.
32*	Certification under Section 906 of the Sarbanes-Oxley Act of 2002.

\* Filed with this document.

+ Management compensation plan or arrangement.

- (1) Incorporated by reference from the Company's Current Report on Form 8-K dated June 29, 2005 as filed on July 6, 2005.
- (2) Incorporated by reference from the Company's Current Report on Form 8-K dated November 27, 2006 as filed on November 30, 2006.
- (3) Incorporated by reference from the Company's Current Report on Form 8-K dated May 3, 2007 as filed on May 3, 2007.
- (4) Incorporated by reference from the Company's Current Report on Form 8-K dated January 31, 2007 as filed on February 6, 2007.
- (5) Incorporated by reference from the Company's Annual Report on Form 10-K as filed on December 21, 1995.
- (6) Incorporated by reference from the Company's Annual Report on Form 10-K as filed on December 12, 1997.
- (7) Incorporated by reference from the Company's Annual Report on Form 10-K filed on December 22, 1999.
- (8) Incorporated by reference from the Company's Quarterly Report on Form 10-Q as filed on May 8, 2008.
- (9) Incorporated by reference from the Company's Form S-8 as filed on February 16, 2000.
- (10) Incorporated by reference from the Company's Quarterly Report on Form 10-Q as filed on November 9, 2005.

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- (11) Incorporated by reference from the Company's Current Report on Form 8-K dated February 11, 2010 as filed on February 16, 2010.
- (12) Incorporated by reference from the Company's Current Report on Form 8-K dated April 9, 2008 as filed on April 14, 2008.
- (13) Incorporated by reference from the Company's Current Report on Form 8-K dated December 30, 2009 as filed on January 5, 2010.
- (14) Incorporated by reference from the Company's Proxy Statement (Schedule 14A) as filed on April 21, 2009.
- (15) Incorporated by reference from the Company's Annual Report on Form 10-K as filed on February 20, 2009.

## INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

GARTNER, INC.

### CONSOLIDATED FINANCIAL STATEMENTS

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All financial statement schedules have been omitted because the information required is not applicable or is shown in the consolidated financial statements or notes thereto.

## Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders  
Gartner, Inc.:

We have audited the accompanying consolidated balance sheets of Gartner, Inc. and subsidiaries (the Company) as of December 31, 2009 and 2008, and the related consolidated statements of operations, stockholders' equity (deficit) and comprehensive income (loss), and cash flows for each of the years in the three-year period ended December 31, 2009. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Gartner, Inc. and subsidiaries as of December 31, 2009 and 2008, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2009, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2009, based criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated February 19, 2010 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

**KPMG LLP**

New York, New York  
February 19, 2010

## Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders  
Gartner, Inc.:

We have audited Gartner, Inc. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2009, 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 maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit 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 audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

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 (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) 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 (3) 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.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2009, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Gartner, Inc. and subsidiaries as of December 31, 2009 and 2008, and the related consolidated statements of operations, stockholders' equity (deficit) and comprehensive income (loss), and cash flows for each of the years in the three-year period ended December 31, 2009, and our report dated February 19, 2010 expressed an unqualified opinion on those consolidated financial statements.

**KPMG LLP**

New York, New York  
February 19, 2010

**GARTNER, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(IN THOUSANDS, EXCEPT SHARE DATA)

	December 31,	
	2009	2008
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 116,574	\$ 140,929
Fees receivable, net of allowances of \$8,100 and \$7,800 respectively	317,598	318,511
Deferred commissions	70,253	52,149
Prepaid expenses and other current assets	53,400	42,935
Total current assets	557,825	554,524
Property, equipment and leasehold improvements, net	52,466	61,869
Goodwill	513,612	398,737
Intangible assets, net	24,113	2,015
Other assets	67,263	75,920
Total assets	\$ 1,215,279	\$ 1,093,065
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 255,966	\$ 219,381
Deferred revenues	437,207	395,278
Current portion of long-term debt	205,000	177,750
Total current liabilities	898,173	792,409
Long-term debt	124,000	238,500
Other liabilities	80,571	83,472
Total liabilities	1,102,744	1,114,381
Commitments and contingencies		
Stockholders' equity (deficit):		
Preferred stock:		
\$.01 par value, authorized 5,000,000 shares; none issued or outstanding	—	—
Common stock:		
\$.0005 par value, authorized 250,000,000 shares for both periods; 156,234,416 shares issued for both periods	78	78
Additional paid-in capital	590,864	570,667
Accumulated other comprehensive income (loss), net	11,322	(1,741)
Accumulated earnings	509,392	426,428
Treasury stock, at cost, 60,356,672 and 62,353,575 common shares, respectively	(999,121)	(1,016,748)
Total stockholders' equity (deficit)	112,535	(21,316)
Total liabilities and stockholders' equity (deficit)	\$ 1,215,279	\$ 1,093,065

See Notes to Consolidated Financial Statements.

**GARTNER, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(IN THOUSANDS, EXCEPT PER SHARE DATA)

	Year Ended December 31,		
	2009	2008	2007
Revenues:			
Research	\$ 752,505	\$ 781,581	\$ 683,380
Consulting	286,847	347,404	325,030
Events	100,448	150,080	160,065
Total revenues	1,139,800	1,279,065	1,168,475
Costs and expenses:			
Cost of services and product development	498,363	572,208	546,569
Selling, general and administrative	477,003	514,994	456,975
Depreciation	25,387	25,880	24,298
Amortization of intangibles	1,636	1,615	2,091
Acquisition and integration charges	2,934	—	—
Other charges	—	—	9,084
Total costs and expenses	1,005,323	1,114,697	1,039,017
Operating income	134,477	164,368	129,458
Interest income	830	3,121	2,912
Interest expense	(16,862)	(22,390)	(25,066)
Other (expense) income, net	(2,919)	(358)	3,193
Income before income taxes	115,526	144,741	110,497
Provision for income taxes	32,562	47,593	39,831
Income from continuing operations	82,964	97,148	70,666
Income from discontinued operations, net of taxes	—	6,723	2,887
Net income	\$ 82,964	\$ 103,871	\$ 73,553
Net income per share:			
Basic:			
Income from continuing operations	\$ 0.88	\$ 1.02	\$ 0.68
Income from discontinued operations	—	.07	.03
	\$ 0.88	\$ 1.09	\$ 0.71
Diluted:			
Income from continuing operations	\$ 0.85	\$ 0.98	\$ 0.65
Income from discontinued operations	—	.07	.03
	\$ 0.85	\$ 1.05	\$ 0.68
Weighted average shares outstanding:			
Basic	94,658	95,246	103,613
Diluted	97,549	99,028	108,328

See Notes to Consolidated Financial Statements.

**GARTNER, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT) AND COMPREHENSIVE INCOME**  
(IN THOUSANDS)

	Common Stock	Additional Paid-In Capital	Unearned Compensation, Net	Accumulated Other Comprehensive Income (Loss), Net	Accumulated Earnings	Treasury Stock	Total Stockholders' Equity (Deficit)
Balance at December 31, 2006	\$ 78	\$ 544,686	\$ (2,208)	\$ 13,097	\$ 249,004	\$ (778,339)	\$ 26,318
Comprehensive income:							
Net income	—	—	—	—	73,553	—	73,553
Other comprehensive income:							
Foreign currency translation adjustments	—	—	—	10,570	—	—	10,570
Interest rate swap, net of tax	—	—	—	(2,966)	—	—	(2,966)
Pension unrecognized gain, net of tax	—	—	—	2,940	—	—	2,940
Other comprehensive income				10,544			10,544
Comprehensive income							84,097
Issuances under stock plans	—	(36,210)	—	—	—	73,357	37,147
Excess tax benefits from stock compensation	—	14,759	—	—	—	—	14,759
Purchase of shares for treasury stock	—	—	—	—	—	(169,064)	(169,064)
Stock compensation expense (net of forfeitures)	—	22,419	1,822	—	—	—	24,241
Balance at December 31, 2007	\$ 78	\$ 545,654	\$ (386)	\$ 23,641	\$ 322,557	\$ (874,046)	\$ 17,498
Comprehensive income:							
Net income	—	—	—	—	103,871	—	103,871
Other comprehensive loss:							
Foreign currency translation adjustments	—	—	—	(20,497)	—	—	(20,497)
Interest rate swaps, net of tax	—	—	—	(6,060)	—	—	(6,060)
Pension unrecognized gain, net of tax	—	—	—	1,175	—	—	1,175
Other comprehensive loss				(25,382)			(25,382)
Comprehensive income							78,489
Issuances under stock plans	—	(10,128)	—	—	—	55,874	45,746
Excess tax benefits from stock compensation	—	14,831	—	—	—	—	14,831
Purchase of shares for treasury stock	—	—	—	—	—	(198,576)	(198,576)
Stock compensation expense (net of forfeitures)	—	20,310	386	—	—	—	20,696
Balance at December 31, 2008	\$ 78	\$ 570,667	\$ —	\$ (1,741)	\$ 426,428	\$ (1,016,748)	\$ (21,316)
Comprehensive income:							
Net income	—	—	—	—	82,964	—	82,964
Other comprehensive income:							
Foreign currency translation adjustments	—	—	—	9,088	—	—	9,088
Interest rate swaps, net of tax	—	—	—	3,535	—	—	3,535
Pension unrecognized gain, net of tax	—	—	—	440	—	—	440
Other comprehensive income				13,063			13,063
Comprehensive income							96,027
Issuances under stock plans	—	(6,522)	—	—	—	21,371	14,849
Excess tax benefits from stock compensation	—	653	—	—	—	—	653
Purchase of shares for treasury stock	—	—	—	—	—	(3,744)	(3,744)
Stock compensation expense (net of forfeitures)	—	26,066	—	—	—	—	26,066
Balance at December 31, 2009	\$ 78	\$ 590,864	\$ —	\$ 11,322	\$ 509,392	\$ (999,121)	\$ 112,535

See Notes to Consolidated Financial Statements.

**GARTNER, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(IN THOUSANDS)

	Year Ended December 31,		
	2009	2008	2007
<b>Operating activities:</b>			
Net income	\$ 82,964	\$ 103,871	\$ 73,553
Adjustments to reconcile net income to net cash provided by operating activities:			
Gain on sale of Vision Events business	—	(7,061)	—
Depreciation and amortization of intangibles	27,023	27,495	26,389
Stock-based compensation expense	26,066	20,696	24,241
Excess tax benefits from stock-based compensation expense	(2,392)	(14,831)	(14,759)
Deferred taxes	5,003	2,617	6,740
Amortization and write-off of debt issue costs	1,480	1,222	1,363
Changes in assets and liabilities:			
Fees receivable, net	25,349	20,987	(10,880)
Deferred commissions	(16,750)	(1,403)	(5,266)
Prepaid expenses and other current assets	13,059	(21)	(857)
Other assets	532	2,907	(12,288)
Deferred revenues	5,101	(308)	26,858
Accounts payable, accrued, and other liabilities	(5,498)	28,179	33,241
<b>Cash provided by operating activities</b>	<b>161,937</b>	<b>184,350</b>	<b>148,335</b>
<b>Investing activities:</b>			
Proceeds from sale of Vision Events business	—	7,847	—
Additions to property, equipment and leasehold improvements	(15,142)	(24,302)	(24,136)
Acquisitions (net of cash received)	(104,523)	—	—
<b>Cash used in investing activities</b>	<b>(119,665)</b>	<b>(16,455)</b>	<b>(24,136)</b>
<b>Financing activities:</b>			
Proceeds from terminated interest rate swap	—	—	1,167
Proceeds from stock issued for stock plans	14,822	44,702	34,458
Proceeds from debt issuance	78,000	180,000	525,000
Payments for debt issuance costs	—	(801)	(1,257)
Payments on debt	(165,250)	(157,750)	(501,000)
Purchases of treasury stock	(3,744)	(200,817)	(166,822)
Excess tax benefits from stock-based compensation expense	2,392	14,831	14,759
<b>Cash used by financing activities</b>	<b>(73,780)</b>	<b>(119,835)</b>	<b>(93,695)</b>
Net (decrease) increase in cash and cash equivalents	(31,508)	48,060	30,504
Effects of exchange rates on cash and cash equivalents	7,153	(17,076)	11,640
Cash and cash equivalents, beginning of period	140,929	109,945	67,801
<b>Cash and cash equivalents, end of period</b>	<b>\$ 116,574</b>	<b>\$ 140,929</b>	<b>\$ 109,945</b>
Supplemental disclosures of cash flow information:			
Cash paid during the period for:			
Interest	\$ 13,942	\$ 22,380	\$ 24,100
Income taxes, net of refunds received	\$ 34,438	\$ 19,961	\$ 3,564

See Notes to Consolidated Financial Statements.

**GARTNER, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1 — BUSINESS AND SIGNIFICANT ACCOUNTING POLICIES**

*Business.* Gartner, Inc. is a global information technology research and advisory company founded in 1979 with its headquarters in Stamford, Connecticut. Gartner, Inc. delivers its principal products and services through three business segments: Research, Consulting, and Events.

*Basis of presentation.* The fiscal year of Gartner, Inc. (the "Company") represents the period from January 1 through December 31. Certain prior year amounts have been reclassified to conform to the current year presentation. When used in these notes, the terms "Company," "we," "us," or "our" mean Gartner, Inc. and its consolidated subsidiaries.

On December 18, 2009, we acquired AMR Research, Inc., and on December 30, 2009, we acquired Burton Group, Inc. (see Note 2 — Acquisitions). The results of these businesses are included in our operating results beginning on their respective dates of acquisition.

*Principles of consolidation.* The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All significant intercompany transactions and balances have been eliminated.

*Use of estimates.* The preparation of the accompanying consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions about future events. These estimates and the underlying assumptions affect the amounts of assets and liabilities reported, disclosures about contingent assets and liabilities, and reported amounts of revenues and expenses. Such estimates include the valuation of accounts receivable, goodwill, intangible assets, and other long-lived assets, as well as tax accruals and other liabilities. In addition, estimates are used in revenue recognition, income tax expense, performance-based compensation charges, depreciation and amortization, and the allowance for losses. Management believes its use of estimates in the consolidated financial statements to be reasonable.

Management evaluates its estimates on an ongoing basis using historical experience and other factors, including the general economic environment and actions it may take in the future. We adjust such estimates when facts and circumstances dictate. However, these estimates may involve significant uncertainties and judgments and cannot be determined with precision. In addition, these estimates are based on our best judgment at a point in time and as such these estimates may ultimately differ from actual results.

The global credit crisis and economic downturn that began in 2008, volatile foreign currency rates, cuts in travel, marketing and technology budgets, and other external factors have combined to increase the risks and uncertainty inherent in such estimates. These external factors may increase the risks the Company faces in developing estimates in particular relating to the collection of receivables, the achievement of the performance targets on performance-based compensation elements, and the valuation of goodwill. Changes in those estimates resulting from continuing weakness in the economic environment or other factors beyond our control could be material and would be reflected in the Company's financial statements in future periods.

*Reclassifications.* Effective January 1, 2009, the Company has reclassified certain amounts presented in its Consolidated Statements of Operations, as follows:

"Other" revenues — The Company eliminated its previously reported "Other" revenue line. The "Other" revenue line primarily consisted of fees earned from Research reprints and other miscellaneous products, and these revenues and related expenses are now included in the Research segment. The Company made this change because the "Other" revenue has declined in magnitude, from approximately \$10.0 million in 2007, slightly less than 1.0% of total revenues in that year, to about \$8.3 million in 2008, about half a percent of total revenues in that year, and this trend is continuing. The revenue decline reflects the Company's decision to discontinue some of these products.

Expense reclassifications — Certain expenses that were formerly classified as Selling, general & administrative expense are now included in Cost of services and product development. These reclassifications reflect changes in the way we service and deliver value to our Research clients and related changes in work responsibilities of certain departments and associates.

Prior periods have been reclassified in order to be consistent with the current period presentation. See Note 16 — Segment Information for additional information.

*Codification of accounting standards.* On September 30, 2009, the Company adopted SFAS No. 168, *The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles* (the Codification). The Codification combines the previous U.S. GAAP hierarchy which included four levels of authoritative accounting literature distributed among a number of different sources. The Codification does not by itself create new accounting standards but instead reorganizes thousands of pages of existing U.S. GAAP accounting rules into approximately 90 accounting topics.

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All existing accounting standard documents are superseded by the Codification and all other accounting literature not included in the Codification is now considered non-authoritative. The Codification explicitly recognizes the rules and interpretive releases of the Securities and Exchange Commission ("SEC") under federal securities laws as authoritative GAAP for SEC registrants. The Codification is now the single source of authoritative nongovernmental accounting standards in the United States. As a result of the Codification, the references to authoritative accounting pronouncements included herein in this Annual Report on Form 10-K now refer to the Codification topic section rather than a specific accounting rule as was past practice.

*Subsequent events.* The Company has evaluated the potential impact of subsequent events on the consolidated financial statements herein through the date of filing of this Annual Report on Form 10-K.

*Revenues.* Revenues from research products are deferred and recognized ratably over the applicable contract term. The Company typically enters into annually renewable subscription contracts for research products. Reprint fees are recognized when the reprint is shipped.

The majority of research contracts are billable upon signing, absent special terms granted on a limited basis from time to time. All research contracts are non-cancelable and non-refundable, except for government contracts that may have cancellation or fiscal funding clauses, which have not produced material cancellations to date. With the exception of certain government contracts which permit termination and contracts with special billing terms, it is Company policy to record the entire amount of the contract that is billable as a fee receivable at the time the contract is signed, which represents a legally enforceable claim, and a corresponding amount as deferred revenue. For those government contracts that permit termination, the Company bills the client the full amount billable under the contract but only records a receivable equal to the earned portion of the contract. In addition, the Company only records deferred revenue on these government contracts when cash is received.

Deferred revenue attributable to government contracts was \$65.3 million and \$61.6 million at December 31, 2009 and 2008, respectively. In addition, at December 31, 2009 and 2008, the Company had not recognized receivables or deferred revenues relating to government contracts that permit termination of \$8.3 million and \$12.1 million, respectively, which had been billed but not yet collected.

Consulting revenues, primarily derived from consulting, measurement and strategic advisory services (paid one-day analyst engagements), are principally generated from fixed fee or time and materials for discrete projects. Revenues for such projects are recognized as work is delivered and/or services are provided. Unbilled fees receivable associated with consulting engagements were \$30.0 million at December 31, 2009 and \$35.3 million at December 31, 2008. Revenues related to contract optimization contracts are contingent in nature and are only recognized upon satisfaction of all conditions related to their payment.

Events revenues are deferred and recognized upon the completion of the related symposium, conference or exhibition. In addition, the Company defers certain costs directly related to events and expenses these costs in the period during which the related symposium, conference or exhibition occurs. The Company policy is to defer only those costs, primarily prepaid site and production services costs, which are incremental and are directly attributable to a specific event. Other costs of organizing and producing our events, primarily Company personnel and non-event specific expenses, are expensed in the period incurred. At the end of each fiscal quarter, the Company assesses on an event-by-event basis whether expected direct costs of producing a scheduled event will exceed expected revenues. If such costs are expected to exceed revenues, the Company records the expected loss in the period determined.

The Company maintains an allowance for losses which is composed of a bad debt allowance and a sales reserve. Provisions are charged against earnings, either as a reduction in revenues or an increase to expense. The amount of the allowance for losses is based on historical loss experience, aging of outstanding receivables, an assessment of current economic conditions and the financial health of specific clients.

*Cost of services and product development.* Includes costs incurred in the creation and delivery of products and services.

*Selling, general and administrative ("SG&A").* SG&A expense includes direct and indirect selling costs and general and administrative costs.

*Commission expense.* The Company records the commission obligation related to research contracts upon the signing of the contract and amortizes the corresponding deferred commission expense over the contract period in which the related revenues are earned. The Company records commission expense in SG&A in the Consolidated Statements of Operations.

*Stock-based compensation expense.* The Company accounts for stock-based compensation in accordance with FASB ASC Topics 505 and 718, as interpreted by SEC Staff Accounting Bulletins No. 107 ("SAB No. 107") and No. 110 ("SAB No. 110"). Stock-based compensation cost is based on the fair value of the award on the date of grant, which is expensed over the related service period, net of estimated forfeitures. The service period is the period over which the employee performs the related services,

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which is normally the same as the vesting period. The Company records this expense in both Cost of services and product development and SG&A in the Consolidated Statements of Operations.

During 2009, 2008, and 2007, the Company recognized \$26.1 million, \$20.7 million, and \$24.2 million, respectively, of stock-based compensation expense (see Note 10 — Stock-Based Compensation).

*Income tax expense.* The provision for income taxes is the sum of the amount of income tax paid or payable for the year as determined by applying the provisions of enacted tax laws to taxable income for that year and the net changes during the year in deferred tax assets and liabilities. Deferred tax assets and liabilities are recognized based on differences between the book and tax basis of assets and liabilities using presently enacted tax rates. We credit additional paid-in capital for realized tax benefits arising from stock transactions with employees. The tax benefit on a nonqualified stock option is equal to the tax effect of the difference between the market price of Common Stock on the date of exercise and the exercise price.

*Sales taxes.* Sales tax collected from customers remitted to governmental authorities is presented on a net basis in the Consolidated Statements of Operations.

*Cash and cash equivalents.* All highly liquid investments with original maturities of three months or less are classified as cash equivalents. The carrying value of these investments approximates fair value based upon their short-term maturity. Investments with maturities of more than three months are classified as marketable securities. Interest earned on investments is classified in Interest income in the Consolidated Statements of Operations.

*Property, equipment and leasehold improvements.* The Company leases all of its facilities and certain equipment. These leases are all classified as operating leases in accordance with FASB ASC Topic 840. The cost of these operating leases, including any contractual rent concessions, contractual rent increases, and landlord incentives, are recognized ratably over the life of the related lease agreement. Lease expense was \$22.5 million in both 2009 and 2008 and \$23.8 million in 2007.

Equipment, leasehold improvements, and other fixed assets owned by the Company are recorded at cost less accumulated depreciation and amortization and are depreciated using the straight-line method over the estimated useful lives of the assets. Leasehold improvements are amortized using the straight-line method over the shorter of the estimated useful lives of the assets or the remaining term of the related leases. Property, equipment and leasehold improvements, less accumulated depreciation and amortization consist of the following (in thousands):

	Useful Life (Years)	December 31,	
		2009	2008
Computer equipment and software	2 - 7	\$ 118,487	\$ 123,970
Furniture and equipment	3 - 8	32,183	34,220
Leasehold improvements	2 - 10	46,945	49,110
		197,615	207,300
Less — accumulated depreciation and amortization		(145,149)	(145,431)
		\$ 52,466	\$ 61,869

The Company also capitalizes certain development costs incurred to develop internal use software in accordance with FASB ASC Topic 350. At December 31, 2009 and 2008, capitalized development costs for internal use software were \$16.1 million and \$19.6 million, respectively, net of accumulated amortization of \$20.4 million and \$18.9 million, respectively. Amortization of capitalized internal software development costs, which is classified in Depreciation in the Consolidated Statements of Operations, totaled \$8.3 million, \$7.4 million, and \$6.5 million during 2009, 2008, and 2007, respectively.

The Company had total depreciation expense of \$25.4 million, \$25.9 million, and \$24.3 million in 2009, 2008, and 2007, respectively.

*Intangible assets.* Intangible assets are amortized using the straight-line method over their expected useful lives. Intangible assets subject to amortization include the following (in thousands):

December 31, 2009	Content	Trade Name	Customer Relationships	Noncompete Agreements	Total
Gross cost (1)	\$ 10,634	\$ 5,758	\$ 14,910	\$ 416	\$ 31,718
Accumulated amortization	—	—	(7,315)	(290)	(7,605)
Net	\$ 10,634	\$ 5,758	\$ 7,595	\$ 126	\$ 24,113

  

December 31, 2008	Customer Relationships	Noncompete Agreements	Total
Gross cost	\$ 7,700	\$ 278	\$ 7,978
Accumulated amortization	(5,775)	(188)	(5,963)
Net	\$ 1,925	\$ 90	\$ 2,015

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- (1) Includes \$23.6 million of purchased intangibles related to the acquisitions of AMR, Research, Inc. and Burton Group, Inc. in December 2009. See Note 2 — Acquisitions for additional information.

Intangible assets will be amortized against earnings over the following period:

	Useful Life (Years)
Content	1.5
Trade Name	5
Customer Relationships	4
Noncompete agreements	2-5

Aggregate amortization expense related to intangible assets was \$1.6 million, \$1.6 million, and \$2.1 million for 2009, 2008, and 2007, respectively.

The estimated future amortization expense by year from purchased intangibles is as follows (in thousands):

2010	\$ 10,541
2011	6,530
2012	2,958
2014	2,958
2015 and thereafter	1,126
	<u>\$ 24,113</u>

**Goodwill.** Goodwill represents the excess of the purchase price of acquired businesses over the estimated fair value of the tangible and identifiable intangible net assets acquired. The evaluation of goodwill is performed in accordance with FASB ASC Topic 350, which requires an annual assessment of potential goodwill impairment at the reporting unit level. A reporting unit can be an operating segment or a business if discrete financial information is prepared and reviewed by management. Under the impairment test, if a reporting unit's carrying amount exceeds its estimated fair value, goodwill impairment is recognized to the extent that the reporting unit's carrying amount of goodwill exceeds the implied fair value of the goodwill. The fair value of reporting units is estimated using discounted cash flows, market multiples, and other valuation techniques.

The following table presents changes to the carrying amount of goodwill by reporting segment during the two years ended December 31, 2009 (in thousands):

	Research	Consulting	Events	Total
Balance, January 1, 2008 (1)	\$ 291,281	\$ 88,425	\$ 36,475	\$ 416,181
Purchase accounting adjustments (2)	(520)	—	—	(520)
Foreign currency translation adjustments	(10,600)	(4,377)	(107)	(15,084)
Divestitures (3)	—	—	(1,840)	(1,840)
Balance, December 31, 2008	<u>\$ 280,161</u>	<u>\$ 84,048</u>	<u>\$ 34,528</u>	<u>\$ 398,737</u>
Foreign currency translation adjustments	4,386	1,434	73	5,893
Additions due to acquisitions (4)	86,083	15,262	7,637	108,982
Balance, December 31, 2009	<u>\$ 370,630</u>	<u>\$ 100,744</u>	<u>\$ 42,238</u>	<u>\$ 513,612</u>

- The Company has not recorded charges for goodwill impairment since the adoption of the current goodwill impairment rules on January 1, 2002. Accordingly, the Company considers the goodwill amount as of January 1, 2008 to be the gross amount of goodwill.
- The Company reduced Research goodwill by \$0.5 million due to a tax purchase accounting adjustment related to the acquisition of META Group, Inc. in 2005. The adjustment related to the utilization or anticipated utilization of net operating losses for which a valuation was recorded at the acquisition date.
- The Company reduced Events segment goodwill by \$1.8 million related to the sale of its Visions Events business in February 2008 (see Note 3 — Discontinued Operations).
- The Company recorded \$109.0 million of goodwill related to the acquisitions of AMR Research, Inc. and Burton Group, Inc. in December 2009 (see Note 2 — Acquisitions).

**Impairment of long-lived assets and intangible assets.** The Company reviews long-lived assets and intangible assets other than goodwill for impairment whenever events or changes in circumstances indicate that the carrying amount of the respective asset may not be recoverable. Such evaluation may be based on a number of factors including current and projected operating results and cash flows, changes in management's strategic direction as well as other economic and market variables. The Company's policy regarding long-lived assets and intangible assets other than goodwill is to evaluate the recoverability of these assets by determining whether the balance can be recovered through undiscounted future operating cash flows. Should events or circumstances indicate that the carrying value might not be recoverable based on undiscounted future operating cash flows, an impairment loss would be recognized. The amount of impairment, if any, is measured based on the difference between projected discounted future operating cash flows using a discount rate reflecting the Company's average cost of funds and the carrying value of the asset.

*Pension obligations.* The Company has defined-benefit pension plans in several of its international locations (see Note 15 — Employee Benefits). Benefits earned under these plans are based on years of service and level of employee compensation. The Company accounts for material defined benefit plans in accordance with the requirements of FASB ASC Topic 715. The Company determines the pension obligations and related benefit expense for these plans through actuarial assumptions and valuations. The Company recognized \$2.2 million, \$2.2 million, and \$2.7 million of expense for these plans in 2009, 2008, and 2007, respectively. The Company classifies pension expense in SG&A in the Consolidated Statements of Operations.

*Foreign currency exposure.* All assets and liabilities of foreign subsidiaries are translated into U.S. dollars at exchange rates in effect at the balance sheet date. The resulting translation adjustments are recorded as foreign currency translation adjustments, a component of Accumulated Other Comprehensive Income (Loss), net within the Stockholders' equity section of the Consolidated Balance Sheets. Income and expense items are translated at average exchange rates for the year.

Currency transaction gains or losses arising from transactions denominated in currencies other than the functional currency of a subsidiary are included in results of operations within Other income (expense), net within the Consolidated Statements of Operations. Net currency transaction (losses) gains were \$(3.6) million, \$(0.9) million, and \$4.1 million in 2009, 2008, and 2007, respectively.

We may enter into foreign currency forward exchange contracts to offset the effects of adverse fluctuations in foreign currency exchange rates. These contracts generally have a short duration and are recorded at fair value with unrealized and realized gains and losses recorded in Other income (expense). The net gain (loss) from these contracts was \$0.7 million, \$(0.6) million, and \$(3.0) million for 2009, 2008, and 2007, respectively.

*Fair value disclosures.* The Company's fair value disclosures are included in Note 14 — Fair Value Disclosures.

*Concentrations of credit risk.* Items that potentially subject the Company to concentration of credit risk at December 31, 2009 consist primarily of short-term, highly liquid investments classified as cash equivalents, accounts receivable, interest rate swaps, and a pension reinsurance asset. The majority of the Company's cash equivalent investments and its two interest rate swap contracts are with investment grade commercial banks that are participants in the Company's Credit Agreement. Accounts receivable balances deemed to be collectible from customers have limited concentration of credit risk due to our diverse customer base and geographic dispersion. The Company's pension reinsurance asset is maintained with a large international insurance company that was rated investment grade as of December 31, 2009.

*Stock repurchase programs.* The Company records the cost to repurchase its own shares to treasury stock. During 2009, 2008 and 2007, the Company recorded \$3.7 million, \$198.6 million, and \$169.1 million, respectively, of stock repurchases (see Note 9-Equity). Shares repurchased by the Company are added to treasury shares and are not retired.

*Recent accounting developments.* In January 2010, the FASB issued ASU 2010-6, *Improving Disclosures About Fair Value Measurements*, which requires reporting entities to make new disclosures about recurring or nonrecurring fair-value measurements including significant transfers into and out of Level 1 and Level 2 fair-value measurements and information on purchases, sales, issuances, and settlements on a gross basis in the reconciliation of Level 3 fair-value measurements. ASU 2010-6 is effective for annual reporting periods beginning after December 15, 2009, except for Level 3 reconciliation disclosures which are effective for annual periods beginning after December 15, 2010.

## 2—ACQUISITIONS

The Company acquired two businesses in December 2009:

### AMR Research, Inc.

On December 18, 2009, the Company acquired all of the outstanding shares of AMR Research, Inc. ("AMR Research"), a privately-owned, Boston-based firm with 170 employees, for approximately \$63.0 million in cash. AMR is a leading authority on global supply chain and supporting technologies. AMR offers operations and technology executives of manufacturing and retail companies an integrated set of services, including written research, access to research analysts, peer networking through its forum advisory services, consulting and participation at its executive conferences. Gartner's strategic objective in acquiring AMR is to leverage Gartner's scale and worldwide distribution capability and sell AMR's suite of research, consulting, and events offerings to Gartner's much larger client base with supply chain technology concerns, as well as introduce AMR's supply chain clients to Gartner's suite of products. The combination is also expected to drive operational efficiencies and cost savings.

### Burton Group, Inc.

On December 30, 2009, the Company acquired all of the outstanding shares of Burton Group, Inc. ("Burton Group"), a privately-owned Utah-based firm with 120 employees, for approximately \$55.0 million in cash. Burton Group is a leading research and advisory services firm that focuses on providing practical, technically in-depth advice to front-line IT professionals. Gartner's strategic objective in acquiring Burton Group is to expand Gartner's product and service offerings and to leverage Gartner's scale

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and worldwide distribution capability to sell Burton Group's suite of research, consulting, and events offerings to Gartner's much larger client base. The combination is also expected to drive operational efficiencies and cost savings.

### Operating Results

The Company's consolidated financial statements include the operating results of these acquisitions beginning with their respective dates of acquisition, which was not material to the Company's 2009 results. The Company recorded \$2.9 million of pre-tax acquisition and integration charges related to these businesses for the year ended December 31, 2009, which is classified in Acquisition and integration expense in the Consolidated Statements of Operations. Included in these charges are legal fees and consultant fees in connection with the acquisition and integration, as well as severance costs related to redundant headcount.

The Company's acquisitions of AMR Research and Burton Group were not considered material individually or in the aggregate, and as a result pro forma financial statements are not presented. However, on a pro forma basis, had the acquisitions of these businesses occurred on January 1, 2007, the Company would have recorded approximately \$72.0 million, \$79.0 million, and \$67.0 million of additional revenues in 2007, 2008, and 2009, respectively, while the impact to the Company's consolidated operating income and net income for those years would not have been material.

### Purchase Price Allocation

Gartner utilized its existing cash on hand and availability under its revolving credit facility to fund the acquisitions. The final acquisition costs are subject to certain post-closing and other adjustments. The acquisitions are being accounted for under the acquisition method in accordance with FASB ASC Topic 805, *Business Combination*, which requires the consideration paid to be allocated to the net assets and liabilities acquired based on their estimated fair values as of the acquisition date. Any excess of the purchase price over the estimated fair value of the net assets acquired, including identifiable intangible assets, was allocated to goodwill.

The Company considers its allocation of the respective purchase prices to be preliminary, particularly with respect to the valuation of intangibles and certain tax related items. In accordance with existing accounting rules, a final determination of the purchase price allocation must be made within one year of the acquisition dates. The following table represents the aggregate preliminary purchase price allocation to the assets acquired and liabilities assumed for the two acquisitions (dollars in thousands):

Assets:	
Fees receivable, net	\$ 16,919
Prepaid expenses and other current assets	19,015
Property, equipment, and leasehold improvements, net	2,666
Intangible assets:	
Trade name	5,758
Content	10,634
Customer relationships	7,210
Total intangible assets	23,602
Goodwill	108,983
Other assets	1,014
Total assets	\$ 172,199
Liabilities:	
Accounts payable and accrued liabilities	\$ 27,175
Deferred revenues	26,402
Other liabilities	1,045
Total liabilities	\$ 54,622

Of the total \$109.0 million recorded in goodwill, \$86.1 million, \$15.3 million, and \$7.6 million has been allocated to the Research, Consulting, and Events segments, respectively. The Company believes the recorded goodwill is supported by the anticipated revenues and synergies in general and administrative costs. The preliminary purchase price allocation includes an estimate of the fair value of the cost to fulfill the deferred revenue obligations which was determined by estimating the costs to provide the services plus a normal profit margin, and did not include any costs associated with selling efforts. The preliminary amount that is expected to be deductible for tax purposes is approximately \$55.4 million.

In connection with the acquisitions, the Company has received contractual indemnifications from the selling shareholders for certain pre-acquisition liabilities of the acquired companies. The Company estimates these liabilities at approximately \$6.1 million. In accordance with FASB ASC Topic 805, the Company has recorded a \$6.1 million receivable in Prepaid expenses and other current assets and a \$6.1 million liability in Accrued liabilities, which are included in the purchase price allocation table above. The Company believes the indemnification assets are fully collectible since a portion of the sale proceeds have been escrowed pending resolution of the liabilities.

### 3—DISCONTINUED OPERATIONS

In early 2008 the Company sold its Vision Events business, which had been part of the Company's Events segment, for \$11.4 million in cash. In accordance with FASB ASC Topic 205, the operating results of the Vision Events business have been reported separately as a discontinued operation for 2008 and 2007. The Vision Events business generated revenues of zero and \$20.7 million in 2008 and 2007, respectively, and had an operating (loss) income of \$(0.3) million and \$2.9 million in 2008 and 2007, respectively.

The Company realized net cash proceeds from the sale of \$7.8 million and recorded a net gain on the sale of approximately \$7.1 million after deducting direct costs to sell, a charge of \$1.8 million of Events segment goodwill, and related tax charges. The gain is recorded in Income from discontinued operations in the Consolidated Statements of Operations.

The goodwill charge was recorded in accordance with FASB ASC Topic 350, which requires an allocated portion of goodwill to be included in the gain or loss on disposal of a portion of a reporting unit. The assets and liabilities of the Vision Events business that were included in the sale were not material to the Company's Consolidated Balance Sheet or Consolidated Statements of Cash Flows.

### 4—OTHER CHARGES

The Company recorded Other charges of \$0 in both 2009 and 2008 and \$9.1 million in 2007.

Other charges of \$9.1 million recorded in 2007 included charges of \$8.7 million related to a litigation settlement and \$2.7 million related to our decision to exit consulting operations in Asia. Offsetting these charges was a credit of \$2.3 million related to an excess facility that was returned to service.

The following table summarizes the activity related to restructuring costs recorded as Other Charges in the Consolidated Statements of Operations (in thousands):

	Workforce Reduction Costs	Excess Facilities Costs	Asset Impairments and Other	Total
Accrued liability at December 31, 2006	\$ 681	\$ 15,030	\$ —	\$ 15,711
Charges during 2007	2,682	—	8,681	11,363
Adjustment for excess facility	—	(2,280)	—	(2,280)
Currency translation and reclassifications	(156)	164	—	8
Payments	(2,871)	(5,138)	(8,681)	(16,690)
Accrued liability at December 31, 2007	\$ 336	\$ 7,776	\$ —	\$ 8,112
Charges during 2008	—	—	—	—
Currency translation and reclassifications	(114)	—	—	(114)
Payments	(222)	(4,117)	—	(4,339)
Accrued liability at December 31, 2008	\$ —	\$ 3,659	\$ —	\$ 3,659
Charges during 2009	—	—	—	—
Currency translation and reclassifications	—	—	—	—
Payments	—	(2,856)	—	(2,856)
Accrued liability at December 31, 2009(1),(2)	\$ —	\$ 803	\$ —	\$ 803

(1) The \$0.8 million liability for excess facilities represents the present value of the estimated remaining lease payments less projected sublease income. Accretion expense related to the obligations is charged against earnings.

(2) Costs for excess facilities will be paid as the leases expire through 2011. The Company intends to fund these payments from existing cash.

### 5—OTHER ASSETS

Other assets consist of the following (in thousands):

	December 31,	
	2009	2008
Security deposits	\$ 3,545	\$ 2,796
Debt issuance costs	1,384	2,376
Benefit plan related assets	30,903	23,095
Non-current deferred tax assets	29,527	46,378
Other	1,904	1,275
Total other assets	\$ 67,263	\$ 75,920

**6—ACCOUNTS PAYABLE, ACCRUED, AND OTHER LIABILITIES**

Accounts payable and accrued liabilities consist of the following (in thousands):

	December 31,	
	2009	2008
Accounts payable	\$ 14,312	\$ 12,130
Payroll, employee benefits, severance	63,600	58,840
Bonus payable	53,264	45,040
Commissions payable	39,705	33,797
Taxes payable	17,693	29,508
Acquisition payables (1)	13,059	—
Rent and other facilities costs	9,666	6,575
Professional and consulting fees	4,112	4,007
Other accrued liabilities	40,555	29,484
Total accounts payable and accrued liabilities	\$ 255,966	\$ 219,381

(1) Includes amounts payable consisting primarily of a portion of the purchase price related to our acquisition of Burton Group on December 30, 2009. These amounts were paid in January 2010.

Other liabilities consist of the following (in thousands):

	December 31,	
	2009	2008
Non-current deferred revenue	\$ 3,912	\$ 1,913
Long-term taxes payable	15,064	15,386
Benefit plan-related liabilities	37,977	30,098
Other	23,618	36,075
Total other liabilities	\$ 80,571	\$ 83,472

**7—DEBT**

**Credit Agreement**

The Company has a Credit Agreement dated as of January 31, 2007 that provides for a \$300.0 million revolving credit facility and a five-year, \$180.0 million term loan (the "original term loan"). On April 9, 2008, the Company entered into a First Amendment (the "First Amendment") with the lenders to the Credit Agreement, which provided for a new \$150.0 million term loan (the "2008 term loan"). The revolving credit facility may be increased up to an additional \$100.0 million at the discretion of the Company's lenders (the "expansion feature"), for a total revolving credit facility of \$400.0 million. However, the \$100.0 million expansion feature may or may not be available to the Company depending upon prevailing credit market conditions. To date the Company has not sought to borrow under the expansion feature.

The following table provides information regarding amounts outstanding under the Company's Credit Agreement:

Description:	Amount Outstanding December 31, 2008 (In thousands)	Amount Outstanding December 31, 2009 (In thousands)	Annualized Effective Interest Rate December 31, 2009(2)
Original Term Loan (1)	\$ 157,500	\$ 126,000	5.81%
2008 Term Loan (1)	138,750	75,000	1.26%
Revolver (3)	120,000	128,000	1.00%
Total	\$ 416,250	\$ 329,000	

- (1) During 2009 the Company repaid \$31.5 million of the original term loan and \$23.8 million of the 2008 term loan pursuant to the loan amortization schedules. In addition, the Company prepaid \$40.0 million of the 2008 term loan on September 30, 2009.
- (2) The rate on the original term loan consisted of the interest rate swap rate (see below) plus a margin of 0.75%. The rate on the 2008 term loan consisted of a three-month LIBOR base rate plus a margin of 1.00%, while the revolver consisted of a one-month LIBOR base rate plus a margin of 0.75%.
- (3) The Company had approximately \$170.0 million of available borrowing capacity on the revolver (not including the expansion feature) as of December 31, 2009.

Borrowings under the Credit Agreement carry interest rates that are either prime-based or Libor-based. Interest rates under these borrowings include a base rate plus a margin between 0.00% and 0.75% on Prime-based borrowings and between 0.625% and 1.75% on Libor-based borrowings. Generally, the Company's borrowings are Libor-based. The revolving loans may be borrowed, repaid and reborrowed until January 31, 2012, at which time all amounts borrowed must be repaid. The revolver borrowing capacity is reduced for both amounts outstanding under the revolver and for letters of credit.

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The original term loan will be repaid in 18 consecutive quarterly installments which commenced on September 30, 2007, with the final payment due on January 31, 2012, and may be prepaid at any time without penalty or premium at the option of the Company. The 2008 term loan is co-terminus with the original 2007 term loan under the Credit Agreement and will be repaid in 16 consecutive quarterly installments which commenced June 30, 2008, plus a final payment due on January 31, 2012, and may be prepaid at any time without penalty or premium at the option of Gartner.

The Credit Agreement contains certain customary restrictive loan covenants, including, among others, financial covenants requiring a maximum leverage ratio, a minimum fixed charge coverage ratio, and a minimum annualized contract value ratio and covenants limiting Gartner's ability to incur indebtedness, grant liens, make acquisitions, be acquired, dispose of assets, pay dividends, repurchase stock, make capital expenditures, and make investments. The Company was in full compliance with its financial covenants as of December 31, 2009, after giving effect to the acquisitions. A failure to comply with these covenants in the future could result in acceleration of all amounts outstanding under the Credit Agreement, which would materially impact our financial condition unless accommodations could be negotiated with our lenders.

### Interest Rate Swap Contracts

The Company has two interest rate swap contracts:

#### Swap designated as a hedge

The Company has an interest rate swap contract that hedges the base interest rate risk on its original term loan. The effect of the swap is to convert the floating base rate on the term loan to a fixed rate. Under the swap terms, the Company pays a fixed rate of 5.06% on the original term loan and in return receives a three-month LIBOR rate. The three-month LIBOR rate received on the swap matches the base rate paid on the term loan since the Company optionally selects a three-month LIBOR rate on the term loan. The notional amount of the interest rate swap declines over time and constantly matches the outstanding amount of the term loan. Other critical terms of the swap and the term loan also match.

The Company accounts for the interest rate swap on its original term loan as a cash flow hedge in accordance with FASB ASC Topic 815. Since the swap is hedging the forecasted interest payments on the term loan and qualifies as a cash flow hedge, changes in the fair value of the swap are recorded in Other comprehensive income as long as the swap continues to be a highly effective hedge of the base interest rate risk on the term loan. Any ineffective portion of change in the fair value of the hedge is recorded in earnings. At December 31, 2009, there was no ineffective portion of the hedge. The interest rate swap had a negative fair value of approximately \$6.6 million at December 31, 2009, which is recorded in Other comprehensive income, net of tax effect.

#### Swap not designated as a hedge

On September 30, 2009, the Company discontinued hedge accounting on an interest rate swap contract that previously hedged the 2008 term loan. In addition, on the same date the Company prepaid \$40.0 million of the outstanding amount of the 2008 term loan.

The interest rate swap had a negative fair value of \$3.3 million as of September 30, 2009. In accordance with the hedge accounting rules in FASB ASC Topic 815, the \$3.3 million was recorded in Other comprehensive income, net of tax effect, as a deferred loss. However, because of the \$40.0 million loan prepayment, the Company reclassified \$1.1 million of the deferred loss from Other comprehensive income to interest expense, net. The remaining \$2.2 million deferred loss in Other comprehensive income as of September 30, 2009, will be amortized to interest expense through maturity of the 2008 term loan. The 2008 term loan matures in January 2012. For the three months ended December 31, 2009, the Company reclassified approximately \$0.4 million of the deferred loss in Other comprehensive income to interest expense.

### Letters of Credit

The Company issues letters of credit and related guarantees in the ordinary course of business. At December 31, 2009, the Company had outstanding letters of credit and guarantees of approximately \$2.5 million.

## 8—COMMITMENTS AND CONTINGENCIES

The Company leases various facilities, furniture, and computer equipment under operating lease arrangements expiring between 2010 and 2026. The future minimum annual cash payments under non-cancelable operating lease agreements at December 31, 2009, are as follows (in thousands):

Year ended December 31,

2010	\$	33,946
2011		23,344
2012		15,965
2013		11,554
2014		8,267
Thereafter		44,082
Total minimum lease payments (1)	\$	137,158

(1) Excludes approximately \$5.5 million of contractual sublease rental income.

We are involved in legal proceedings and litigation arising in the ordinary course of business. We believe that the potential liability, if any, in excess of amounts already accrued from all proceedings, claims and litigation will not have a material effect on our financial position or results of operations when resolved in a future period.

The Company has various agreements that may obligate us to indemnify the other party with respect to certain matters. Generally, these indemnification clauses are included in contracts arising in the normal course of business under which we customarily agree to hold the other party harmless against losses arising from a breach of representations related to such matters as title to assets sold and licensed or certain intellectual property rights. It is not possible to predict the maximum potential amount of future payments under these indemnification agreements due to the conditional nature of the Company's obligations and the unique facts of each particular agreement. Historically, payments made by us under these agreements have not been material. As of December 31, 2009, we did not have any indemnification agreements that would require material payments.

The Company received cash proceeds of \$1.2 million in 2008 related to the settlement of a litigation matter which was recorded as a gain in Other (expense) income, net in the Consolidated Statements of Operations.

## 9—EQUITY

*Capital stock.* Holders of Gartner's Common Stock, par value \$.0005 per share ("Common Stock") are entitled to one vote per share on all matters to be voted by stockholders. The Company does not currently pay cash dividends on its Common Stock. Also, our credit arrangement contains a negative covenant which may limit our ability to pay dividends.

The following table summarizes transactions relating to Common Stock for the three years' ending December 31, 2009:

	Issued Shares	Treasury Stock Shares
Balance at December 31, 2006	156,234,416	52,169,591
Issuances under stock plans	—	(3,353,421)
Purchases for treasury	—	8,386,490
Balance at December 31, 2007	156,234,416	57,202,660
Issuances under stock plans	—	(4,568,658)
Purchases for treasury	—	9,719,573
Balance at December 31, 2008	156,234,416	62,353,575
Issuances under stock plans	—	(2,302,935)
Purchases for treasury	—	306,032
Balance at December 31, 2009	156,234,416	60,356,672

*Share repurchase programs.* The Company has a \$250.0 million authorized stock repurchase program, of which \$78.6 million remained available as of December 31, 2009. Repurchases are made from time-to-time through open market purchases and are subject to the availability of stock, prevailing market conditions, the trading price of the stock, the Company's financial performance and other conditions. Repurchases are also made from time-to-time in connection with the settlement of shared-based compensation awards. Repurchases may be funded from cash flow from operations and borrowings under the Company's Credit Agreement.

During 2009, 2008, and 2007, the Company recorded \$3.7 million, \$198.6 million, and \$169.1 million, respectively, of Common Stock repurchases. Included in the 2008 total was \$26.9 million for shares repurchased directly from Silver Lake Partners and affiliates (collectively, "Silver Lake").

*Secondary Offering.* On December 14, 2009, Silver Lake sold 7,960,641 shares of Common Stock in a secondary offering, which represented its entire remaining holdings in the Common Stock. The Company did not receive any of the proceeds from the sale of these shares. Additionally, in conjunction with the sale, the Amended and Restated Securityholders Agreement, dated as of July 12, 2002, between the Company and Silver Lake, pursuant to which Silver Lake was entitled to designate two board members and to certain consent rights, was terminated with the exception of certain indemnification rights.

## 10—STOCK-BASED COMPENSATION

The Company grants stock-based compensation awards as an incentive for employees and directors to contribute to the Company's long-term success. The Company's stock compensation awards include stock-settled stock appreciation rights, restricted stock, service- and performance-based restricted stock units, common stock equivalents, and stock options. At December 31, 2009, the Company had approximately 7.4 million shares of Common Stock available for awards of stock-based compensation under its 2003 Long-Term Incentive Plan, which includes 4.0 million additional shares approved by stockholders at the Company's 2009 Annual Meeting of Stockholders.

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The Company accounts for stock-based compensation in accordance with FASB ASC Topics 505 and 718, as interpreted by SAB No. 107 and SAB No. 110. Stock-based compensation expense is based on the fair value of the award on the date of grant, which is recognized over the related service period, net of estimated forfeitures. The service period is the period over which the related service is performed, which is generally the same as the vesting period.

Determining the appropriate fair value model and calculating the fair value of stock compensation awards requires the input of certain highly complex and subjective assumptions, including the expected life of the stock compensation awards and the Company's Common Stock price volatility. In addition, determining the appropriate amount of associated periodic expense requires management to estimate the amount of employee forfeitures and the likelihood of the achievement of certain performance targets. The assumptions used in calculating the fair value of stock compensation awards and the associated periodic expense represent management's best estimates, but these estimates involve inherent uncertainties and the application of judgment. As a result, if factors change and the Company deems it necessary in the future to modify the assumptions it made or to use different assumptions, or if the quantity and nature of the Company's stock-based compensation awards changes, then the amount of expense may need to be adjusted and future stock compensation expense could be materially different from what has been recorded in the current period.

The Company recognized the following amounts of stock-based compensation expense (in millions) for the years ended December 31:

Award type:	2009	2008	2007
Restricted stock	\$ —	\$ 0.4	\$ 1.8
Restricted stock units (RSUs)	21.3	14.8	13.7
Common stock equivalents (CSEs)	0.4	0.4	0.5
Stock appreciation rights (SARs)	4.4	3.2	2.4
Options	—	1.9	5.8
Total (1)	\$ 26.1	\$ 20.7	\$ 24.2

(1) Includes \$1.9 million, \$1.3 million, and \$0.9 million in 2009, 2008, and 2007, respectively, for charges related to retirement-eligible employees.

Stock-based compensation (in millions) was recognized in the Consolidated Statements of Operations for the years ended December 31 as follows:

Amount recorded in:	2009	2008	2007
Costs of services and product development	\$ 12.6	\$ 9.6	\$ 10.8
Selling, general, and administrative	13.5	11.1	13.4
Total stock-based compensation expense	\$ 26.1	\$ 20.7	\$ 24.2

As of December 31, 2009, the Company had \$41.5 million of total unrecognized stock-based compensation cost, which is expected to be recognized as stock-based compensation expense over the remaining weighted-average service period of approximately 2 years. Currently, the Company issues treasury shares upon the exercise, release or settlement of stock-based compensation awards.

### Stock-Based Compensation Awards

The following disclosures provide information regarding the Company's stock-based compensation awards, all of which are classified as equity awards:

#### Stock Appreciation Rights

Stock-settled stock appreciation rights ("SARs") are settled in common shares and are similar to options as they permit the holder to participate in the appreciation of the Common Stock. SARs may be settled in Common Stock by the employee once the applicable vesting criteria have been met. When SARs are exercised, the number of shares of Common Stock issued is calculated as follows: (1) the total proceeds from the SARs exercise (calculated as the closing price of Common Stock on the date of exercise less the exercise price of the SARs, multiplied by the number of SARs exercised) is divided by (2) the closing price of Common Stock on the exercise date. The Company will withhold a portion of the Common Stock issued upon exercise to satisfy minimum statutory tax withholding requirements. SARs recipients do not have any of the rights of a Gartner stockholder, including voting rights and the right to receive dividends and distributions, until after actual shares of Common Stock are issued in respect of the award, which is subject to the prior satisfaction of the vesting and other criteria relating to such grants. At the present time, SARs are awarded only to the Company's executive officers.

The Company determines the fair value of SARs on the date of grant using the Black-Scholes-Merton valuation model. The SARs vest ratably over a four-year service period and expire seven years from the grant date. Total compensation expense for SARs was \$4.4 million, \$3.2 million, and \$2.4 million in 2009, 2008, and 2007, respectively.

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A summary of the changes in SARs outstanding for the year ended December 31, 2009, follows:

	SARs in millions	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term
Outstanding at December 31, 2008	2.1	\$ 17.42	\$ 6.61	5.12 years
Granted	1.0	11.15	4.97	6.11 years
Forfeited	(0.2)	15.08	6.11	na
Exercised (1)	—	—	—	—
Outstanding at December 31, 2009 (2)	2.9	\$ 15.43	\$ 6.09	4.67 years
Vested and exercisable at December 31, 2009(2)	1.1	\$ 16.65	\$ 6.51	3.67 years

na=not applicable

(1) SARs exercised in 2009 were immaterial.

(2) At December 31, 2009, SARs outstanding had an intrinsic value of \$9.4 million. SARs vested and exercisable had an intrinsic value of \$2.4 million.

The fair value of the Company's SARs was determined on the date of grant using the Black-Scholes-Merton valuation model with the following weighted-average assumptions for the years ended December 31:

	2009	2008	2007
Expected dividend yield (1)	0%	0%	0%
Expected stock price volatility (2)	50%	36%	33%
Risk-free interest rate(3)	2.3%	2.8%	4.7%
Expected life in years(4)	4.80	4.75	4.74

(1) The dividend yield assumption is based on the history and expectation of the Company's dividend payouts. Historically Gartner has not paid cash dividends on its Common Stock.

(2) The determination of expected stock price volatility was based on both historical Common Stock prices and implied volatility from publicly traded options in Common Stock.

(3) The risk-free interest rate is based on the yield of a U.S. Treasury security with a maturity similar to the expected life of the award.

(4) The expected life in years is based on the "simplified" calculation provided for in SAB No. 107. The simplified method determines the expected life in years based on the vesting period and contractual terms as set forth when the award is made. The Company continues to use the simplified method for awards of stock-based compensation since it does not have the necessary historical exercise and forfeiture data to determine an expected life for SARs, as permitted by SAB No. 110.

### Restricted Stock, Restricted Stock Units, and Common Stock Equivalents

Restricted stock awards give the awardee the right to vote and to receive dividends and distributions on these shares; however, the awardee may not sell the restricted shares until all restrictions on the release of the shares have lapsed and the shares are released.

Restricted stock units (RSUs) give the awardee the right to receive Common Stock when the vesting conditions are met and the restrictions lapse, and each RSU that vests entitles the awardee to one common share. RSU awardees do not have any of the rights of a Gartner stockholder, including voting rights and the right to receive dividends and distributions, until after the common shares are released.

Common stock equivalents (CSEs) are convertible into Common Stock, and each CSE entitles the holder to one common share. Certain members of our Board of Directors receive directors' fees payable in CSEs unless they opt for cash payment. Generally, the CSEs are converted when service as a director terminates unless the director has elected accelerated release.

The fair value of restricted stock, RSUs, and CSEs is determined on the date of grant based on the closing price of the Common Stock as reported by the New York Stock Exchange on that date. The fair value of these awards is recognized as compensation expense as follows: (i) outstanding restricted stock awards vest based on the achievement of a market condition and are expensed on a straight-line basis over approximately three years; (ii) service-based RSUs vest ratably over four years and are expensed on a straight-line basis over four years; (iii) performance-based RSUs are subject to both performance and service conditions, vest ratably over four years, and are expensed on an accelerated basis; and (iv) CSEs vest immediately and are recorded as expense on the date of grant.

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A summary of the changes in restricted stock, RSUs, and CSEs during the year ended December 31, 2009 is presented in the table below:

	Restricted Stock	Weighted-Average Grant Date Fair Value	Restricted Stock Units (RSUs)	Weighted-Average Grant Date Fair Value	Common Stock Equivalents (CSEs)	Weighted-Average Grant Date Fair Value
Outstanding at December 31, 2008	200,000	\$ 7.30	2,614,847	\$ 18.40	158,511	na
Granted (1),(2)	—	—	2,251,020	11.38	26,531	\$ 15.03
Vested or released (2)	—	—	(884,761)	17.93	(49,818)	na
Forfeited	—	—	(217,301)	15.20	—	na
Outstanding at December 31, 2009(3),(4)	200,000	\$ 7.30	3,763,805	\$ 14.57	135,224	na

na=not available

- (1) The 2.3 million RSUs granted during 2009 consisted of 1.1 million performance-based RSUs awarded to executives and 1.2 million service-based RSUs awarded to non-executive employees. The number of performance-based RSUs granted was subject to the achievement of a performance condition tied to the annual increase in the Company's subscription-based contract value for 2009, which ranged from 0% and 200% of the target number depending on the performance level achieved. The aggregate performance-based RSU target for 2009 was 1.0 million. The actual performance target achieved was 119.4%, resulting in the granting of 1.1 million performance-based RSUs in 2009.
- (2) CSEs represent fees paid to directors. The CSEs vest when granted and are convertible into common shares when the director leaves the Board of Directors or earlier if the director elects to accelerate the release.
- (3) Vesting on the 200,000 shares of restricted stock held by our CEO is subject to a market condition as follows: (i) 100,000 shares will vest when the Common Stock trades at an average price of \$25 or more each trading day for sixty consecutive trading days; and (ii) 100,000 shares will vest when the Common Stock trades at an average price of \$30 or more each trading day for sixty consecutive trading days. There is no remaining unamortized cost on these shares.
- (4) The weighted-average remaining contractual term of the RSUs is 1.28 years. The restricted stock awards and the CSEs have no defined contractual term.

### Stock Options

Historically the Company granted stock options to employees that allowed them to purchase shares of Common Stock at a certain price. The Company has not made significant stock option grants since 2005. All outstanding options are fully vested and there is no remaining unamortized cost. The Company received approximately \$12.2 million in cash from option exercises in the year ended December 31, 2009.

A summary of the changes in stock options outstanding for the year ended December 31, 2009, follows:

	Options in millions	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term
Outstanding at December 31, 2008	6.1	\$ 10.78	3.56 years
Expired	(0.2)	17.66	na
Exercised (1)	(1.2)	10.42	na
Outstanding at December 31, 2009 (2)	4.7	\$ 10.65	3.07 years

na=not applicable

- (1) Options exercised during 2009 had an aggregate intrinsic value of \$7.7 million.
- (2) At December 31, 2009, options outstanding had an aggregate intrinsic value of \$34.8 million.

### Employee Stock Purchase Plan

The Company has an employee stock purchase plan (the "ESPP Plan") under which eligible employees are permitted to purchase Common Stock through payroll deductions, which may not exceed 10% of an employee's compensation (or \$23,750 in any calendar year), at a price equal to 95% of the Common Stock price as reported by the New York Stock Exchange at the end of each offering period.

At December 31, 2009, the Company had 1.6 million shares of Common Stock available for purchase under the ESPP Plan. The ESPP Plan is considered non-compensatory and as a result the Company does not record compensation expense related to employee share purchases. The Company received \$2.7 million in cash from share purchases under the ESPP Plan in the year ended December 31, 2009.

**11—COMPUTATION OF EARNINGS PER SHARE**

Basic earnings per share ("EPS") is computed by dividing net income by the weighted average number of shares of Common Stock outstanding for the period. Diluted EPS reflects the potential dilution of securities that could share in earnings. When the impact of common share equivalents is antidilutive, they are excluded from the calculation.

The following table sets forth the reconciliation of the basic and diluted earnings per share computations (in thousands, except per share amounts):

	2009	2008	2007
<b>Numerator:</b>			
Net income used for calculating basic and diluted earnings per common share	\$ 82,964	\$ 103,871	\$ 73,553
<b>Denominator: (1)</b>			
Weighted average number of common shares used in the calculation of basic earnings per share	94,658	95,246	103,613
Common share equivalents associated with stock-based compensation plans	2,891	3,782	4,715
Shares used in the calculation of diluted earnings per share	97,549	99,028	108,328
<b>Earnings per share:</b>			
Basic (2)	\$ 0.88	\$ 1.09	\$ 0.71
Diluted (2)	\$ 0.85	\$ 1.05	\$ 0.68

(1) During 2009, 2008 and 2007, the Company repurchased 0.3 million, 9.7 million, and 8.4 million shares of its Common Stock, respectively.

(2) Basic and diluted earnings per share include income from discontinued operations of \$0.07 per share and \$0.03 per share for 2008 and 2007, respectively.

The following table presents the number of common share equivalents that were not included in the computation of diluted EPS in the table above because the effect would have been antidilutive. During periods with reported income, these common share equivalents were antidilutive because their exercise price was greater than the average market value of a share of Common Stock during the period. During periods with reported loss, all common share equivalents would have an antidilutive effect.

	2009	2008	2007
Antidilutive common share equivalents as of December 31 (in millions):	1.7	1.3	0.6
Average market price per share of Common Stock during the year	\$ 15.52	\$ 20.17	\$ 23.00

**12—INCOME TAXES**

Following is a summary of the components of income before income taxes for the years ended December 31 (in thousands):

	2009	2008	2007
U.S.	\$ 54,793	\$ 79,393	\$ 59,884
Non-U.S.	60,733	65,348	50,613
Income before income taxes	\$ 115,526	\$ 144,741	\$ 110,497

The expense for income taxes on the above income consists of the following components (in thousands):

	2009	2008	2007
<b>Current tax expense (benefit):</b>			
U.S. federal	\$ 8,749	\$ 10,564	\$ 3,321
State and local	3,107	3,341	(2,935)
Foreign	14,340	15,614	14,286
Total current	26,196	29,519	14,672
<b>Deferred tax (benefit) expense:</b>			
U.S. federal	7,477	(547)	2,695
State and local	3,168	1,848	5,487
Foreign	1,281	(2,798)	(381)
Total deferred	11,926	(1,497)	7,801
Total current and deferred	38,122	28,022	22,473
Benefit (expense) relating to interest rate swap used to increase (decrease) equity	(2,530)	3,776	2,449
Benefit from stock transactions with employees used to increase equity	621	15,876	15,237
Benefit (expense) relating to defined-benefit pension adjustments used to increase (decrease) equity	(296)	(594)	(1,688)
Benefit (expense) of acquired tax assets (liabilities) used to decrease (increase) goodwill	(3,355)	513	1,360
Tax expense on continuing operations	32,562	47,593	39,831
Tax expense on discontinued operations	—	622	777
Total tax expense	\$ 32,562	\$ 48,215	\$ 40,608

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Current and long-term deferred tax assets and liabilities are comprised of the following (in thousands):

	December 31,	
	2009	2008
Depreciation and software amortization	\$ 3,261	\$ 6,591
Expense accruals	28,751	32,865
Loss and credit carryforwards	35,232	37,036
Other assets	25,213	24,294
Gross deferred tax asset	92,457	100,786
Intangible assets	(17,259)	(10,238)
Prepaid expenses	(7,098)	(6,533)
Other liabilities	(1,190)	(970)
Gross deferred tax liability	(25,547)	(17,741)
Valuation allowance	(19,692)	(24,924)
Net deferred tax asset	\$ 47,218	\$ 58,121

Current net deferred tax assets and current net deferred tax liabilities were \$19.0 million and \$1.2 million as of December 31, 2009 and \$15.7 million and \$2.8 million as of December 31, 2008, respectively, and are included in Prepaid expenses and other current assets and Accounts payable and accrued liabilities in the Consolidated Balance Sheets. Long-term net deferred tax assets and long-term net deferred tax liabilities were \$29.5 million and \$0.1 million as of December 31, 2009 and \$46.4 million and \$1.2 million as of December 31, 2008, respectively, and are included in Other assets and Other liabilities in the Consolidated Balance Sheets.

The valuation allowances in 2009 and 2008 relate primarily to non-U.S. net operating losses, domestic capital loss carryforwards, and domestic foreign tax credits that more likely than not will expire unutilized. The net decrease in the valuation allowance of \$5.2 million in 2009 relates primarily to the following items: (a) the release of approximately \$1.9 million of the valuation allowance for changes in both actual and anticipated utilization of foreign tax credits and (b) the release of approximately \$3.2 million of the valuation allowance on federal and state capital loss carryovers.

The Company has established a full valuation allowance against domestic realized and unrealized capital losses, as the future utilization of these losses is uncertain. As of December 31, 2009, the Company had U.S. federal capital loss carryforwards of \$15.5 million, of which \$13.4 million expire in 2011 and \$2.1 million expire in 2012 and 2013. The Company also had \$15.5 million in state and local capital loss carryforwards that expire over a similar period of time.

As of December 31, 2009, the Company had federal net operating loss carryforwards of \$1.8 million expiring in 2028 and 2029. The utilization of these net operating losses is subject to certain limitations under the Internal Revenue Code. The Company believes that the losses will be fully utilized prior to their expiration. As of December 31, 2009, the Company also has state and local tax net operating loss carryforwards of \$161.2 million, of which \$3.5 million expires within one to five years, \$98.0 million expires within six to fifteen years, and \$59.7 million expires within sixteen to twenty years. In addition, the Company had non-U.S. net operating loss carryforwards of \$30.5 million, of which \$4.7 million expires over the next 20 years and \$25.8 million that can be carried forward indefinitely.

As of December 31, 2009 the Company also had foreign tax credit carryforwards of \$12.1 million, all of which expire in 2018.

The differences between the U.S. federal statutory income tax rate and the Company's effective tax rate on income before income taxes are:

	2009	2008	2007
Statutory tax rate	35.0%	35.0%	35.0%
State income taxes, net of federal benefit	3.0	2.8	2.9
Foreign income taxed at different rates	(5.0)	(4.4)	(2.4)
Non-deductible meals and entertainment	0.5	0.7	0.8
Repatriation of foreign earnings	4.1	7.6	—
Record (release) valuation allowance	(4.5)	(9.2)	(1.4)
Foreign tax credits	(1.9)	(1.0)	(1.8)
(Release) increase reserve for tax contingencies	(3.5)	(0.3)	1.8
Other items (net)	0.5	1.7	1.1
Effective tax rate	28.2%	32.9%	36.0%

The Company adopted new accounting principles on accounting for uncertain tax positions on January 1, 2007. As of December 31, 2009 and December 31 2008, the Company had gross unrecognized tax benefits of \$13.8 million and \$16.3 million, respectively. The reduction is primarily attributable to the expiration of certain statutes of limitation in the third quarter of 2009. It is reasonably possible that the gross unrecognized tax benefits will be decreased by \$0.3 million within the next 12 months due primarily to anticipated settlements.

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The Company classifies uncertain tax positions not expected to be settled within one year as long term liabilities. As of December 31, 2009 and December 31, 2008, the Company had Other Liabilities of \$13.5 million and \$14.2 million, respectively, related to long term uncertain tax positions.

The Company records accrued interest and penalties related to unrecognized tax benefits in its income tax provision. As of December 31, 2009 and December 31, 2008, the Company had \$2.8 million and \$3.6 million of accrued interest and penalties respectively, related to unrecognized tax benefits. These amounts are in addition to the gross unrecognized tax benefits noted above. The total amount of interest and penalties recognized in the Consolidated Statements of Operations for the years ending December 31, 2009 and 2008 was (\$0.5) million and \$1.4 million, respectively.

The following is a reconciliation of the beginning and ending amount of unrecognized tax benefits, excluding interest and penalties, for the years ending December 31 (in thousands):

	2009	2008
Beginning balance	\$ 16,347	\$ 18,051
Additions based on tax positions related to the current year	953	1,253
Additions for tax positions of prior years	415	1,424
Reductions for tax positions of prior years	(334)	(1,692)
Reductions for expiration of statutes	(3,349)	(2,128)
Settlements	(447)	(264)
Change in foreign currency exchange rates	219	(297)
Ending balance	\$ 13,804	\$ 16,347

In 2009 the Company repatriated approximately \$52.0 million from its foreign subsidiaries. The cost of the repatriation was offset with the utilization of foreign tax credits.

The number of years with open statutes of limitation varies depending on the tax jurisdiction. Generally, the Company's statutes are open for tax years ended December 31, 2006 and forward. Major taxing jurisdictions include the U.S. (federal and state), the United Kingdom, Italy, Canada, Japan, the Netherlands, and Ireland.

The Internal Revenue Service ("IRS") commenced an audit of the Company's 2007 tax year early in 2009. The audit is ongoing and the IRS has not proposed any adjustments at this time. The Company believes that it has recorded reserves sufficient to cover exposures related to such review. However, the resolution of such matters involves uncertainties and there are no assurances that the ultimate resolution will not exceed the amounts recorded. The results of the audit could have a material effect on the Company's financial position, results of operations, or cash flows in period or periods for which that determination is made.

Undistributed earnings of subsidiaries outside of the U.S. amounted to approximately \$1.6 million as of December 31, 2009. The Company intends to reinvest such earnings in non-U.S. operations. However, the Company may repatriate a portion of these earnings to the extent that it does not incur an additional U.S. tax liability. Accordingly, no provision for U.S. federal and state income taxes has been provided thereon.

### 13—DERIVATIVES AND HEDGING

The Company typically enters into a limited number of derivative contracts to offset the potentially negative effects of interest rate and foreign exchange movements. The Company accounts for its outstanding derivative contracts in accordance with FASB ASC Topic 815, which requires all derivatives, whether designated as hedges or not, to be recorded on the balance sheet at fair value.

Information regarding the Company's derivatives activity as of, and for, the twelve months ended December 31, 2009 follows (in thousands, except for number of outstanding contracts):

Derivative Contract Type	Number of Outstanding Contracts	Contract Notional Amount	Fair Value Asset (Liability)(4)	Balance Sheet Line Item	Gain (Loss) Recognized in Earnings(5)	Gain (Loss) Recorded in OCI(6)
Interest Rate Swap(1)	1	\$ 126,000	\$ (6,594)	Other Liabilities	\$ 227	\$ (2,573)
Interest Rate Swap(2)	1	112,500	(2,769)	Other Liabilities	(950)	(1,189)
Foreign Currency Forwards(3)	19	117,296	740	Other Current Assets	674	—
Total	21	\$ 355,796	\$ (8,623)		\$ (49)	\$ (3,762)

- (1) The Company designates and accounts for this interest rate swap as a cash flow hedge (see Note 7—Debt).
- (2) The Company discontinued hedge accounting on this interest rate swap on September 30, 2009 (see Note 7—Debt).
- (3) The Company has foreign exchange transaction risk since it typically enters into transactions in the normal course of business that are denominated in foreign currencies that differ from the local functional currencies in which the Company and its subsidiaries operate. The Company may enter into foreign currency forward exchange contracts to offset the effects of this foreign currency transaction risk. These contracts are normally short term in duration. Both realized and unrealized gains and losses are recognized in earnings since the Company does not designate these contracts as hedges for accounting purposes.

- (4) See Note 14—Fair Value Disclosures for the determination of the fair value of these instruments.
- (5) The gain/loss on the swaps is recorded in Interest expense, net and represents the amounts reclassified from Other comprehensive income (OCI) to earnings during the period. The gain on the foreign currency forward contracts is recorded in Other income (expense), net and represents the net amount of realized and unrealized gains and losses recorded during the year.
- (6) Represents the amounts recorded in OCI as of December 31, 2009, net of income taxes.

At December 31, 2009, the Company's derivative counterparties were all large investment grade financial institutions. The Company did not have any collateral arrangements with its derivative counterparties, and none of the derivative contracts contained credit-risk related contingent features.

**14—FAIR VALUE DISCLOSURES**

The Company's financial instruments include cash and cash equivalents, fees receivable from customers, accounts payable, and accruals which are normally short-term in nature. The Company believes the carrying amounts of these financial instruments reasonably approximates their fair value.

At December 31, 2009, the Company had \$329.0 million of outstanding floating rate debt which is carried at amortized cost. The Company believes the carrying amount of the debt reasonably approximates its fair value as the rate of interest on the term loans and revolver are floating rate which reflect current market rates of interest for similar instruments with comparable maturities.

FASB ASC Topic 820 provides a framework for measuring fair value and a valuation hierarchy based upon the transparency of inputs used in the valuation of an asset or liability. Classification within the hierarchy is based upon the lowest level of input that is significant to the resulting fair value measurement. The valuation hierarchy contains three levels:

- Level 1—Valuation inputs are unadjusted quoted market prices for identical assets or liabilities in active markets.
- Level 2—Valuation inputs are quoted prices for identical assets or liabilities in markets that are not active, quoted market prices for similar assets and liabilities in active markets and other observable inputs directly or indirectly related to the asset or liability being measured.
- Level 3—Valuation inputs are unobservable and significant to the fair value measurement.

The following table presents Company assets and liabilities measured at fair value on a recurring basis (in thousands):

Description:	Fair Value December 31, 2009	Fair Value December 31, 2008
<b>Assets:</b>		
Deferred compensation assets(1)	\$ 20,214	\$ 13,900
Foreign currency forward contracts(2)	740	—
	<u>\$ 20,954</u>	<u>\$ 13,900</u>
<b>Liabilities:</b>		
Interest rate swap contracts(3)	\$ 9,363	\$ 14,700
Foreign currency forward contracts(2)	—	2,500
	<u>\$ 9,363</u>	<u>\$ 17,200</u>

- (1) The Company has a supplemental deferred compensation arrangement for the benefit of certain highly compensated officers, managers and other key employees (see Note 15—Employee Benefits). The plan's assets consist of investments in money market and mutual funds, and company-owned life insurance. The money market and mutual funds consist of cash equivalents or securities traded in active markets, which the Company considers the fair value of these assets to be based on a Level 1 input. The value of the Company-owned life insurance is based on indirectly observable prices which the Company considers to be Level 2 inputs.
- (2) The Company periodically enters into foreign currency forward exchange contracts to hedge the effects of adverse fluctuations in foreign currency exchange rates (see Note 13—Derivatives and Hedging). Valuation of the foreign currency forward contracts is based on foreign currency exchange rates in active markets; thus the Company measures the fair value of these contracts under a Level 2 input.
- (3) The Company has two interest rate swap contracts (see Note 7—Debt). To determine the fair value of the swaps, the Company relies on mark-to-market valuations prepared by third-party brokers based on observable interest rate yield curves. Accordingly, the fair value of the swaps is determined under a Level 2 input.

**15—EMPLOYEE BENEFITS**

**Savings and investment plan.** The Company has a savings and investment plan covering substantially all domestic employees. Company contributions are based upon the level of employee contributions, up to a maximum of 4% of the employee's eligible

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salary, subject to an annual maximum. For 2009, the maximum match was \$6,600. In addition, the Company also contributes at least 1% of an employee's base compensation, subject to an IRS annual limitation of \$2,450 for 2009. Amounts expensed in connection with the plan totaled \$13.0 million, \$12.5 million, and \$11.8 million, for 2009, 2008, and 2007, respectively.

**Deferred compensation arrangement.** The Company has a supplemental deferred compensation arrangement for the benefit of certain highly compensated officers, managers and other key employees which is structured as a rabbi trust. We classify the plan's investment assets in Other assets on the Consolidated Balance Sheets at current fair value, and the value of the assets was \$20.2 million and \$13.9 million at December 31, 2009 and 2008, respectively. The corresponding deferred compensation liability of \$23.0 million and \$16.5 million at December 31, 2009 and 2008, respectively, is recorded at fair market value, and is adjusted with a corresponding charge or credit to compensation cost to reflect the fair value of the amount owed to the employees and is included in Other liabilities on the Consolidated Balance Sheets. Total compensation expense (benefit) for the arrangement was \$0.1 million, \$(0.4) million, and \$0.3 million, for 2009, 2008, and 2007, respectively.

**Defined benefit pension plans.** The Company has defined-benefit pension plans in several of its international locations. Benefits earned under these plans are based on years of service and level of employee compensation. The Company accounts for material defined benefit plans in accordance with the requirements of FASB ASC Topics 715 and 960.

The following are the components of net periodic pension expense for the years ended December 31 (in thousands):

	2009	2008	2007
Service cost	\$ 1,465	\$ 1,470	\$ 1,922
Interest cost	742	717	599
Recognition of actuarial (gain) loss	(200)	(74)	129
Recognition of termination benefits	192	40	24
Net periodic pension expense	\$ 2,199	\$ 2,153	\$ 2,674

Assumptions used in the computation of net periodic pension expense are as follows:

	2009	2008	2007
Weighted-average discount rate	4.85%	5.09%	5.01%
Average compensation increase	3.27%	3.27%	3.32%

The Company determines the weighted-average discount rate by utilizing the yields on long-term corporate bonds in the relevant country with a duration consistent with the pension obligations.

The following table provides information related to changes in the projected benefit obligation (in thousands):

	December 31,		
	2009	2008	2007
Projected benefit obligation at beginning of year	\$ 13,286	\$ 13,224	\$ 13,900
Service cost	1,465	1,470	1,922
Interest cost	742	717	599
Actuarial gain	(1,034)	(1,799)	(4,589)
Benefits paid (1)	(562)	(583)	(217)
Foreign currency impact	461	257	1,609
Projected benefit obligation at end of year (2)	\$ 14,358	\$ 13,286	\$ 13,224

(1) The estimated benefits to be paid in future years are as follows: \$0.2 million in 2010; \$0.2 million in 2011; \$0.3 million in 2012; \$0.9 million in 2013; \$1.0 million in 2014; and \$3.6 million in the five years thereafter.

(2) Measured as of December 31.

The following table provides information related to the funded status of the plans and the amounts recorded in the Consolidated Balance Sheets (in thousands):

	December 31,		
	2009	2008	2007
Funded status of the plans:			
Projected benefit obligation	\$ 14,358	\$ 13,286	\$ 13,224
Plan assets at fair value(1)	—	—	—
Funded status(2)	\$ 14,358	\$ 13,286	\$ 13,224
Amounts recorded in the Consolidated Balance Sheets:			
Other assets — reinsurance asset(1)	\$ 10,451	\$ 9,141	\$ 8,380
Other liabilities — accrued pension obligation	\$ 14,358	\$ 13,286	\$ 13,224
Stockholders' equity — unrecognized actuarial gain(3)	\$ 3,217	\$ 2,777	\$ 1,602

(1) The Company has a reinsurance asset arrangement with a large international insurance company that was rated investment grade as of December 31, 2009. The purpose of the reinsurance asset arrangement is to fund the benefit obligation under

one of the plans. However, the reinsurance asset is not acknowledged as a plan asset for accounting purposes since it is considered an asset of the Company and is not legally segregated or restricted for purposes of meeting the pension obligation. The reinsurance asset is carried at its cash surrender value, which the Company believes approximates its fair value as of December 31, 2009.

- (2) Contributions expected to be paid to the plans in 2010 total \$0.2 million.
- (3) The \$3.2 million recorded in Stockholders' equity, net of tax effect as of December 31, 2009 represents the plan's net unrecognized actuarial gain. This amount will be amortized to net periodic pension cost over approximately 15 years. Amortization of the gain is estimated to reduce the net periodic pension cost in 2010 by approximately \$0.2 million.

**16—SEGMENT INFORMATION**

The Company manages its business in three reportable segments: Research, Consulting and Events. Research consists primarily of subscription-based research products, access to research inquiry, as well as peer networking services and membership programs.

Consulting consists primarily of consulting, measurement engagements, and strategic advisory services. Events consists of various symposia, conferences and exhibitions.

The Company evaluates reportable segment performance and allocates resources based on gross contribution margin. Gross contribution, as presented in the table below, is defined as operating income excluding certain cost of services and product development and SGA expenses, depreciation, acquisition and integration charges, amortization of intangibles and Other charges. Certain bonus and fringe benefit costs included in consolidated Cost of services and product development are not allocated to segment expense. The accounting policies used by the reportable segments are the same as those used by the Company. There are no intersegment revenues.

We earn revenue from clients in many countries. Other than the United States, there is no individual country in which revenues from external clients represent 10% or more of the Company's consolidated revenues. Additionally, no single client accounted for 10% or more of total revenue and the loss of a single client, in management's opinion, would not have a material adverse effect on revenues.

We do not identify or allocate assets, including capital expenditures, by operating segment. Accordingly, assets are not being reported by segment because the information is not available by segment and is not reviewed in the evaluation of performance or making decisions in the allocation of resources.

On January 1, 2009 the Company eliminated the previously reported "Other" revenue line. The "Other" revenue line primarily consisted of fees earned from Research reprints and other miscellaneous products, and these revenues and related expenses are now being included in the Research segment. In addition, certain expenses that were formerly classified as Selling, general & administrative expense are now reported in Cost of sales and product development and are included in the Research segment. Prior periods presented below have been reclassified in order to be consistent with the current period presentation. For 2008 these actions increased Research segment revenue by \$8.3 million, increased Research segment expense by \$20.6 million, and decreased Research segment gross contribution by \$12.3 million. For 2007, these actions increased Research segment revenue by \$10.0 million, increased Research segment expense by \$19.4 million, and decreased Research segment gross contribution by \$9.4 million.

The following tables present operating information about the Company's reportable segments (in thousands):

	Research	Consulting	Events	Consolidated
<b>2009</b>				
Revenues	\$ 752,505	\$ 286,847	\$ 100,448	\$ 1,139,800
Gross contribution	489,862	112,099	40,945	642,906
Corporate and other expenses				(508,429)
Operating income				\$ 134,477
<b>2008</b>				
Revenues	\$ 781,581	\$ 347,404	\$ 150,080	\$ 1,279,065
Gross contribution	495,440	141,395	64,954	701,789
Corporate and other expenses				(537,421)
Operating income				\$ 164,368

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	Research	Consulting	Events	Consolidated
<b>2007</b>				
Revenues	\$ 683,380	\$ 325,030	\$ 160,065	\$ 1,168,475
Gross contribution	419,639	128,215	81,908	629,762
Corporate and other expenses				(500,304)
Operating income				\$ 129,458

The Company's consolidated revenues are generated primarily through direct sales to clients by domestic and international sales forces and a network of independent international sales agents. Revenues in the table below are reported based on where the sale is fulfilled; "Other International" revenues are those attributable to all areas located outside of the United States, Canada, and EMEA (Europe, Middle East, Africa). Most of our products and services are provided on an integrated worldwide basis. Because of the integration of products and services delivery, it is not practical to separate precisely our revenues by geographic location. Long-lived assets exclude goodwill and other intangible assets. Accordingly, the separation set forth in the table below is based upon internal allocations, which involve certain management estimates and judgments.

Summarized information by geographic location is as follows (in thousands):

	2009	2008	2007
<b>Revenues:</b>			
United States and Canada	\$ 663,832	\$ 723,247	\$ 661,216
Europe, Middle East and Africa	360,791	430,401	403,919
Other International	115,177	125,417	103,340
<b>Total revenues</b>	<b>\$ 1,139,800</b>	<b>\$ 1,279,065</b>	<b>\$ 1,168,475</b>
<b>Long-lived assets:</b>			
United States and Canada	\$ 65,896	\$ 67,753	\$ 73,859
Europe, Middle East and Africa	21,924	19,324	21,861
Other International	2,404	4,325	4,029
<b>Total long-lived assets</b>	<b>\$ 90,224</b>	<b>\$ 91,402</b>	<b>\$ 99,749</b>

### 17—VALUATION AND QUALIFYING ACCOUNTS

The following table provides information regarding the Company's allowance for doubtful accounts and returns and allowances (in thousands):

	Balance at Beginning of Year	Additions Charged to Costs and Expenses	Additions Charged Against Other Accounts (1)	Deductions from Reserve	Balance at End of Year
<b>2007:</b>					
Allowance for doubtful accounts and returns and allowances	\$ 8,700	\$ 691	\$ 6,608	\$ (7,549)	\$ 8,450
<b>2008:</b>					
Allowance for doubtful accounts and returns and allowances	\$ 8,450	\$ 1,650	\$ 5,000	\$ (7,300)	\$ 7,800
<b>2009:</b>					
Allowance for doubtful accounts and returns and allowances	\$ 7,800	\$ 2,100	\$ 6,000	\$ (7,800)	\$ 8,100

(1) Amounts charged against revenues.

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has caused this Report on Form 10-K to be signed on its behalf by the undersigned, duly authorized, in Stamford, Connecticut, on February 19, 2010.

Gartner, Inc.

Date: February 19, 2010

By: /s/ Eugene A. Hall  
Eugene A. Hall Chief Executive Officer

## POWER OF ATTORNEY

Each person whose signature appears below appoints Eugene A. Hall and Christopher J. Lafond and each of them, acting individually, as his or her attorney-in-fact, each with full power of substitution, for him or her in all capacities, to sign all amendments to this Report on Form 10-K, and to file the same, with appropriate exhibits and other related documents, with the Securities and Exchange Commission. Each of the undersigned, ratifies and confirms his or her signatures as they may be signed by his or her attorney-in-fact to any amendments to this Report. Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Eugene A. Hall</u> Eugene A. Hall	Director and Chief Executive Officer (Principal Executive Officer)	February 19, 2010
<u>/s/ Christopher J. Lafond</u> Christopher J. Lafond	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	February 19, 2010
<u>/s/ Michael J. Bingle</u> Michael J. Bingle	Director	February 19, 2010
<u>/s/ Richard J. Bressler</u> Richard J. Bressler	Director	February 19, 2010
<u>/s/ Karen E. Dykstra</u> Karen E. Dykstra	Director	February 19, 2010
<u>/s/ Russell P. Fradin</u> Russell P. Fradin	Director	February 19, 2010
<u>/s/ Anne Sutherland Fuchs</u> Anne Sutherland Fuchs	Director	February 19, 2010
<u>/s/ William O. Grabe</u> William O. Grabe	Director	February 19, 2010
<u>/s/ Stephen G. Pagliuca</u> Stephen G. Pagliuca	Director	February 19, 2010
<u>/s/ James C. Smith</u> James C. Smith	Director	February 19, 2010
<u>/s/ Jeffrey W. Ubben</u> Jeffrey W. Ubben	Director	February 19, 2010

**AGREEMENT AND PLAN OF MERGER**  
**BY AND AMONG**  
**GARTNER, INC.**  
**CLOVER ACQUISITION CORPORATION**  
**AMR RESEARCH, INC.**  
**U.S. BANK NATIONAL ASSOCIATION, as Escrow Agent**  
**AND**  
**STOCKHOLDER REPRESENTATIVE**

**Dated as of November 29, 2009**

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<u>Exhibit</u>	<u>Description</u>
Exhibit A	Form of Certificate of Merger
Exhibit B	Form of Letter of Transmittal
Exhibit C	Form of Company's Standard Proprietary Information Agreement
Exhibit D	Form of Agreement Concerning Terms and Conditions of Employment
Exhibit E	Legal Opinion of Counsel to the Company
Exhibit F-1	Form of Controlling Stockholder Non-Competition Agreement
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### Schedules

Company Disclosure Schedule

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Schedule 6.2(s)(3) — List of Tier 2 Employees

Schedule 6.2(s)(4) — List of Tier 3 Employees

THIS AGREEMENT AND PLAN OF MERGER (the "**Agreement**") is made and entered into as of November 29, 2009 by and among Gartner, Inc., a Delaware corporation ("**Parent**"), Clover Acquisition Corporation, a Delaware corporation and a wholly owned subsidiary of Parent ("**Sub**"), AMR Research, Inc., a Delaware corporation (the "**Company**"), U.S. Bank National Association, as escrow agent hereunder, and as a party to this Agreement solely with respect to **ARTICLE VII** herein (the "**Escrow Agent**") and Anthony J. Friscia, who will serve as the representative of the Company's stockholders and optionholders, and is a party to this Agreement solely in such capacity (the "**Stockholder Representative**").

#### RECITALS

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

B. Pursuant to the Merger, among other things, and subject to the terms and conditions of this Agreement, all of the issued and outstanding capital stock of the Company shall be converted into the right to receive the consideration set forth herein.

C. A portion of the consideration payable in connection with the Merger shall be placed in escrow as security for the indemnification obligations set forth in this Agreement.

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

E. NOW, THEREFORE, in consideration of the mutual agreements, covenants and other promises set forth herein, the mutual benefits to be gained by the performance thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, the parties hereby agree as follows:

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**ARTICLE I**  
**THE MERGER**

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

1.2 **Effective Time.** Unless this Agreement is earlier terminated pursuant to **Section 8.1** hereof, the closing of the Merger (the "**Closing**") will take place as promptly as practicable following the execution and delivery hereof by the parties hereto, conditioned upon the satisfaction or waiver of the conditions set forth in **ARTICLE VI** hereof, and in any event within three (3) Business Days following the satisfaction or waiver of the conditions set forth in **ARTICLE VI** hereof (other than satisfaction or waiver of those conditions that by their nature are to be satisfied at the Closing), at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 1700 K Street N.W., Fifth Floor, Washington, D.C. 20006, unless another time or place is mutually agreed upon in writing by Parent and the Company. The date upon which the Closing actually occurs shall be referred to herein as the "**Closing Date**." On the Closing Date, the parties hereto shall cause the Merger to be consummated by filing a Certificate of Merger in substantially the form attached hereto as **Exhibit A**, with the Secretary of State of the State of Delaware (the "**Certificate of Merger**"), in accordance with the applicable provisions of Delaware Law (the time of the acceptance of such filing by the Secretary of State of the State of Delaware shall be referred to herein as the "**Effective Time**").

1.3 **Effect of the Merger.** At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of Delaware Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, except as otherwise agreed to pursuant to the terms of this Agreement, all of the rights, privileges, powers and franchises of the Company and Sub shall vest in the Surviving Corporation, and all restrictions, disabilities and duties of the Company and Sub shall become the restrictions, disabilities and duties of the Surviving Corporation.

1.4 **Formation Documents.**

(a) The certificate of incorporation of the Surviving Corporation shall be amended and restated as of the Effective Time to be identical to the certificate of incorporation of Sub as in effect immediately prior to the Effective Time, until thereafter amended in accordance with Delaware Law and as provided in such certificate of incorporation; *provided, however*, that at the Effective Time, Article I of the certificate of incorporation of the Surviving Corporation shall be amended and restated in its entirety to read as follows: "The name of the corporation is AMR Research, Inc."

(b) Unless otherwise determined by Parent prior to the Effective Time, the bylaws of Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation at the Effective Time until thereafter amended in accordance with Delaware Law and as provided in the certificate of incorporation of the Surviving Corporation and such bylaws.

#### 1.5 **Management.**

(a) **Directors of Company.** The directors of Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation immediately after the Effective Time, each to hold the office of a director of the Surviving Corporation in accordance with the provisions of Delaware Law and the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors are duly elected and qualified.

(b) **Officers of Company.** The officers of Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation immediately after the Effective Time, each to hold office in accordance with the provisions of the bylaws of the Surviving Corporation.

(c) **Resignation of Officers and Directors.** At the Closing, the Company shall deliver to Parent a written resignation from each of the officers and directors of the Company effective as of the Effective Time.

#### 1.6 **Effect of Merger on the Capital Stock of the Constituent Corporations.**

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

(i) **“Aggregate Option Exercise Amount”** shall mean an amount equal to the aggregate exercise price of all Company In the Money Options outstanding as of the Effective Time.

(ii) **“Agreed-Upon Loss”** shall mean (A) any Dissenting Share Payments (as defined in **Section 1.8(c)**), (B) any Excess Third Party Expenses (as defined in **Section 5.4**), (C) any Excess Company Debt (as defined in **Section 7.2**), (D) any Shortfall Amount (as defined in **Section 1.10(d)**) or (E) any Agent Interpleader Expenses or Agent Indemnification Expenses pursuant to clauses (vi) and (vii) of **Section 7.4(f)** hereof.

(iii) **“Business Day(s)”** shall mean each day that is not a Saturday, Sunday or holiday on which banking institutions located in New York, New York are authorized or obligated by Law or executive order to close.

(iv) **“Cash”** shall mean cash of the Company, net of any outstanding checks, wire transfers or bank overdrafts, and excluding any Restricted Cash.

(v) “**Cash Collected on Deferred Revenue**” shall mean Cash amounts collected on unearned revenue, less Cash amounts collected on the specific customer research projects listed on **Schedule 1.6(a)(v)** only to the extent services have been delivered thereon.

(vi) “**Class A Common Stock**” shall mean the Company’s Class A Common Stock, \$0.01 par value per share.

(vii) “**Class B Common Stock**” shall mean the Company’s Class B Non-Voting Common Stock, \$0.01 par value per share.

(viii) “**Closing Common Per Share Consideration**” shall mean the quotient obtained by dividing (x) the Estimated Adjusted Net Merger Consideration, less the Escrow Amount, less the Sales Tax Escrow Amount, less the Stockholder Representative Amount, by (y) the Company Common Stock Deemed Outstanding.

(ix) “**Closing Net Working Capital**” shall mean an amount equal to the following (with each of the amounts set forth therein being calculated in accordance with GAAP and to the extent required to be reflected in financial statements in accordance with GAAP) (x) the aggregate value of all current assets of the Company and its Subsidiaries (taken as a whole) as of the close of business on the Closing Date, excluding Cash, Restricted Cash, deferred and other Tax assets, and lease and other security deposits, less (y) the aggregate value of all current Liabilities of the Company and its Subsidiaries (taken as a whole) as of the close of business on the Closing Date, including but not limited to all accounts payable, employee-related Liabilities (including sales commissions and bonuses), deferred revenue, any outstanding checks, wire transfers or bank over drafts not covered by available Cash and other accrued Liabilities, but excluding accrued vacation, any and all deferred Tax liabilities, the aggregate amount of any bonuses with respect to the accelerated vesting of any restricted shares of Company Common Stock paid or to be paid on or before the Closing out of Cash, accruals or reserves for any prior period sales or use taxes in the VDA States (as defined in **Section 5.13(c)(iv)**), Taxes required to be reflected on a Final Income Tax Return, Transaction Taxes, all Third Party Expenses, and any and all Company Debt as of immediately prior to the Effective Time, plus (z) Cash Collected on Deferred Revenue as of the close of business on the Closing Date. Notwithstanding anything to the contrary in this Agreement, any employment or payroll taxes with respect to any bonuses, cash out of options or other compensatory payments in connection with the transactions contemplated by this Agreement, to the extent paid or assumed by the Company or Parent (“**Transaction Payroll Taxes**”) and any other incremental cash costs associated with the transactions contemplated by this Agreement to the extent assumed by the Company or Parent, shall be included as current Liabilities of the Company, whether or not required in accordance with GAAP.

(x) “**Closing Tax Amount**” shall have the meaning ascribed to such term in **Section 5.13(c)** hereof.

(xi) “**Company Common Stock**” shall mean the Class A Common Stock and the Class B Common Stock, taken together.

(xii) “**Company Common Stock Deemed Outstanding**” shall mean the number of shares of Company Common Stock outstanding immediately prior to the Effective Time, plus the number of shares of Company Common Stock underlying the Company In the Money Options.

(xiii) “**Company Debt**” shall mean any Indebtedness of the Company or any of its Subsidiaries.

(xiv) “**Company In the Money Option**” shall mean a Company Vested Option having an exercise price per share less than the Estimated Common Per Share Consideration.

(xv) “**Company Material Adverse Effect**” shall mean any change, event or effect that is or is reasonably likely to be materially adverse to the business, assets (whether tangible or intangible), financial condition, operations or capitalization of the Company and any Company Subsidiaries, taken as a whole; *provided, however*, that none of the following shall constitute a “**Company Material Adverse Effect**”: (i) changes that are the result of factors generally affecting the industries or markets in which the Company and the Company Subsidiaries conduct business that do not disproportionately affect the Company and the Company Subsidiaries, taken as a whole, as compared to other companies of similar size and scope that operate in the same industry or business as the Company and the Company Subsidiaries; (ii) changes in Laws or GAAP as applied on a consistent basis, or the interpretation thereof that do not disproportionately affect the Company and the Company Subsidiaries, taken as a whole, as compared to other companies of similar size and scope that operate in the same industry or business as the Company and the Company Subsidiaries; (iii) changes that are the result of economic factors affecting the national, regional or world economy or acts of war or terrorism that do not disproportionately affect the Company and the Company Subsidiaries, taken as a whole, as compared to other companies of similar size and scope that operate in the same industry or business as the Company and the Company Subsidiaries; (iv) changes that are the result of the announcement or pendency of the Merger and the other transactions contemplated hereby, including without limitation, the impact thereof on the Company’s relationships (contractual or otherwise) with customers, suppliers, licensors, partners or employees; and (v) changes that result from any action taken by the Company pursuant to this Agreement or at the written request or with the written consent of Parent.

(xvi) “**Company Options**” shall mean all options (including commitments to grant options) to purchase or otherwise acquire Company Common Stock (whether or not vested) held by any person or entity, each of which is listed on **Section 2.2(b)** of the Disclosure Schedule, that are issued and outstanding immediately prior to the Effective Time.

(xvii) “**Company Products**” shall mean all of the products, services and Content & Technology offerings of the Company and its Subsidiaries.

(xviii) “**Company Subsidiary**” shall have the meaning ascribed to such term in **Section 2.3** hereof.

(xix) “**Company Vested Options**” shall mean all Company Options that are vested (and have not been exercised) immediately prior to the Effective Time (after giving effect to any vesting acceleration provisions).

(xx) “**Content & Technology**” shall have the meaning ascribed to such term in **Section 2.14** hereof.

(xxi) “**Contract**” shall mean any written or binding oral agreement, contract, subcontract, lease, binding understanding, instrument, note, bond, mortgage, indenture, option, warranty, purchase order, license, sublicense, obligation, commitment or undertaking of any nature.

(xxii) “**Environmental Laws**” shall mean all Laws relating to pollution or protection of the environment or exposure of any individual to Hazardous Materials, including Laws relating to emissions, discharges, releases or threatened releases of Hazardous Materials, or otherwise relating to the manufacture, processing, registration, distribution, labeling, recycling, use, treatment, storage, disposal, transport or handling of Hazardous Materials and including any Hazardous Materials related electronic waste, product content or product take-back requirements.

(xxiii) “**Escrow Amount**” shall mean an amount equal to \$6,500,000.

(xxiv) “**Escrow Participants**” shall mean all Stockholders and all Optionholders.

(xxv) “**Estimated Adjusted Net Merger Consideration**” shall mean the Net Merger Consideration minus the amount, if any, by which Estimated Closing Net Working Capital (as determined pursuant to **Section 1.7(a)**) is less than the Target Closing Net Working Capital.

(xxvi) “**Estimated Common Per Share Consideration**” shall mean the quotient obtained by dividing (1) the sum of the Merger Consideration, plus the aggregate exercise price for the Company Vested Options, minus the amount, if any, by which Estimated Closing Net Working Capital (as determined pursuant to **Section 1.7(a)**) is less than the Target Closing Net Working Capital by (2) the sum of Company Common Stock outstanding immediately prior to the Effective Time, plus the number of shares of Company Common Stock underlying the Company Vested Options.

(xxvii) “**Excess Company Debt**” shall have the meaning ascribed to such term in **Section 7.2** hereof.

(xxviii) “**Final Adjusted Net Merger Consideration**” shall have the following meaning:

(A) If the Actual Closing Net Working Capital (as determined pursuant to **Section 1.7(b)**) is greater or equal to the Estimated Closing Net Working Capital (as

determined pursuant to **Section 1.7(a)**), then “Final Adjusted Net Merger Consideration” shall be the same amount as Estimated Adjusted Net Merger Consideration.

**(B)** If the Actual Closing Net Working Capital (as determined pursuant to **Section 1.7(b)**) is less than the Estimated Closing Net Working Capital (as determined pursuant to **Section 1.7(a)**), then “**Final Adjusted Net Merger Consideration**” shall mean the Net Merger Consideration, minus the amount, if any, by which Actual Closing Net Working Capital is less than the Target Closing Net Working Capital.

(xxxix) “**Final Common Per Share Consideration**” shall mean the quotient obtained by dividing (1) the Final Adjusted Net Merger Consideration by (2) the Company Common Stock Deemed Outstanding.

(xxx) “**GAAP**” shall mean United States generally accepted accounting principles consistently applied.

(xxxii) “**Hazardous Materials**” shall mean chemicals, pollutants, contaminants, wastes, toxic substances, radioactive and biological materials, asbestos-containing materials (ACM), hazardous substances, petroleum and petroleum products or any fraction thereof.

(xxxiii) “**Indebtedness**” shall mean all Liabilities, including any applicable principal, penalties (including with respect to any prepayment thereof) interest and premiums, (i) for borrowed money, (ii) evidenced by notes, bonds, debentures or similar obligations, (iii) for the deferred purchase price of goods or services (other than trade payables or accruals incurred in the ordinary course of business), (iv) under capital leases or (v) in the nature of guarantees of the obligations described in the preceding clauses (i)–(iv), inclusive, of any other Person.

(xxxiv) “**Knowledge**” or “**Known**” shall mean, with respect to the Company, the actual knowledge of the following individuals after reasonable inquiry: Anthony J. Friscia, Robert B. Blakeley, Craig DiForte, Kevin O’Marah, Bruce Richardson, Nancy Gendron, Chris Johnson and Lisa Lawton.

(xxxv) “**Law**” shall mean any foreign, federal, state or local law, statute, regulation, ordinance, rule, order, injunction, judgment, doctrine, decree, ruling, writ, assessment, award or arbitration award of a Governmental Entity, settlement, Contract or governmental requirement enacted, promulgated, entered into, or imposed by, any Governmental Entity (including, for the sake of clarity, common law).

(xxxvi) “**Liabilities**” shall mean all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, asserted or unasserted, known or unknown, including those arising under any law, action or governmental order and those arising under any Contract.

(xxxvii) “**Lien**” shall mean any lien, pledge, charge, claim, mortgage, security interest or other encumbrance of any sort.

(xxxvii) “**Merger Consideration**” shall mean an amount equal to the sum of (a) \$70,000,000 minus (b) the Third Party Expenses (as defined in **Section 5.4** hereof) of the Company minus (c) Cash Collected on Deferred Revenue minus (d) the aggregate amount of any and all Company Debt minus (e) the Closing Tax Amount.

(xxxviii) “**Net Merger Consideration**” shall mean an amount equal to the sum of (i) the Merger Consideration plus (ii) the Aggregate Option Exercise Amount.

(xxxix) “**Optionholder**” shall mean any holder of Company Options immediately prior to the Effective Time.

(xl) “**Parent Material Adverse Effect**” shall mean any change, event or effect that is or is reasonably likely to be materially adverse to (A) the business, assets (whether tangible or intangible), financial condition, operations or capitalization of Parent and any of its subsidiaries, taken as a whole; *provided, however,* that none of the following shall constitute a “**Parent Material Adverse Effect**”: (i) changes that are the result of factors generally affecting the industries or markets in which Parent and its subsidiaries conduct business that do not disproportionately affect Parent and its subsidiaries, taken as a whole, as compared to other companies of similar size and scope that operate in the same industry or business as Parent and its subsidiaries; (ii) changes in Laws or GAAP as applied on a consistent basis, or the interpretation thereof that do not disproportionately affect Parent and its subsidiaries, taken as a whole, as compared to other companies of similar size and scope that operate in the same industry or business as Parent and its subsidiaries; and (iii) changes that are the result of economic factors affecting the national, regional or world economy or acts of war or terrorism that do not disproportionately affect Parent and its subsidiaries, taken as a whole, as compared to other companies of similar size and scope that operate in the same industry or business as Parent and its subsidiaries; or (B) the ability of Parent or Sub to consummate the Merger or otherwise perform their respective obligations hereunder.

(xli) “**Person**” shall mean any natural person, company, corporation, limited liability company, general or limited partnership, trust, proprietorship, joint venture, or other business entity, unincorporated association, organization or enterprise, or any Governmental Authority.

(xlii) “**Plans**” shall mean the Company’s 1996 Stock Option Plan and the Company’s 2000 Stock Incentive Plan, each as amended and in effect as of the date hereof.

(xliii) “**Pro Rata Portion**” shall mean, with respect to each Escrow Participant, an amount equal to the quotient (expressed as a percentage) obtained by dividing (a) the number of shares of Company Common Stock Deemed Outstanding held or deemed to be held by such Escrow Participant as of immediately prior to the Effective Time by (b) the total number of shares of Company Common Stock Deemed Outstanding as of immediately prior to the Effective Time.

(xlv) “**Related Agreements**” shall mean the Certificate of Merger and the Agreements Concerning Terms and Conditions of Employment.

(xlv) “**Restricted Cash**” shall mean cash and cash equivalents of the Company which are restricted as to withdrawal or usage.

(xlvi) “**Sales Tax Escrow Amount**” shall mean an amount equal to \$3,000,000.

(xlvii) “**SEC**” shall mean the United States Securities and Exchange Commission.

(xlviii) “**Stockholder**” shall mean any holder of any Company Common Stock that is issued and outstanding immediately prior to the Effective Time.

(xlix) “**Stockholder Representative Amount**” shall mean an amount equal to \$500,000.

(l) “**Target Closing Net Working Capital**” shall mean \$(1,095,000).

(li) “**Third Party Expenses**” shall have the meaning ascribed to such term in **Section 5.4** hereof.

(b) **Effect on Capital Stock.** At the Effective Time, by virtue of the Merger and without any action on the part of Sub, the Company or the holders of shares of Company Common Stock, each share of Company Common Stock (excluding, for the avoidance of doubt, unexercised Company Options) issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares (as defined in **Section 1.8(a)** hereof) and subject to the escrow provisions contained herein), upon the terms and subject to the conditions set forth in this **Section 1.6** and throughout this Agreement, will be cancelled and extinguished and be converted automatically into the right to receive, upon surrender of the certificate representing such shares of Company Common Stock in the manner provided in **Section 1.10** hereof, (i) the Closing Common Per Share Consideration, (ii) up to the Pro Rata Portion of the Escrow Amount (plus any interest earned thereon in the Escrow Fund), (iii) up to the Pro Rata Portion of the Sales Tax Escrow Amount (plus any interest earned thereon in the Sales Tax Escrow Fund), (iv) up to the Pro Rata Portion of the Stockholder Representative Amount, and (v) up to the Pro Rata Portion of the Closing Tax Amount, in the case of each of (ii), (iii), (iv) and (v), solely to the extent that any portion of such amounts has not otherwise been utilized in accordance with the procedures set forth in **ARTICLE VII** and **Section 5.13(c)(ii)** hereof.

(c) **Treatment of Company Options.**

(i) No Company Option shall be assumed or otherwise replaced by Parent. Immediately prior to the Effective Time, and conditioned on the consummation of the Merger, each Company Option (whether vested or unvested and regardless of the exercise price

thereof) shall be cancelled and each holder of a Company In the Money Option shall automatically (without any further action required of such holder) be entitled to the right to receive a cash payment, subject to the escrow provisions contained herein, in an amount equal to the product of (1) the number of shares of Company Common Stock underlying all Company In the Money Options held by such holder immediately prior to the Effective Time, multiplied by (2) the Final Common Per Share Consideration, and minus (3) the aggregate amount necessary to exercise all of the Company In the Money Options held by such holder (the “**Option Merger Consideration**”). The payment of the Option Merger Consideration to a holder of a Company In the Money Option shall be reduced by any income or employment Tax withholding required under the Code or any provision of state, local or foreign tax Law and shall be subject to the escrow provisions contained herein. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the applicable holder of the Company In the Money Option.

(ii) No consideration shall be paid by Parent, Sub or the Company to effectuate the cancellation and termination of any Company Vested Option with an exercise price greater than the Estimated Common Per Share Consideration.

(iii) Prior to the Effective Time, and subject to the reasonable review and approval of Parent, the Company shall have taken all actions necessary to effect the transactions anticipated by this **Section 1.6(c)** under the Plans, all Company Option agreements, and any other plan or arrangement of the Company (whether written or oral, formal or informal), including delivering all required notices and obtaining any required consents necessary to effectuate the provisions of this Agreement.

(d) **Escrow Amounts.** Notwithstanding any other provisions of this Agreement to the contrary, each Escrow Participant’s Pro Rata Portion of the Escrow Amount, the Sales Tax Escrow Amount, the Stockholder Representative Amount and the Closing Tax Amount shall be deposited into the Escrow Fund, the Sales Tax Escrow Fund, the Stockholder Representative Fund and the Closing Tax Escrow Fund as provided herein. Notwithstanding anything herein to the contrary, the amount deposited into the Stockholder Representative Fund shall be reduced by all applicable income and employment Tax withholdings from deposits thereto with respect to the Optionholders.

(e) **Withholding Taxes.** Notwithstanding any other provision in this Agreement, Parent, the Company, Sub, the Paying Agent (as defined in **Section 1.10**) and the Escrow Agent shall have the right to deduct and withhold Taxes (as defined in **Section 2.11**) from any payments to be made hereunder if such withholding is required by Law and to request and receive any necessary Tax forms, including Form W-9 or the appropriate series of Form W-8, as applicable, or any similar information, from the Stockholders and Optionholders. To the extent that any of the aforementioned amounts are so withheld and paid over to the appropriate taxing authority, such withheld amounts shall be treated for all purposes of this Agreement as having been delivered and paid to the Stockholder, Optionholder, or other recipient of payments in respect of which such deduction and withholding was made.

(f) **Capital Stock of Sub.** Each share of Common Stock of Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of Common Stock of the Surviving Corporation. Each stock certificate of Sub evidencing ownership of any such shares shall continue to evidence ownership of such shares of capital stock of the Surviving Corporation.

**1.7 Calculation of Estimated and Final Adjusted Net Merger Consideration.**

(a) **Calculation of Estimated Closing Net Working Capital.** At least three (3) Business Days prior to the close of business on the Closing Date, the Company shall prepare and deliver to Parent an estimated unaudited balance sheet of the Company as of the close of business on the Closing Date (the “**Closing Date Balance Sheet**”), which shall include a statement setting forth the Company’s estimate of the Closing Net Working Capital (the “**Estimated Closing Net Working Capital Statement**”). The Estimated Closing Net Working Capital Statement shall fairly and accurately present the Company’s good faith best estimate (based on reasonable assumptions) of the Closing Net Working Capital without giving effect to the consummation of the Merger and the other transactions contemplated by this Agreement (unless otherwise specified herein). The estimated Closing Net Working Capital set forth in the Estimated Closing Net Working Capital Statement shall be referred to herein as the “**Estimated Closing Net Working Capital.**”

(b) **Calculation of Final Closing Net Working Capital.**

(i) Within ninety (90) calendar days following the Closing Date, Parent shall prepare (or cause to be prepared) and deliver to the Stockholder Representative a statement setting forth Parent’s calculation of the actual Closing Net Working Capital (the “**Actual Closing Net Working Capital Statement**”).

(ii) The Stockholder Representative may dispute any item or amount set forth in the Actual Closing Net Working Capital Statement, at any time within thirty (30) calendar days following receipt of the Actual Closing Net Working Capital Statement, by delivering to Parent a written notice of such dispute (a “**Notice of Dispute**”) setting forth, in reasonable detail and to the extent practicable, (A) each item or amount so disputed by the Stockholder Representative, (B) the Stockholder Representative’s calculation of each such disputed item or amount, and (C) the Stockholder Representative’s calculation of the Closing Net Working Capital of the Company after giving effect to the Stockholder Representative’s calculation of each such disputed item or amount.

(iii) If Parent shall not receive a Notice of Dispute from the Stockholder Representative delivered pursuant and in accordance with **Section 1.7(b)(ii)** within the time period set forth therein, then (A) the Stockholder Representative shall be deemed to have irrevocably consented and agreed to each item and amount set forth in the Actual Closing Net Working Capital Statement delivered by Parent pursuant to **Section 1.7(b)(i)**, and (B) for all purposes of and under this Agreement, the term “**Actual Closing Net Working Capital**” shall mean the Closing Net Working Capital, as set forth in the Actual Closing Net Working Capital Statement delivered by Parent pursuant to **Section 1.7(b)(i)**. If Parent shall receive a Notice of Dispute from the

Stockholder Representative delivered pursuant to and in accordance with **Section 1.7(b)(ii)** within the time period set forth therein, then Parent and the Stockholder Representative shall use their respective commercially reasonable efforts to resolve all disputed items and amounts set forth in the Notice of Dispute pursuant to good faith negotiations. In the event that Parent and the Stockholder Representative shall reach agreement, within thirty (30) calendar days following Parent's receipt of a Notice of Dispute, on all disputed items and amounts set forth in such Notice of Dispute, then for all purposes of and under this Agreement, the term "**Actual Closing Net Working Capital**" shall mean the Closing Net Working Capital, as agreed upon by Parent and the Stockholder Representative. In the event that Parent and the Stockholder Representative are unable to reach agreement, within thirty (30) calendar days following Parent's receipt of a Notice of Dispute, on all of the disputed items or amounts set forth in a Notice of Dispute, then:

(A) Parent and the Stockholder Representative shall execute a memorandum (the "**Working Capital Memorandum**") setting forth (1) the resolved items and/or amounts, if any, and (2) the items or amounts included in the Notice of Dispute that remain in dispute following such good faith negotiations, with the position of each party with respect thereto;

(B) Parent and the Stockholder Representative shall submit all remaining disputed items and amounts set forth in the Working Capital Memorandum to a "Big Four" accounting firm mutually agreeable to Parent and the Stockholder Representative (the "**Independent Accounting Firm**") for resolution in accordance with the terms and conditions hereof; provided that the Independent Accounting Firm shall not be the accounting firm that audits Parent's financial statements or the primary accounting firm that then advises Parent with respect to Taxes. Each of the parties to this Agreement shall, and shall cause their respective affiliates and representatives to, provide full cooperation to the Independent Accounting Firm. The Independent Accounting Firm shall (1) act in its capacity as an expert and not as an arbitrator, (2) consider only those items and amounts identified in the Working Capital Memorandum as being in dispute between Parent and the Stockholder Representative, (3) be instructed to reach its conclusions regarding any such dispute within thirty (30) calendar days after its appointment and provide a written explanation of its decision, and (4) not (x) determine any liability claimed by the Stockholder Representative or asset claimed by Parent in an amount less than that claimed by such party, or (y) determine any asset claimed by the Stockholder Representative or liability claimed by Parent in an amount in excess of the amount claimed by such party. All expenses relating to the engagement of the Independent Accounting Firm shall be shared equally by Parent, on the one hand, and the Escrow Participants, on the other hand, from the Stockholder Representative Fund. The Independent Accounting Firm shall determine all disputed items and amounts and its decision in respect thereof shall be final and binding upon Parent and the Stockholder Representative; and

(C) For all purposes of and under this Agreement, the term "**Actual Closing Net Working Capital**" shall mean the Closing Net Working Capital, based upon (1) all amounts agreed upon by Parent and the Stockholder Representative in respect of any disputed items or amounts, as set forth in the Working Capital Memorandum, and (2) all other amounts determined by the Independent Accounting Firm pursuant to clause (B) of this **Section 1.7(b)(iii)**.

(iv) During the period of time from and after the date of the delivery of the Actual Closing Net Working Capital Statement to the Stockholder Representative until the Final Adjusted Net Merger Consideration has been finally determined pursuant to and in accordance with this **Section 1.7(b)**, Parent shall provide the Stockholder Representative and accountants and counsel retained by the Stockholder Representative (subject to the execution and delivery of a confidentiality agreement, in form and substance reasonably acceptable to Parent) with reasonable access during normal business hours to the working papers used by Parent (or accountants and counsel retained by it, and subject to the execution and delivery of a customary hold harmless or audit work paper access letter) to determine the Actual Closing Net Working Capital Statement and shall use its commercially reasonable efforts to respond to inquiries from the Stockholder Representative regarding the Actual Closing Net Working Capital Statement.

#### **1.8 Dissenting Shares.**

(a) Notwithstanding any other provisions of this Agreement to the contrary, any shares of Company Common Stock held by a holder who demands and perfects such holder's appraisal rights under Delaware Law (collectively, the "**Dissenting Shares**") shall not be converted into or represent a right to receive the applicable consideration for Company Common Stock set forth in **Section 1.6** hereof, but the holder thereof shall only be entitled to such rights as are provided by Delaware Law.

(b) Notwithstanding the provisions of **Section 1.8(a)** hereof, if any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) such holder's appraisal rights under Delaware Law, then, as of the later of the Effective Time and the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive the consideration for Company Common Stock, as applicable, set forth in **Section 1.6** hereof, without interest thereon, upon surrender of the certificate representing such shares.

(c) The Company shall give Parent (i) prompt notice of any written demand for appraisal received by the Company pursuant to the applicable provisions of Delaware Law, and (ii) the opportunity to participate in all negotiations and proceedings with respect to such demands. Prior to the Effective Time, the Company shall not, except with the prior written consent of Parent, which consent shall not be unreasonably withheld, and following the Effective Time, Parent and the Surviving Corporation shall not, except with the prior written consent of the Stockholder Representative, which consent shall not be unreasonably withheld, make any payment with respect to any such demands or offer to settle or settle any such demands. Notwithstanding the foregoing, to the extent that Parent or the Company (i) makes any payment or payments in respect of any Dissenting Shares in excess of the consideration that otherwise would have been payable in respect of such shares in accordance with this Agreement or (ii) reasonably incurs any other costs or expenses (including specifically, but without limitation, reasonable attorneys' fees, costs and expenses in connection with any action or proceeding or in connection with any investigation) in respect of any Dissenting Shares (excluding payments for such shares) (together "**Dissenting Share Payments**"), Parent shall be entitled to recover under the terms of **Section 7.2** hereof the amount of

such Dissenting Share Payments without regard to the Threshold Amount (as defined in **Section 7.4(a)** hereof).

**1.9 Parent's Obligations Fulfilled.** Notwithstanding anything herein to the contrary, before the Paying Agent or the Surviving Corporation shall make any payments hereunder to Stockholders/former Stockholders and Optionholders/former Optionholders, the Stockholder Representative shall deliver to Parent and the Paying Agent a schedule (a "**Payment Schedule**") setting forth (i) the name and address of each Stockholder/former Stockholder and Optionholder/former Optionholder entitled to distribution of Merger Consideration at such time and (ii) the amount of consideration to which each such Stockholder/former Stockholder and Optionholder/former Optionholder is then entitled (and, with respect to payments to be made in connection with the Closing, the amount of any income or employment Tax withholding required under applicable Law), together with any supporting schedules and documentation (showing the number and type of securities held immediately prior to the Effective Time by each such holder, together with calculations of the amount then payable to such holder). The Stockholder Representative shall be responsible for instructing the Paying Agent and the Surviving Corporation as to the distribution of such amounts then deposited. Parent, the Paying Agent and the Surviving Corporation may rely on the instructions of the Stockholder Representative for distributions and shall have no responsibility or liability with respect thereto; provided, that the distribution instructions of the Stockholder Representative are followed. Upon Parent making each aggregate payment required of it under this Agreement to the Paying Agent, directly to certain Stockholders on the Closing Date pursuant to **Section 1.10(b)** hereof and the Surviving Corporation as provided herein, Parent shall have fulfilled its obligations with respect to such payment. Neither Parent (including indirectly through the Surviving Corporation) nor the Paying Agent shall have any liability whatsoever with respect to the distribution of such payments among the Stockholders/former Stockholders and Optionholders/former Optionholders of the Company in accordance with the instructions of the Stockholder Representative, provided, that there is no gross negligence, bad faith, or willful misconduct in connection with the distribution of such payments.

**1.10 Payment of Consideration; Surrender of Certificates.**

(a) **Paying Agent.** An institution selected by Parent prior to the Effective Time, and reasonably acceptable to the Stockholder Representative, shall serve as the paying agent (such institution, the "**Paying Agent**") for the Merger, other than with respect to (i) any payments to be made directly by Parent to certain Stockholders on the Closing Date pursuant to **Section 1.10(b)** hereof and (ii) the Option Merger Consideration. The Surviving Corporation shall serve as the paying agent for the Option Merger Consideration, which shall be paid on the first administratively practicable payroll date after the Effective Time or the release of an amount thereof from the Escrow Fund or the Sales Tax Escrow Fund, as the case may be.

(b) **Parent to Provide Consideration.** Subject to the provisions of **Sections 5.13(c)(ii)** and **7.3** hereof relating to escrow arrangements, promptly following the Effective Time, Parent shall make available in the form of immediately available funds to (i) the Paying Agent for exchange in accordance with this **ARTICLE I** the cash payable at the Effective Time to the

Stockholders pursuant to **Section 1.6(b)** hereof in exchange for outstanding shares of Company Common Stock and (ii) the Surviving Corporation the Option Merger Consideration payable at the Effective Time to the Optionholders pursuant to **Section 1.6(c)**; *provided, however*, that Parent shall (x) deposit into (A) the Escrow Fund the Merger Consideration that comprises the Escrow Amount out of the Merger Consideration pursuant to **Section 1.6** hereof, (B) the Sales Tax Escrow Fund the Merger Consideration that comprises the Sales Tax Escrow Amount out of the Merger Consideration pursuant to **Section 1.6** hereof, (C) the Stockholder Representative Fund the Merger Consideration that comprises the Stockholder Representative Amount (as reduced by all applicable income and employment Tax withholdings) out of the Merger Consideration pursuant to **Section 1.6** hereof and (D) the Closing Tax Escrow Fund the Merger Consideration that comprises the Closing Tax Amount out of the Merger Consideration pursuant to **Section 1.6** hereof and (y) pay directly on the Closing Date, by wire transfer of immediately available funds, the cash payable at the Effective Time pursuant to **Section 1.6** hereof to such Stockholders who have theretofore delivered to Parent a properly completed Letter of Transmittal (as defined below) and the related Company Stock Certificates and are entitled to receive in excess of \$500,000 of cash at the Effective Time pursuant to **Section 1.6** hereof. The Pro Rata Portion of the consideration comprising the Escrow Amount shall be deemed to be contributed to the Escrow Fund, the Pro Rata Portion of the consideration comprising the Sales Tax Escrow Amount shall be deemed to be contributed to the Sales Tax Escrow Fund, the Pro Rata Portion of the consideration comprising the Closing Tax Escrow Amount shall be deemed to be contributed to the Closing Tax Escrow Fund and the Pro Rata Portion of the consideration comprising the Stockholder Representative Amount (as reduced by all applicable income and employment Tax withholdings) shall be deemed to be contributed to the Stockholder Representative Fund with respect to each such Escrow Participant.

(c) **Exchange Procedures.** On or promptly following the Effective Time but in any event no later than three (3) Business Days after the Effective Time, Parent shall (or shall cause the Paying Agent to) mail a letter of transmittal in substantially the form attached hereto as **Exhibit B** (the "**Letter of Transmittal**") to each Stockholder at the address set forth opposite each such Stockholder's name on the Payment Schedule. After receipt of such Letter of Transmittal, the Stockholders will surrender the certificates representing their shares of Company Common Stock (the "**Company Stock Certificates**") to the Paying Agent for cancellation, and each of the Stockholders shall deliver a duly completed and validly executed Letter of Transmittal. Upon surrender of a Company Stock Certificate for cancellation to the Paying Agent, together with a Letter of Transmittal, duly completed and validly executed in accordance with the instructions thereto, subject to the terms of **Section 1.10(e)** hereof, the holder of such Company Stock Certificate shall be entitled to receive from the Paying Agent in exchange therefor, cash to which such holder is entitled pursuant to **Section 1.6** hereof (less the Pro Rata Portion of the Escrow Amount to be deposited into the Escrow Fund, the Pro Rata Portion of the Sales Tax Escrow Amount to be deposited into the Sales Tax Escrow Fund, the Pro Rata Portion of the Closing Tax Amount to be deposited into the Closing Tax Escrow Fund and the Pro Rata Portion of the Stockholder Representative Amount to be deposited into the Stockholder Representative Fund with respect to such Stockholder), and the Company Stock Certificate so surrendered shall be cancelled. Until so surrendered, each Company Stock Certificate outstanding after the Effective Time will be deemed, for all corporate purposes thereafter, to evidence only the right to receive the applicable portion of

the Merger Consideration pursuant to **Section 1.6** hereof in exchange for shares of Company Common Stock (without interest) into which such shares of Company Common Stock shall have been so converted. No portion of the Merger Consideration will be paid to the holder of any unsurrendered Company Stock Certificate with respect to shares of Company Common Stock formerly represented thereby until the holder of record of such Company Stock Certificate shall surrender such Company Stock Certificate pursuant hereto.

(d) **Post-Closing Payment Based on Final Adjusted Net Merger Consideration.** If the Final Adjusted Net Merger Consideration is less than the Estimated Adjusted Net Merger Consideration (such difference, the “**Shortfall Amount**”), as soon as reasonably practicable following the determination of the Final Adjusted Net Merger Consideration pursuant to **Section 1.7** hereof (and in any event within five (5) Business Days thereafter), Parent and the Stockholder Representative shall jointly instruct the Escrow Agent to promptly release from the Escrow Fund and deliver to Parent an amount in cash equal to the Shortfall Amount (without regard to the Threshold Amount).

(e) **Transfers of Ownership.** If any cash amounts are to be disbursed pursuant to **Section 1.6** hereof to a person other than the person or entity whose name is reflected on the Company Stock Certificate surrendered in exchange therefor, it will be a condition of the delivery thereof that the certificate so surrendered will be properly endorsed and otherwise in proper form for transfer and that the person requesting such exchange will have paid to Parent or any agent designated by it any transfer or other Taxes required by reason of the disbursement of such cash amounts to a person other than the registered holder of the certificate surrendered, or established to the satisfaction of Parent or any agent designated by it that such Tax has been paid or is not payable.

(f) **Paying Agent to Return Merger Consideration.** At any time following the last day of the six (6) month period following the Effective Time, Parent shall be entitled to require the Paying Agent to deliver to Parent or its designated successor or assign all cash amounts that have been deposited with the Paying Agent pursuant to **Section 1.10** hereof, and any income or proceeds thereof, not disbursed to the holders of Company Stock Certificates pursuant to **Section 1.10(c)** hereof, and thereafter the holders of Company Stock Certificates shall be entitled to look only to Parent (subject to the terms of **Section 1.10(g)** hereof) only as general creditors thereof with respect to any and all amounts that may be payable to such holders of Company Stock Certificates pursuant to **Section 1.6** hereof upon the due surrender of such Company Stock Certificates in the manner set forth in **Section 1.10(c)** hereof.

(g) **No Liability.** Notwithstanding anything to the contrary in this **Section 1.10**, neither the Paying Agent, the Surviving Corporation, nor any party hereto shall be liable to a holder of shares of Company Common Stock for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar Law.

1.11 **No Further Ownership Rights in Company Common Stock.** The cash paid in respect of the surrender for exchange of shares of Company Common Stock in accordance with the terms hereof shall be deemed to be full satisfaction of all rights pertaining to such shares of

Company Common Stock, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of Company Common Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Company Stock Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this **ARTICLE I**.

1.12 **Lost, Stolen or Destroyed Certificates.** In the event any Company Stock Certificates shall have been lost, stolen or destroyed, the Paying Agent shall issue in exchange for such lost, stolen or destroyed certificates, upon the making of an affidavit of that fact by the holder thereof, such amount, if any, as may be required pursuant to **Section 1.6** hereof; *provided, however*, that the Paying Agent may, in its discretion and as a condition precedent to the issuance thereof, require the Stockholder who is the owner of such lost, stolen or destroyed certificates to either (i) deliver a bond in such amount as it may reasonably direct or (ii) provide an indemnification agreement in a form and substance reasonably acceptable to the Paying Agent, against any claim that may be made against Parent or the Paying Agent with respect to the certificates alleged to have been lost, stolen or destroyed. Any Stockholder complying with the provisions of this **Section 1.12** shall be deemed to have surrendered such lost, stolen or destroyed Company Stock Certificate for all purposes hereunder, including, without limitation, for purposes of receiving the cash to which such Stockholder is entitled pursuant to **Section 1.6** hereof.

1.13 **Payments at Closing.** Promptly following the Closing, the Company or the Surviving Corporation shall pay all Third Party Expenses of the Company to the extent that they have not been paid at or prior to the Closing.

1.14 **Distribution of Cash.**

Notwithstanding anything to the contrary contained herein, the parties acknowledge and agree that all Cash of the Company as of immediately prior to the Closing shall belong to the Stockholders and not Parent, and that the Company shall distribute such Cash to the Stockholders on a pro rata basis at or prior to the Closing.

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

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company hereby represents and warrants to Parent and Sub, subject to such exceptions as are disclosed in the disclosure schedule supplied by the Company to Parent (the "**Disclosure Schedule**") and dated as of the date hereof (referencing the appropriate section and paragraph

numbers, provided that the disclosures in any section or paragraph of the Disclosure Schedule shall qualify other sections and paragraphs of the Disclosure Schedule to the extent that it is reasonably apparent from a reading of the disclosure that such disclosure is applicable to such other sections and paragraphs), on the date hereof and as of the Effective Time, as though made at the Effective Time (except to the extent expressly made as of a specified date, in which case as of such date), as follows (references to “Company” in this **ARTICLE II** shall refer, wherever not inappropriate by reference to the context, to the Company and each Company Subsidiary):

**2.1 Organization of the Company .** The Company is a corporation duly organized, validly existing and in good standing under Delaware Law. The Company has the corporate power to own its properties and to carry on its business as currently conducted. The Company is duly qualified or licensed to do business and is in good standing as a foreign corporation in each jurisdiction in which such qualification or licensure is required by Law, except for those jurisdictions where the failure to be so qualified or licensed and in good standing would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company and each Company Subsidiary has made available a true and correct copy of its certificate of incorporation and bylaws or comparable governing documents, each as amended to date and in full force and effect on the date hereof (collectively, the “**Charter Documents**”), to Parent. **Section 2.1** of the Disclosure Schedule lists the directors and officers of the Company as of the date hereof. Except as set forth on **Section 2.1** of the Disclosure Schedule, the operations now being conducted by the Company are not now and have never been conducted by the Company under any other name. **Section 2.1** of the Disclosure Schedule also lists (i) each jurisdiction in which the Company is qualified or licensed to do business and (ii) every state or foreign jurisdiction in which the Company has employees or facilities.

**2.2 Company Capital Structure.**

(a) The authorized capital stock of the Company consists of 11,790,000 shares of Common Stock, of which 4,812,100 shares have been designated Class A Common Stock, of which 3,746,210 shares are issued and outstanding as of the date hereof, and 6,977,900 shares have been designated Class B Non-Voting Common Stock, of which 1,011,568 shares are issued and outstanding as of the date hereof. As of the date hereof, the capitalization of the Company is as set forth in **Section 2.2(a)(i)** of the Disclosure Schedule. The Company Common Stock is held by the persons with the addresses on record with the Company and in the numbers of shares set forth in **Section 2.2(a)(i)** of the Disclosure Schedule. All outstanding shares of Company Common Stock are duly authorized, validly issued, fully paid and non-assessable and are not subject to preemptive rights created by statute, the Charter Documents of the Company, or any agreement to which the Company is a party or by which it is bound, and together with all Company Options, have been issued in compliance in all material respects with all applicable federal and state securities Laws. Except as set forth in **Section 2.2(a)(ii)** of the Disclosure Schedule, the Company has not suffered or incurred any material liability (contingent or otherwise) or claim relating to or arising out of the issuance or repurchase of any Company Common Stock or options or warrants to purchase Company Common Stock, or out of any agreements or arrangements relating thereto (including any amendment of the terms of any such agreement or arrangement). As of the date hereof, there are no

declared and unpaid dividends with respect to any shares of Company Common Stock. The Company has no capital stock other than the Company Common Stock authorized, issued or outstanding. Except as set forth in **Section 2.2(a)(iii)** of the Disclosure Schedule, the Company has no Company Common Stock that is unvested.

(b) Except for the Plans or as set forth in **Section 2.2(b)(i)** of the Disclosure Schedule, the Company has never adopted, sponsored or maintained any stock option plan or any other plan or agreement, other than restricted stock and option agreements thereunder, providing for equity compensation to any person. The Company has reserved 3,500,000 shares of Company Common Stock under the 2000 Plan and 146,750 shares under the 1996 Plan for issuance to employees and directors of, and consultants to, the Company upon the exercise of options granted under the Plans or any other plan, agreement or arrangement (whether written or oral, formal or informal), of which 2,539,000 shares are issuable, as of the date hereof, upon the exercise of outstanding, unexercised options. Except for the Company Options set forth in **Section 2.2(b)(ii)** of the Disclosure Schedule (such schedule to contain, for each holder of Company Options, the name and address on record with the Company of such holder, the number of shares of Company Common Stock issuable upon exercise of such Company Options held by such holder, the vesting schedule and exercise price of such Company Options, the dates on which such Company Options were granted and will expire, and whether any Company Options are intended to be incentive stock options under the Code) or otherwise set forth in said **Section 2.2(b)(ii)** of the Disclosure Schedule, there are no options, warrants, calls, rights, convertible securities, commitments or agreements of any character, written or oral, to which the Company is a party or by which the Company is bound obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the Company Common Stock or obligating the Company to grant, extend, accelerate the vesting of, change the price of, otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or other similar rights with respect to the Company. Except as set forth in **Section 2.2(b)(iii)** of the Disclosure Schedule, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting securities of the Company. Except as set forth in **Section 2.2(b)(iv)** of the Disclosure Schedule, there are no agreements to which the Company is a party relating to the registration, sale or transfer (including agreements relating to rights of first refusal, co-sale rights or “drag-along” rights) of any Company Common Stock.

2.3 **Subsidiaries.** **Section 2.3** of the Disclosure Schedule lists each of the Company’s subsidiaries as of the date hereof (each, a “**Company Subsidiary**”), the jurisdiction of incorporation of each such Company Subsidiary, and the Company’s equity interest therein. Each Company Subsidiary is wholly owned by the Company. Neither the Company nor any Company Subsidiary has agreed, is obligated to make, or is bound by any Contract under which it may become obligated to make any future investment in, or capital contribution to, any other entity. Except for the Company Subsidiaries and as set forth in **Section 2.3** of the Disclosure Schedule, neither the Company nor any Company Subsidiary directly or indirectly owns any equity or similar interest in or any interest convertible, exchangeable or exercisable for, any equity or similar interest in, any person.

#### 2.4 Authority.

(a) The Company has all requisite corporate power and authority to enter into this Agreement and any Related Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. Subject to obtaining the requisite approval of the Stockholders of this Agreement (the “**Sufficient Stockholder Vote**”), the execution and delivery of this Agreement and any Related Agreements to which the Company is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of the Company and no further action is required on the part of the Company to authorize this Agreement and any Related Agreements to which it is a party and the transactions contemplated hereby and thereby. This Agreement has been unanimously approved by the Board of Directors of the Company. This Agreement and each of the Related Agreements to which the Company is a party has been duly executed and delivered by the Company and assuming the due authorization, execution and delivery by the other parties hereto and thereto, constitute the valid and binding obligations of the Company enforceable against it in accordance with their respective terms, except as such enforceability may be subject to the Laws of general application relating to bankruptcy, insolvency, and the relief of debtors and rules of Law governing specific performance, injunctive relief, or other equitable remedies; *provided, however*, that the Certificate of Merger will not be effective until filed with and accepted by the Secretary of State of the State of Delaware.

#### 2.5 No Conflict.

(a) Except as set forth on **Section 2.5(a)** of the Disclosure Schedule, the execution and delivery by the Company of this Agreement and the Certificate of Merger, and the consummation of the transactions contemplated hereby and thereby, will not conflict with or result in any violation of or default under (with or without notice or lapse of time, or both) or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any right or benefit under (any such event, a “**Conflict**”) (i) any provision of the Charter Documents, (ii) any Material Contract (as defined in **Section 2.15** hereof), or (iii) any Law applicable to the Company or any of its properties (whether tangible or intangible) or assets.

(b) **Section 2.5(b)** of the Disclosure Schedule sets forth a list of Material Contracts pursuant to which consents, waivers and approvals of parties are required thereunder in connection with the Merger, or for any such Material Contract to remain in full force and effect without limitation, modification or alteration after the Effective Time so as to preserve all rights of, and benefits to, the Company under such Material Contracts from and after the Effective Time; *provided, however*, that the foregoing representation shall not be deemed breached as a result of the operation of provisions contained in any agreement to which Parent is a party other than this Agreement. Except as set forth in **Section 2.5(b)** of the Disclosure Schedule, following the Effective Time, the Surviving Corporation will be permitted to exercise all of its rights under the Material Contracts without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Company would otherwise be required to pay pursuant to the terms of such Material Contracts had the transactions contemplated by this Agreement not occurred; *provided, however*, that the foregoing representation shall not be deemed breached as a result of the

operation of provisions contained in any agreement to which Parent is a party other than this Agreement. As of the date hereof, no other parties to any Material Contract listed on **Section 2.5(b)** of the Disclosure Schedule, conditioned its grant of a consent, waiver or approval (including by threatening to exercise a “recapture” or other termination right) upon the payment of a consent fee, “profit sharing” payment or other consideration, including increased rent payments or other payments under the Material Contract listed on **Section 2.5(b)** of the Disclosure Schedule.

**2.6 Governmental Consents.** No consent, notice, waiver, approval, order or authorization of, or registration, declaration or filing with any court, administrative agency or commission or other federal, state, county, local or other foreign governmental or regulatory authority, instrumentality, agency or commission (each, a “**Governmental Entity**”), is required to be obtained or made by the Company in connection with the execution and delivery of this Agreement and the Certificate of Merger or the consummation of the transactions contemplated hereby and thereby, except for the filing of the Certificate of Merger with the Secretary of State of the State of Delaware.

**2.7 Company Financial Statements.** **Section 2.7** of the Disclosure Schedule sets forth the Company’s (i) audited balance sheets as of December 31, 2007 and 2008, and the consolidated statements of income, cash flow and stockholders’ equity for the twelve (12) month periods ended December 31, 2007 and 2008 (the “**Year-End Financials**”), and (ii) unaudited balance sheets as of September 30, 2008 and September 30, 2009 (the “**Balance Sheet Date**”), and the related unaudited statement of income, cash flow and stockholders’ equity for the nine month periods then ended (the “**Interim Financials**”). The Year-End Financials and the Interim Financials (collectively referred to as the “**Financials**”) are true and correct in all material respects and have been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated and consistent with each other (except as may be indicated in the footnotes to the Year-End Financials or in **Section 2.7** of the Disclosure Schedule, and that the Interim Financials do not contain footnotes and other presentation items that may be required by GAAP). Except as set forth in **Section 2.7** of the Disclosure Schedule, the Company has identified all material uncertain tax positions contained in all Returns of the Company or any Company Subsidiary, and has established adequate reserves and made any appropriate disclosures in the Financial Statements in accordance with the requirements of Financial Interpretation No. 48 of FASB Statement No. 109. The Financials fairly present in all material respects the Company’s financial condition, operating results and cash flows as of the dates and during the periods indicated therein, subject in the case of the Interim Financials to normal year-end adjustments, which are not material in amount or significance in any individual case or in the aggregate. The Company’s unaudited consolidated balance sheet as of the Balance Sheet Date is referred to hereinafter as the “**Current Balance Sheet.**”

**2.8 No Undisclosed Liabilities.** Except as set forth in **Section 2.8** of the Disclosure Schedule, the Company has no liability, indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any type, whether accrued, absolute, contingent, matured, unmatured or otherwise, required to be reflected in financial statements in accordance with GAAP, which individually or in the aggregate (i) has not been reflected in the Current Balance Sheet, or (ii) has not arisen in the ordinary course of business, consistent with past practices, since the Balance Sheet Date

in an amount that does not exceed \$25,000 in any one case or \$100,000 in the aggregate. The aggregate amount of the Company's indebtedness for borrowed money outstanding on the date hereof is \$0.

**2.9 Internal Controls.** The Company maintains accurate books and records reflecting its assets and liabilities in all material respects and maintains proper and adequate internal accounting controls for a company of its size and scope which provide reasonable assurance that: (i) transactions are executed with management's authorization; (ii) transactions are recorded as necessary to permit preparation of the consolidated financial statements of the Company in accordance with GAAP and to maintain accountability for the Company's consolidated assets; (iii) the reporting of the Company's assets is compared with existing assets as necessary to permit preparation of the consolidated financial statements of the Company in accordance with GAAP and to maintain accountability for the Company's consolidated assets; (iv) accounts, notes and other receivables and inventory are recorded accurately in all material respects, and adequate procedures are implemented to effect the collection thereof on a timely basis; and (v) there are adequate procedures in place regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets. As of the date of this Agreement, to the Company's Knowledge, (x) there are no "significant deficiencies" in the design or operation of the Company's internal controls over financial reporting which would reasonably be expected to adversely affect in any material respect the Company's ability to record, process, summarize and report financial data or "material weaknesses" in internal controls and (y) there has been no fraud, whether or not material, that involved management or other employees of the Company who have a significant role in the Company's internal controls over financial reporting.

**2.10 No Changes.** Except as provided in **Section 2.10** of the Disclosure Schedule, since the Balance Sheet Date through the date of this Agreement, there has not been, occurred or arisen any:

- (a) transaction by the Company except in the ordinary course of business, consistent with past practices, as conducted on the Balance Sheet Date;
- (b) amendments or changes to the Charter Documents of the Company;
- (c) material decrease in the Company's annual contract value;
- (d) capital expenditure or commitment therefor by the Company exceeding \$25,000 individually or \$100,000 in the aggregate;

(e) payment, discharge or satisfaction of any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise of the Company), other than (i) payments, discharges or satisfactions of liabilities reflected or reserved against in the Current Balance Sheet or (ii) incurred in the ordinary course of business, consistent with past practices, since the Balance Sheet Date;

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

(g) employment dispute, including but not limited to, claims or matters raised by any individuals or any workers' representative organization, bargaining unit or union regarding labor trouble or claim of wrongful discharge or other unlawful employment or labor practice or action with respect to the Company;

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

(i) adoption of or change in any material Tax (as defined in **Section 2.11**) election or any Tax accounting method, entering into any closing agreement with respect to Taxes, settlement or compromise of any Tax claim or assessment, or extension or waiver of the limitation period applicable to any Tax claim or assessment;

(j) material revaluation by the Company of any of its assets (whether tangible or intangible), including without limitation, writing down the value of inventory or writing off notes or accounts receivable;

(k) declaration, setting aside or payment of a dividend or other distribution (whether in cash, stock or property) in respect of any Company Common Stock, or any split, combination or reclassification in respect of any shares of Company Common Stock, or any issuance or authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Common Stock, or any direct or indirect repurchase, redemption, or other acquisition by the Company of any shares of Company Common Stock (or options, warrants or other rights convertible into, exercisable or exchangeable therefor);

(l) increase in the salary or other compensation payable or to become payable by the Company to any of its officers, directors, employees, consultants or advisors, or the declaration, payment or commitment or obligation of any kind for the payment (whether in cash or equity) by the Company of a severance payment, termination payment, bonus or other additional salary or compensation to any such person, other than pursuant to the Company's written plans and policies in effect as of the Balance Sheet Date and listed in **Section 2.22(b)(1)** of the Disclosure Schedule;

(m) entry into a Material Contract or any termination, extension, amendment or modification of the terms of any Material Contract;

(n) sale, lease, license or other disposition of any of the assets (whether tangible or intangible) or properties of the Company outside of the ordinary course of business, consistent with past practices, including, but not limited to, the sale of any accounts receivable of the Company, or any creation of any security interest in such assets or properties;

(o) loan by the Company to any person or entity, or purchase by the Company of any debt securities of any person or entity, except for advances to employees for travel and business expenses in the ordinary course of business, consistent with past practices, in an amount not to exceed \$10,000 in any one case or \$25,000 in the aggregate;

(p) incurrence by the Company of any indebtedness for borrowed money, amendment of the terms of any outstanding loan agreement, guaranteeing by the Company of any indebtedness, issuance or sale of any debt securities of the Company or guaranteeing of any debt securities of others, except for advances to employees for travel and business expenses in the ordinary course of business, consistent with past practices;

(q) waiver or release of any material right or claim of the Company, including any write-off or other compromise of any account receivable of the Company;

(r) commencement or settlement of any lawsuit by the Company, the commencement, settlement, notice or, to the Knowledge of the Company, threat of any lawsuit or proceeding or, to the Knowledge of the Company, other investigation against the Company or its affairs;

(s) notice of any claim or potential claim of ownership, interest or right by any person other than the Company or a Company Subsidiary of the Company Intellectual Property (as defined in **Section 2.14** hereof) or of infringement by the Company of any other person's Intellectual Property Rights (as defined in **Section 2.14** hereof);

(t) issuance or sale, or contract or agreement to issue or sell, by the Company of any shares of Company Common Stock or securities convertible into, or exercisable or exchangeable for, shares of Company Common Stock or any securities, warrants, options or rights to purchase any of the foregoing, except for issuances of options under a Plan and issuances of Company Common Stock upon the exercise of options issued under the Plans;

(u) (i) sale or license of any Company Intellectual Property to, or execution, modification or amendment of any agreement with respect to any Company Intellectual Property with, any person or entity, (ii) purchase or license of any third-party Intellectual Property Rights from, or execution, modification or amendment of any agreement with respect to any third-party Intellectual Property Rights with, any person or entity, (iii) agreement, or modification or amendment of an existing agreement, with respect to the development of any Content & Technology or Intellectual Property Rights, with a third party (other than custom research projects that involve less than \$50,000), or (iv) material change in pricing or royalties set or charged by the Company to its licensees, or in pricing or royalties set or charged by persons who have licensed Content & Technology or Intellectual Property Rights to the Company;

(v) agreement or modification to any agreement pursuant to which any other party was granted marketing, distribution, development, manufacturing or similar rights of any type or scope with respect to any Company Product;

(w) event or condition of any character that has had or is reasonably likely to have a Company Material Adverse Effect;

(x) lease, license, sublease or other occupancy of any Leased Real Property (as defined in **Section 2.13** hereof) by the Company; or

(y) agreement by the Company to do any of the things described in the preceding clauses (a) through (x) of this **Section 2.10** (other than negotiations with Parent and its representatives regarding the transactions contemplated by this Agreement and the Related Agreements).

#### 2.11 **Tax Matters.**

(a) **Definition of Taxes.** For purposes of this Agreement, the term “**Tax**” or, collectively, “**Taxes**” shall mean (i) any and all U.S. federal, state, local and non-U.S. duties and taxes of any kind whatsoever, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes as well as social security charges (including but not limited to health, unemployment and pension insurance), together with all interest, penalties and additions imposed with respect to such amounts, (ii) any liability for the payment of any amounts of the type described in clause (i) of this **Section 2.11(a)** as a result of being or having been a member of an affiliated, consolidated, combined, unitary or similar group for any period (including any arrangement for group or consortium relief or similar arrangement), and (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) of this **Section 2.11(a)** as a result of any express or implied obligation to indemnify any other person or as a result of any obligation under any agreement or arrangement with any other person with respect to such amounts and including any liability for taxes of a predecessor or transferor or otherwise by operation of law.

(b) **Tax Returns and Audits.** Except as set forth in **Section 2.11(b)** of the Disclosure Schedule:

(i) Each of the Company and each Company Subsidiary has (a) prepared and timely filed all material U.S. federal, state, local and non-U.S. returns, estimates, information statements and reports (“**Returns**”) relating to any and all Taxes concerning or attributable to the Company, any Company Subsidiary or any of their respective operations and such Returns have been completed in accordance with applicable Law in all material respects and (b) timely paid all Taxes it is required to pay.

(ii) Each of the Company and each Company Subsidiary has paid or withheld with respect to its respective Employees, Stockholders, creditors and other third parties, all U.S. federal, state and non-U.S. income taxes and social security charges and similar fees, Federal Insurance Contribution Act amounts, Federal Unemployment Tax Act amounts and other Taxes required to be paid or withheld, and has timely paid over any such withheld Taxes to the appropriate authorities.

(iii) Neither the Company nor any Company Subsidiary has been delinquent in the payment of any material Tax, nor is there any Tax deficiency outstanding, assessed or proposed in writing against the Company or any Company Subsidiary, nor has the Company or any Company Subsidiary executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax.

(iv) To the Knowledge of the Company, no audit or other examination of any Return of the Company or any Company Subsidiary is presently in progress, nor has the Company or any Company Subsidiary been notified in writing of any request for such an audit or other examination. No adjustment relating to any Return filed by the Company or any Company Subsidiary has been proposed in writing by any Tax authority to the Company, any Company Subsidiary or any representative thereof. No written claim has ever been made by a taxing authority that the Company or any Company Subsidiary is or may be subject to taxation in a jurisdiction in which it does not file Returns.

(v) As of the date of the Current Balance Sheet, neither the Company nor any Company Subsidiary had any Liabilities for unpaid Taxes which had not been accrued or reserved on the Current Balance Sheet, whether asserted or unasserted, contingent or otherwise, and neither the Company nor any Company Subsidiary has incurred any Liability for Taxes since the date of the Current Balance Sheet other than in the ordinary course of business, consistent with past practices. Except for any Taxes required to be reflected on a Final Income Tax Return and any Transaction Taxes (each as defined in **Section 5.13(c)**) or as otherwise set forth in the definition of Closing Net Working Capital, any Liabilities for unpaid Taxes of the Company or any Company Subsidiary relating or attributable to any Tax period or portion thereof through and including the Closing Date (the "**Pre-Closing Tax Period**"), including any such Taxes that are not yet due and payable and including the Transaction Payroll Taxes, will be included as Liabilities of the Company in the calculation of Closing Net Working Capital. For purposes of the foregoing, in the case of any taxable period that includes but does not end on the Closing Date (each, a "**Straddle Period**"), the real, personal and intangible property Taxes ("**Property Taxes**") imposed upon the Company or any Company Subsidiary allocable to the Pre-Closing Tax Period shall be equal to the amount of such Property Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that are in the Pre-Closing Tax Period and the denominator of which is the number of days in the Straddle Period; and the Taxes (other than Property Taxes) imposed upon the Company or any Company Subsidiary allocable to the Pre-Closing Tax Period shall be computed as if such taxable period ended on the Closing Date, provided, that exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions), other than with respect to property placed in service after the Closing, shall be allocated between the Pre-Closing Tax Period and the period after the Closing Date in proportion to the number of days in each period.

(vi) The Company has made available to Parent or its legal counsel, copies of all Tax Returns for the Company and each Company Subsidiary filed for all periods with respect to which the statute of limitations has not expired.

(vii) There are (and immediately following the Effective Time there will be) no Liens on the assets of the Company or any Company Subsidiary relating to or attributable to Taxes, other than Liens for Taxes not yet due and payable.

(viii) Neither the Company nor any Company Subsidiary has (a) ever been a member of an affiliated group (within the meaning of Code §1504(a)) filing a consolidated U.S. federal income Tax Return (other than a group the common parent of which was the Company), (b) ever been a party to any Tax sharing, indemnification, allocation or similar agreement or arrangement, nor does the Company or any Company Subsidiary owe any amount pursuant to such agreement or arrangement, and (c) any liability for the Taxes of any Person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or non-U.S. law (including any arrangement for group or consortium relief or similar arrangement)), as a transferee or successor, by operation of law, by contract or agreement, or otherwise.

(ix) The Company has not been a “United States Real Property Holding Corporation” within the meaning of Section 897(c)(2) of the Code during any applicable period of determination specified in Section 897(c) of the Code.

(x) Neither the Company nor any Company Subsidiary has constituted either a “distributing corporation” or a “controlled corporation” in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code.

(xi) Neither the Company nor any Company Subsidiary has engaged in a reportable transaction under Treas. Reg. § 1.6011-4(b), including a transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction, as set forth in Treas. Reg. § 1.6011-4(b)(2).

(xii) Neither the Company nor any Company Subsidiary will be required to include any income or gain or exclude any deduction or loss from Taxable income for any taxable period or portion thereof after the Closing Date as a result of any (a) change in method of accounting for any taxable period or portion thereof ending on or prior to the Closing Date, (b) closing agreement under Section 7121 of the Code executed prior to the Closing, (c) deferred intercompany gain or excess loss account under Treasury Regulations under Section 1502 of the Code in connection with a transaction consummated prior to the Closing (or in the case of each of (a), (b) and (c), under any similar provision of applicable Law), (d) installment sale or open transaction disposition consummated prior to the Closing or (e) prepaid amount received prior to Closing.

(xiii) Each of the Company and each Company Subsidiary uses the accrual method of accounting for Tax purposes.

(xiv) Neither the Company nor any Company Subsidiary is subject to Tax in any country other than its country of incorporation or formation by virtue of having a permanent establishment, place of business or source of income in such country.

(xv) Each of the Company, any Company Subsidiary, and any predecessor to the Company or any Company Subsidiary has been an S corporation or a qualified subchapter S subsidiary for federal income tax purposes at all times since inception and in the states listed in **Section 2.11(b)(xv)** of the Disclosure Schedule, at all times since the dates noted therein as applicable, within the meaning of the Code and for state Tax law purposes of those jurisdictions listed in **Section 2.11(b)(xv)** of the Disclosure Schedule, and has filed all forms and taken all actions necessary to maintain such status in such jurisdictions. None of the Company, any Company Subsidiary, any predecessor to the Company or any Company Subsidiary, or any Stockholder has taken any action, or omitted to take any action, which action or omission could result in the loss of S corporation or qualified subchapter S subsidiary status prior to the Closing.

(xvi) There are not now, nor have there ever been, any outstanding shares of restricted stock of the Company or any Company Subsidiary with respect to which elections pursuant to Section 83(b) of the Code have been filed.

(xvii) None of the Company or any Company Subsidiary will be liable for any Tax under Section 1374 of the Code (or any comparable provision of applicable state law) in connection with the deemed sale of the Company's assets caused by the Section 338(h)(10) Election (as defined in **Section 5.13(b)** hereof). None of the Company or any Company Subsidiary has in the past 10 years, (1) acquired assets from another corporation in a transaction in which the tax basis of the acquired assets (or any other property) was determined, in whole or in part, by reference to the tax basis of the acquired assets (or any other property) in the hands of the transferor, or (2) acquired the stock of any corporation.

(c) **Executive Compensation Tax.** There is no contract, agreement, plan or arrangement to which the Company is a party, including the provisions of this Agreement, covering any Employee of the Company, which, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Sections 280G or 404 of the Code.

(d) **409A.** Except as set forth in **Section 2.11(d)** of the Disclosure Schedule, each nonqualified deferred compensation plan (as defined in Section 409A(d)(1) of the Code) has complied in all material respects with Section 409A of the Code and all applicable IRS guidance issued with respect thereto. Except as set forth in **Section 2.11(d)** of the Disclosure Schedule, each outstanding Company Option, stock appreciation right, or other similar right to acquire Company Common Stock or other equity of the Company, granted to or held by an individual or entity who is or may be subject to United States taxation, (1) has an exercise price that is not less than the fair market value of the underlying equity as of the date such Company Option, stock appreciation right or other similar right was granted, (2) has no feature for the deferral of compensation other than the deferral of recognition of income until the later of exercise or disposition of such Company Option, stock appreciation right or other similar right, (3) to the extent it was granted after December 31, 2004, was granted with respect to a class of stock of the Company that is "service recipient stock" (within the meaning of Section 409A and the final regulations issued with respect thereto), and (4) has been properly accounted for in accordance with GAAP in the Financials.

**2.12 Restrictions on Business Activities.** Except as set forth in **Section 2.12** of the Disclosure Schedule and other than this Agreement, there is no agreement (non-competition or otherwise), commitment, judgment, injunction, order or decree to which the Company is a party or otherwise binding upon the Company which has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company, any acquisition of property (tangible or intangible) by the Company, the conduct of business by the Company, or otherwise limiting the freedom of the Company to engage in any line of business or to compete with any person. Without limiting the generality of the foregoing, except as set forth in **Section 2.12** of the Disclosure Schedule, the Company has not entered into any agreement under which the Company is restricted from selling, licensing, manufacturing or otherwise distributing any of its technology or products or from providing services to customers or potential customers or any class of customers, in any geographic area, during any period of time, or in any segment of the information technology and supply chain research & advisory, consulting and events markets.

**2.13 Title to Properties; Absence of Liens and Encumbrances.**

(a) The Company does not own any real property, nor has the Company ever owned any real property. **Section 2.13(a)** of the Disclosure Schedule sets forth a list of all real property currently leased, subleased or licensed by or from the Company or otherwise used or occupied by the Company for the operation of its business (the "**Leased Real Property**") and each lease, sublease, license or other occupancy agreement relating to the Leased Real Property to which the Company or any Company Subsidiary is a party or by which it is bound, the name of the lessor, licensor, sublessor, master lessor and/or lessee, the date and term of the lease, license, sublease or other occupancy right and each amendment thereto (the "**Lease Agreements**"). All such Lease Agreements are valid and effective in accordance with their respective terms except as such effectiveness may be subject to the Laws of general application relating to bankruptcy, insolvency, and the relief of debtors and rules of Law governing specific performance, injunctive relief, or other equitable remedies, and there is not, under any of such leases, any existing default by the Company or any Company Subsidiary, no rentals are past due, or event of default (or event which with notice or lapse of time, or both, would constitute a default) by the Company or, to the Knowledge of the Company, the other party thereto. The Company has not received any written notice of a default, alleged failure to perform, or any offset or counterclaim with respect to any such Lease Agreement, which has not been fully remedied and withdrawn.

(b) The Leased Real Property is in good operating condition and repair (subject to normal wear and tear), and to the Company's Knowledge, free from structural, physical and mechanical defects and is structurally sufficient and otherwise suitable for the conduct of the business as presently conducted. Neither the operation of the Company on the Leased Real Property nor, to the Company's Knowledge, such Leased Real Property, including the improvements thereon, violate in any material respect any applicable building code, zoning requirement or statute relating to such property or operations thereon, and to the Knowledge of the Company, any such non-violation is not dependent on so-called non-conforming use exceptions. The Company does not owe any brokerage commissions or finders fees with respect to any Leased Real Property or would owe any such fees if any existing Lease Agreement were renewed pursuant to any renewal options contained

in such Lease Agreements. The Company has performed in all material respects all of its obligations under any termination agreements pursuant to which it has terminated any leases, subleases, licenses or other occupancy agreements for real property that are no longer in effect and has no continuing liability with respect to such terminated agreements.

(c) The Company has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its tangible properties and assets, real, personal and mixed, used or held for use in its business, free and clear of any Liens, except (i) as reflected in the Current Balance Sheet, (ii) Liens for Taxes not yet due and payable, and (iii) such imperfections of title and encumbrances, if any, which do not materially detract from the value or interfere with the present use of the property subject thereto or affected thereby (collectively, “**Permitted Liens**”) and except as set forth in **Section 2.13(c)** of the Disclosure Schedule.

(d) All equipment owned or leased by the Company currently in use and necessary for the conduct of its business as presently conducted is in good operating condition, regularly and properly maintained, subject to normal wear and tear.

#### 2.14 **Intellectual Property.**

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

(i) “**Content & Technology**” shall mean any or all of the following (A) research content and information offerings including, without limitation, research content and information offerings presented in the form of reports, briefings, updates and related tools, (B) other works of authorship including, without limitation, computer programs, source code, and executable code, whether embodied in software or otherwise, architecture, documentation, designs, files, records, databases, and data, (C) inventions (whether or not patentable), discoveries, improvements, and technology, (D) proprietary and confidential information, trade secrets and know how, (E) databases, data compilations and collections and technical data, (F) domain names, web addresses and sites including, without limitation, client-specific portals, (G) tools, methods and processes including, without limitation, research methodologies, and (H) any and all instantiations or embodiments of the foregoing in any form and embodied in any media.

(ii) “**Intellectual Property Rights**” shall mean worldwide common law and statutory rights associated with (A) patents and patent applications of any kind (collectively, the “**Patents**”), (B) copyrights, copyright registrations and copyright applications and “moral” rights, (C) the protection of trade and industrial secrets and confidential information, (D) logos, trademarks, trade names and service marks, and (E) any other proprietary rights relating to Content & Technology, including any analogous rights to those set forth above.

(iii) “**Company Intellectual Property**” shall mean any and all Content & Technology and Intellectual Property Rights that are owned by or exclusively licensed to the Company.

(iv) “**Registered Intellectual Property Rights**” shall mean any and all Intellectual Property Rights that have been registered, applied for, filed, certified or otherwise perfected, issued, or recorded with or by any state, government or other public or quasi-public legal authority.

(v) “**Shrink-Wrap Code**” shall mean off-the-shelf commercially available software where available for a cost of not more than \$50,000 in the aggregate for all users and workstations.

(b) **Section 2.14(b)** of the Disclosure Schedule lists all Registered Intellectual Property Rights owned by, or filed in the name of, the Company (the “**Company Registered Intellectual Property Rights**”) and any material proceedings or actions before any court, tribunal (including the United States Patent and Trademark Office (the “**PTO**”) or equivalent authority anywhere in the world) related to any of the Company Registered Intellectual Property Rights or any of the Company Intellectual Property owned by the Company.

(c) Each item of Company Registered Intellectual Property Rights is (i) subsisting, and (ii) to the Knowledge of the Company, valid. All necessary registration, maintenance and renewal fees in connection with all Company Registered Intellectual Property Rights have been paid and all necessary documents and certificates in connection with such Company Registered Intellectual Property Rights have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Company Registered Intellectual Property Rights. There are no actions that must be taken by the Company following the date of this Agreement until one hundred (100) days following the Closing Date for the purposes of maintaining, perfecting or preserving or renewing any Company Registered Intellectual Property Rights. In each case in which the Company has acquired any Registered Intellectual Property Rights or any other material Intellectual Property Rights from any person, the Company has obtained a valid and enforceable assignment sufficient to irrevocably transfer all such Intellectual Property Rights (including the right to seek past and future damages with respect thereto) to the Company, and, to the maximum extent provided for by, and in accordance with, applicable Laws, the Company has recorded each such assignment with the relevant Governmental Entities, including the PTO, the U.S. Copyright Office, or their respective equivalents in any relevant foreign jurisdiction, as the case may be.

(d) Following the Closing Date, the Surviving Corporation and/or Parent, will have, without additional payment of any kind to any third party, the same rights and privileges in the Company Intellectual Property as the Company had in the Company Intellectual Property immediately prior to the Closing Date; *provided, however*, that the representations made in this **Section 2.14(d)** shall not be deemed breached as a result of the operation of provisions contained in any agreement to which Parent is a party but to which the Company is not.

(e) Each item of Company Intellectual Property owned by the Company, and to the Knowledge of the Company, each item of Company Intellectual Property licensed to the Company, in each case, including all Company Registered Intellectual Property Rights listed in

**Section 2.14(b)** of the Disclosure Schedule, and all Content & Technology and Intellectual Property Rights licensed to the Company, is free and clear of any Liens (other than Permitted Liens and those Liens set forth on **Section 2.14(e)** of the Disclosure Schedule). Except as set forth in **Section 2.14(e)** of the Disclosure Schedule, the Company is the exclusive owner or exclusive licensee of all Company Intellectual Property.

(f) Except as set forth in **Section 2.14(f)** of the Disclosure Schedule, to the extent that any Content & Technology has been developed or created independently or jointly by any person other than the Company for which the Company has, directly or indirectly, provided consideration for such development or creation, the Company has a written agreement with such person with respect thereto, and the Company thereby has obtained ownership of, and is the exclusive owner of, all such Content & Technology and associated Intellectual Property Rights by operation of law or by valid assignment.

(g) Except as set forth in **Section 2.14(g)** of the Disclosure Schedule, the Company has not (i) transferred ownership of, or granted any exclusive license of or exclusive right to use, or authorized the retention of any exclusive rights to use or joint ownership of, any Content & Technology or Intellectual Property Rights that are or were Company Intellectual Property, to any other person or (ii) in the five (5)-year period immediately preceding the Closing, permitted the Company's rights in any Intellectual Property Rights that are or were Company Registered Intellectual Property Rights to enter into the public domain.

(h) Except as set forth in **Section 2.14(h)** of the Disclosure Schedule, and except for the Content & Technology and Intellectual Property Rights licensed to the Company pursuant to the in-bound licenses listed in **Section 2.14(u)** and **Section 2.15(a)(xv)** of the Disclosure Schedule and any Shrink-Wrap Code that is not incorporated into, combined with, or distributed in conjunction with any Company Products, all Content & Technology used in or necessary to the conduct of Company's business as presently conducted or currently contemplated to be conducted by the Company was written and created solely by either (i) employees of the Company acting within the scope of their employment who have validly and irrevocably assigned all of their rights, including all Intellectual Property Rights therein, to the Company or (ii) by third parties who have validly and irrevocably assigned all of their rights, including all Intellectual Property Rights therein, to the Company and no third party owns or has any rights to any of the Company Intellectual Property.

(i) The Company Intellectual Property, together with Content & Technology and Intellectual Property Rights non-exclusively licensed to the Company pursuant to the non-exclusive in-bound licenses listed in **Sections 2.14(u)** and **2.15(a)(xv)** of the Disclosure Schedule and the Shrink Wrap Code excluded from the Material Contracts in **Section 2.15(a)(xv)**, constitutes all of the Content & Technology and Intellectual Property Rights used in or necessary to the conduct of, the business of the Company as it currently is conducted, including, without limitation, the design, development, use, branding, advertising, promotion, marketing, distribution and sale of any Company Product (including Company Products currently under development).

(j) Except as set forth in **Section 2.14(j)** of the Disclosure Schedule, none of the contracts, licenses and agreements pursuant to which the Company licenses any Content & Technology or Intellectual Property Rights from a third party will terminate, or may be terminated by such third party, solely by the passage of time or at the election of a third party within one hundred twenty (120) days after the Closing Date.

(k) Except as set forth in **Section 2.14(k)** of the Disclosure Schedule and any Shrink Wrap Code, no third party that has licensed any Content & Technology or Intellectual Property Rights to the Company has ownership rights or license rights to improvements or derivative works made by the Company in such Content & Technology or Intellectual Property Rights that have been licensed to the Company.

(l) Except as set forth in **Section 2.14(l)** of the Disclosure Schedule, neither the Company Intellectual Property owned by the Company nor the operation of the business of the Company as it has been conducted or is currently conducted, including but not limited to the design, development, use, branding, advertising, promotion, marketing, distribution and sale of any Company Products of the Company (including Company Products under development): (i) infringes or misappropriates, or will infringe or misappropriate when conducted by Parent and/or the Surviving Corporation immediately following the Closing in the manner currently conducted by the Company, any Intellectual Property Rights of any other person, and (ii) violates any right of any other person (including any right to privacy or publicity), or constitutes unfair competition or trade practices under the Laws of any jurisdiction. Except as set forth in **Section 2.14(l)** of the Disclosure Schedule, the Company has not received written notice from any person claiming that such operation or any act, any product, technology or service (including products, technology or services currently under development) or Content & Technology of the Company infringes or misappropriates any Intellectual Property Rights of any person, violates any rights of any person, or constitutes unfair competition or trade practices under the Laws of any jurisdiction (nor does the Company have Knowledge of any such infringement or misappropriation).

(m) Except as set forth in **Section 2.14(m)** of the Disclosure Schedule, neither this Agreement nor the transactions contemplated by this Agreement, including the assignment to Parent or the Surviving Corporation by operation of law or otherwise of any contracts or agreements to which the Company is a party, will result in: (i) Parent, the Surviving Corporation, the Company or any Company Subsidiary granting to any third party any right to or with respect to any Intellectual Property Rights owned by, or licensed to Parent, the Surviving Corporation, the Company or any Company Subsidiary, (ii) Parent, the Surviving Corporation or any of their subsidiaries, being bound by or subject to, any exclusivity obligations, non-compete or other restriction on the operation or scope of their respective businesses, or (iii) Parent, the Surviving Corporation or any of their subsidiaries being obligated to pay any royalties or other material amounts to any third party in excess of those payable by any of them, respectively, in the absence of this Agreement or the transactions contemplated hereby; *provided, however*, that the representations made in this **Section 2.14(m)** shall not be deemed breached as a result of the operation of provisions contained in any agreement to which Parent is a party but to which the Company is not or by any actions taken by the Parent or the Surviving Corporation.

(n) To the Knowledge of the Company, no person or entity has infringed or misappropriated or is infringing or misappropriating any Company Intellectual Property.

(o) The Company has taken all reasonable steps that are necessary to protect the Company's rights in confidential information and trade secrets of the Company or provided by any other person to the Company under an agreement requiring the Company to maintain such information as confidential. Without limiting the foregoing, the Company has, and enforces, a policy requiring each employee, consultant, and contractor to execute proprietary information, confidentiality and assignment agreements substantially in the Company's standard form (as set forth in **Exhibit C** attached hereto), and, except as set forth in **Section 2.14(o)(i)** of the Disclosure Schedule, all current employees, consultants and contractors of the Company have executed such an agreement in substantially the Company's standard form. None of the individuals listed on **Section 2.14(o)(ii)** of the Disclosure Schedule possesses any confidential information or trade secrets of the Company other than in their capacity as a stockholder of the Company, and such confidential information or trade secrets possessed by such individuals do not include any information regarding the Company Intellectual Property, the Company's clients or the Company's employees that would enable such individuals to compete against Parent.

(p) Except as set forth in **Section 2.14(p)** of the Disclosure Schedule, no Company Intellectual Property owned by the Company and no Company Product is subject to any proceeding or outstanding decree, order, judgment or settlement agreement or stipulation that restricts in any manner the use, transfer or licensing thereof by the Company or may affect the validity, use or enforceability of such Company Intellectual Property.

(q) No (i) Company Product, or (ii) material published or distributed by the Company includes or constitutes obscene material, a defamatory statement or material, false advertising or otherwise violates any applicable Laws.

(r) No government funding, facilities or resources of a university, college, other educational institution or research center or funding from third parties was used in the development of any Company Intellectual Property purported to be owned by the Company and no Governmental Entity, university, college, other educational institution or research center has any claim or right in or to the Company Intellectual Property. No rights have been granted by or under the authority of the Company to any Governmental Entity with respect to any Company Product or Content & Technology, or under any Company Intellectual Property, other than the same standard commercial rights as are granted by the Company to commercial end users of the Company Products in the ordinary course of business, consistent with past practices. To the Knowledge of the Company, no current or former employee, consultant or independent contractor of the Company who was involved in, or who contributed to, the creation or development of any Company Intellectual Property, has performed conflicting services for the government, a university, college or other educational institution, or a research center, during a period of time during which such employee, consultant or independent contractor was also performing similar services for the Company.

(s) The Company has not collected any personally identifiable information from any third parties except as described in **Section 2.14(s)** of the Disclosure Schedule. The Company has complied with all applicable Laws and its internal privacy policies relating to the privacy of users of its products, services, and Web sites, and also the collection, storage, and transfer of any personally identifiable information collected by or on behalf of the Company. The execution, delivery and performance of this Agreement complies with all applicable Laws relating to privacy and to the Company's privacy policies. True and correct copies of all applicable privacy policies are attached to **Section 2.14(s)** of the Disclosure Schedule, and the Company has at all times made all disclosures to users or customers required by applicable Laws and none of such disclosures made or contained in any such privacy policy or in any such materials has been inaccurate, misleading or deceptive or in violation of any applicable Laws.

(t) Except as set forth in **Section 2.14(t)** of the Disclosure Schedule, the Company has not disclosed, delivered or licensed to any person or entity, agreed to disclose, deliver or license to any person or entity, or permitted the disclosure or delivery to any escrow agent or other person or entity of any software source code or related proprietary or confidential information or algorithms owned by or exclusively licensed to the Company.

(u) **Section 2.14(u)** of the Disclosure Schedule lists all software or other material that is distributed as "freeware," "free software," "open source software" or under a similar licensing or distribution model (including but not limited to the GNU General Public License) that the Company has incorporated into, combined with, or distributed or used in conjunction with any Company Products in a manner that obligates the Company to disclose, make available, offer or deliver any portion of the source code to any third party, and identifies the license governing its use.

(v) **Section 2.14(v)** of the Disclosure Schedule lists all industry standards bodies and similar organizations of which the Company is a member, to which it has been a contributor or in which it has been a participant. The Company is not and never was a member in, a contributor to, or participant in any industry standards body or similar organization that could require or obligate the Company to grant or offer to any other person any license or right to any Content & Technology or Intellectual Property Rights.

#### **2.15 Agreements, Contracts and Commitments.**

(a) Except as set forth in **Section 2.15** of the Disclosure Schedule (specifying the appropriate subparagraph), the Company is not a party to, nor is it bound by any of the following (each, a "**Material Contract**"):

(i) any employment, contractor or consulting agreement, contract or commitment with an employee or individual consultant, contractor or salesperson, or consulting, services or sales agreement, contract, or commitment that is either (a) not terminable by the Company at will and without penalty, or (b) has a value in excess of \$100,000;

(ii) any agreement or plan, including, without limitation, any stock option plan, stock appreciation rights plan or stock purchase plan, any of the benefits of which will be

increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement (either alone or upon the occurrence of any additional subsequent events) or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;

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

(iv) any lease of personal property or equipment having a value in excess of \$50,000 individually or \$250,000 in the aggregate;

(v) any agreement of indemnification or guaranty;

(vi) any agreement, contract or commitment relating to capital expenditures and involving future payments in excess of \$50,000 individually or \$250,000 in the aggregate;

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

(viii) any mortgages, indentures, guaranties, loans or credit agreements, security agreements or other agreements or instruments relating to the borrowing of money or extension of credit;

(ix) any purchase order, contract or other commitment obligating the Company to purchase materials or services at a cost in excess of \$50,000 individually or \$250,000 in the aggregate;

(x) any agreement containing covenants or other obligations granting or containing any current or future commitments regarding exclusive rights, non-competition, "most favored nations," restriction on the operation or scope of its businesses or operations, or similar terms;

(xi) any agreement providing a customer with refund rights;

(xii) any dealer, distribution, marketing, development or joint venture agreement which requires payment in excess of \$50,000 individually or \$250,000 in the aggregate;

(xiii) any sales representative, original equipment manufacturer, manufacturing, value added, remarketer, distributor, reseller, or independent software vendor, or other agreement for use or distribution of any Company Product;

(xiv) any other contracts and licenses pursuant to which the Company has granted rights to any third party in any Company Product that involves in excess of \$50,000 individually;

(xv) any contracts, licenses and agreements to which the Company is a party with respect to any Content & Technology or Intellectual Property Rights, including without limitation any in-bound licenses, out-bound licenses and cross-licenses, but excluding (A) Shrink Wrap Code that is neither (1) incorporated into, or combined or distributed in conjunction with any Company Product, nor (2) used in connection with the development, support or maintenance of any Company Product, and (B) standard, end-user customer agreements entered in the ordinary course of business and not covered by **Section 2.15(a)(xiv)**; or

(xvi) any other agreement, contract or commitment that involves \$50,000 individually and is not cancelable by the Company without penalty within ninety (90) days.

(b) Except as set forth in **Section 2.15(b)(i)** of the Disclosure Schedule, the Company is in compliance in all material respects with, and has not materially breached, violated or defaulted under, or received notice that it has materially breached, violated or defaulted under, any of the terms or conditions of any Material Contract, nor does the Company have any Knowledge of any event that would constitute such a material breach, violation or default with the lapse of time, giving of notice or both, nor to the Knowledge of the Company is any party obligated to the Company pursuant to any such Material Contract subject to any default thereunder. Except as set forth in **Section 2.15(b)(i)** of the Disclosure Schedule, each Material Contract is in full force and effect except to the extent that the same may be subject to the Laws of general application relating to bankruptcy, insolvency, and the relief of debtors and rules of Law governing specific performance, injunctive relief, or other equitable remedies. There is no material dispute regarding any Material Contract, or the performance of any Material Contract, including with respect to payments to be made or received by the Company thereunder. Except as set forth in **Section 2.15(b)(ii)** of the Disclosure Schedule, no Material Contract will terminate, or may be terminated by the counterparty thereto, solely by the passage of time or at the election of such counterparty within one hundred twenty (120) days after the Closing. To the Knowledge of the Company, as of the date hereof, no party to a Material Contract has any intention of terminating such Material Contract with the Company or reducing the volume of business such party conducts with the Company, whether as a result of the Merger or otherwise.

**2.16 Interested Party Transactions.** Except as set forth in **Section 2.16** of the Disclosure Schedule, no officer, director or, to the Knowledge of the Company, Stockholder of the Company (nor, to the Knowledge of the Company, any ancestor, sibling, descendant or spouse of any of such persons, or any trust, partnership or corporation in which any of such persons has or has had an interest), has directly or indirectly, (i) an interest in any entity which furnishes or sells or licenses, services, products, Content & Technology or Intellectual Property Rights that the Company furnishes or sells, or proposes to furnish or sell, or (ii) any interest in any entity that purchases from or sells or furnishes to the Company, any goods or services, or (iii) a beneficial interest in any Material Contract to which the Company is a party (other than in such person's capacity as a stockholder, director, officer or employee of the Company); *provided, however*, that ownership of no more than one percent (1%) of the outstanding voting stock of a publicly traded corporation shall not be deemed to be an "interest in any entity" for purposes of this **Section 2.16**. Except as set forth in **Section 2.16** of the Disclosure Schedule, no Stockholder has any loans outstanding from the

Company except for business travel expenses in the ordinary course of business, consistent with past practices, to employee Stockholders of the Company.

**2.17 Governmental Authorization.** Except as set forth in **Section 2.17** of the Disclosure Schedule, each material consent, license, permit, grant or other authorization of any Governmental Entity (i) pursuant to which the Company currently operates or holds any interest in any of its properties, or (ii) which is required for the operation of the Company's business as currently conducted or the holding of any such interest (collectively, "**Company Authorizations**") has been issued or granted to the Company by such Governmental Entity, as the case may be. The Company Authorizations are in full force and effect and constitute all Company Authorizations required to permit the Company to operate or conduct its business as presently conducted or hold any interest in its properties or assets.

**2.18 Litigation.** Except as set forth in **Section 2.18** of the Disclosure Schedule, there is no action, suit, claim or proceeding of any nature pending, or to the Knowledge of the Company, threatened, against the Company, its properties (tangible or intangible) or any of its officers or directors in their capacity as such. Except as set forth in **Section 2.18** of the Disclosure Schedule, to the Knowledge of the Company, there is no investigation, audit, or other proceeding pending or threatened, against the Company, any of its properties (tangible or intangible) or any of its officers or directors in their capacity as such by or before any Governmental Entity. No Governmental Entity has at any time challenged or, to the Knowledge of the Company, questioned the legal right of the Company to conduct its operations as presently conducted. There is no action, suit, claim or proceeding of any nature pending or, to the Knowledge of the Company, threatened, against any individual or entity who has a contractual right or a right pursuant to Delaware Law to indemnification from the Company related to facts and circumstances existing as of the date hereof, nor are there, to the Knowledge of the Company, any facts or circumstances existing as of the date hereof that would reasonably be expected to give rise to such an action, suit, claim or proceeding.

**2.19 Minute Books.** Except as set forth in **Section 2.19** of the Disclosure Schedule, the minutes of the Company made available to counsel for Parent contain materially complete and accurate records of all actions taken by the stockholders, the Board of Directors of the Company and each of the Company Subsidiaries (and any committees thereof).

**2.20 Environmental Matters.** Except as set forth in **Section 2.20** of the Disclosure Schedule, the Company: (i) has not received any written notice of any alleged claim, violation of or Liability under any Environmental Law which has not heretofore been cured or for which there is any remaining liability; (ii) has not disposed of, emitted, discharged, handled, stored, transported, used or released any Hazardous Materials, arranged for the disposal, discharge, storage or release of any Hazardous Materials, or to the Knowledge of the Company, exposed any employee or other individual to any Hazardous Materials so as to give rise to any material liability or corrective or remedial obligation under any Environmental Laws; (iii) has not entered into any agreement that requires it to guarantee, reimburse, pledge, defend, hold harmless or indemnify any other party with respect to liabilities arising out of violations of Environmental Laws or activities of the Company, if any, related to Hazardous Materials; and (iv) has made available to Parent all records in the

Company's possession concerning activities of the Company, if any, related to Hazardous Materials and all environmental audits and environmental assessments of any facility owned or leased by the Company. To the Knowledge of the Company, there are no Hazardous Materials in, on, or under any properties owned or leased by the Company such as could give rise to any material liability or corrective or remedial obligation of the Company under any Environmental Laws.

2.21 **Brokers' and Finders' Fees; Third Party Expenses.** Except as set forth in **Section 2.21** of the Disclosure Schedule, the Company has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions, fees related to investment banking or similar advisory services or any similar charges in connection with the Agreement or any transaction contemplated hereby.

2.22 **Employee Benefit Plans and Compensation.**

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

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

(ii) "**COBRA**" shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

(iii) "**DOL**" shall mean the United States Department of Labor.

(iv) "**Employee**" shall mean any current or former employee, consultant, independent contractor or director of the Company, or any ERISA Affiliate.

(v) "**Employee Agreement**" shall mean each management, employment, severance, separation, settlement, consulting, contractor, relocation, change of control, retention, bonus, repatriation, expatriation, loan, visa, work permit or other agreement, or contract (including, without limitation, any offer letter or any agreement providing for acceleration of Company Options or Company Common Stock that is unvested, or any other agreement providing for compensation or benefits) between the Company or any ERISA Affiliate and any Employee, and which the Company or any ERISA Affiliate has or may have any liability or obligation.

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

(vii) “**ERISA Affiliate**” shall mean any Company Subsidiary or other person or entity under common control with the Company within the meaning of Section 414(b), (c), (m) or (o) of the Code, and the regulations issued thereunder.

(viii) “**International Employee Plan**” shall mean each Company Employee Plan or Employee Agreement that has been adopted or maintained by the Company or any ERISA Affiliate, whether formally or informally, or with respect to which the Company or any ERISA Affiliate will or may have any liability with respect to Employees who perform services outside the United States.

(ix) “**IRS**” shall mean the United States Internal Revenue Service.

(x) “**Pension Plan**” shall mean each Company Employee Plan that is an “employee pension benefit plan,” within the meaning of Section 3(2) of ERISA.

(b) **Schedule. Section 2.22(b)(1)** of the Disclosure Schedule contains an accurate and complete list of each Company Employee Plan and each Employee Agreement. The Company has not made any plan or commitment to establish any new Company Employee Plan or Employee Agreement, to modify any Company Employee Plan or Employee Agreement (except to the extent required by Law or to conform any such Company Employee Plan or Employee Agreement to the requirements of any applicable Law, in each case as previously disclosed to Parent in writing, or as required by this Agreement), or to enter into any Company Employee Plan or Employee Agreement. **Section 2.22(b)(2)** of the Disclosure Schedule sets forth a table setting forth for each employee of the Company, such employee’s name, hiring date, current annual salary, commissions, and bonus as of October 31, 2009, and accrued but unpaid vacation balances of each such employee as of September 30, 2009. To the Knowledge of the Company, as of the date hereof, no employee listed on **Section 2.22(b)(2)** of the Disclosure Schedule intends to terminate his or her employment for any reason. **Section 2.22(b)(3)** of the Disclosure Schedule contains an accurate and complete list of all persons that have a consulting or advisory relationship with the Company.

(c) **Documents.** The Company has made available to Parent (i) correct and complete copies of all documents embodying each Company Employee Plan and each Employee Agreement including, without limitation, all amendments thereto and all related trust documents, (ii) the three (3) most recent annual reports (Form Series 5500 and all schedules and financial statements attached thereto), if any, required under ERISA or the Code in connection with each Company Employee Plan, (iii) if the Company Employee Plan is funded, the most recent annual and periodic accounting of Company Employee Plan assets, (iv) the most recent summary plan description together with the summary(ies) of material modifications thereto, if any, required under ERISA with respect to each Company Employee Plan, (v) all material written agreements and contracts relating to each Company Employee Plan, including, without limitation, administrative service agreements and group insurance contracts, (vi) all communications material to any Employee or Employees relating to any Company Employee Plan and any proposed Company Employee Plans, in each case, relating to any amendments, terminations, establishments, increases or decreases in benefits, acceleration of payments or vesting schedules or other events which would result in any

material liability to the Company, (vii) all material correspondence to or from any Governmental Entity relating to any Company Employee Plan within the past six (6) years, (viii) all model COBRA forms and related notices, (ix) all policies pertaining to fiduciary liability insurance covering the fiduciaries for each Company Employee Plan, (x) all discrimination tests for each Company Employee Plan for the three (3) most recent plan years, and (xi) the most recent IRS determination or opinion letter issued with respect to each Company Employee Plan.

(d) **Employee Plan Compliance.** The Company and each ERISA Affiliate has performed all material obligations required to be performed by it under each Company Employee Plan and, as of the date hereof, the Company does not have Knowledge of any material default or violation by any other party to any Company Employee Plan, and each Company Employee Plan has been established and maintained in all material respects in accordance with its terms and in compliance with all applicable Laws, including but not limited to ERISA or the Code. Any Company Employee Plan intended to be qualified under Section 401(a) of the Code has obtained a favorable determination letter (or opinion letter valid as to the Company, if applicable) with respect to its qualified status under the Code. No “prohibited transaction,” within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 4975 of the Code or Section 408 of ERISA, has occurred with respect to any Company Employee Plan. There are no actions, suits or claims pending or, to the Knowledge of the Company, threatened or reasonably anticipated (other than routine claims for benefits) against any Company Employee Plan or against the assets of any Company Employee Plan. Each Company Employee Plan that is an “employee benefit plan” within the meaning of Section 3(3) of ERISA can be amended, terminated or otherwise discontinued after the Effective Time in accordance with its terms, without material liability to the Company or any ERISA Affiliate (other than ordinary administration expenses). There are no audits, inquiries or proceedings pending or to the Knowledge of the Company, threatened by the IRS, DOL, or any other Governmental Entity with respect to any Company Employee Plan. Neither the Company nor any ERISA Affiliate is subject to any material penalty or Tax with respect to any Company Employee Plan under Section 502(i) of ERISA or Sections 4975 through 4980 of the Code. The Company has timely made all contributions and other payments required by and due under the terms of each Company Employee Plan.

(e) **No Pension Plans.** Neither the Company nor any ERISA Affiliate has ever maintained, established, sponsored, participated in, or contributed to, any Pension Plan subject to Title IV of ERISA or Section 412 of the Code.

(f) **No Self-Insured Plans.** Neither the Company nor any ERISA Affiliate has ever maintained, established sponsored, participated in or contributed to any self-insured medical plan that provides material benefits to employees (including, without limitation, any such plan pursuant to which a stop-loss policy or contract applies).

(g) **Collectively Bargained, Multiemployer and Multiple Employer Plans.** At no time has the Company or any ERISA Affiliate contributed to or been obligated to contribute to any “multiemployer plan,” as defined in Section 3(37) of ERISA. Neither the Company nor any ERISA

Affiliate has at any time ever maintained, established, sponsored, participated in or contributed to any multiple employer plan or to any plan described in Section 413 of the Code.

(h) **No Post-Employment Obligations.** Except as set forth in **Section 2.22(h)** of the Disclosure Schedule, no Company Employee Plan or Employee Agreement provides, or reflects or represents any liability to provide, retiree life insurance, retiree health or other material retiree employee welfare benefits to any person for any reason, except as may be required by COBRA or other applicable statute, and the Company has never represented, promised or contracted (whether in oral or written form) to any Employee (either individually or to Employees as a group) or any other person that such Employee(s) or other person would be provided with retiree life insurance, retiree health or other material retiree employee welfare benefits, except to the extent required by statute.

(i) **Effect of Transaction.** Except as set forth in **Section 2.22(i)** of the Disclosure Schedule, the execution of this Agreement and the consummation of the transactions contemplated hereby will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Company Employee Plan, Employee Agreement, trust or loan that will or may result in any payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any Employee.

(j) **Section 280G.** The Company is a small business corporation (as defined in Section 1361(b) of the Code without regard to Section 1361(b)(a)(C) of the Code) and therefore satisfies the exemption from Section 280G pursuant to Section 280G(b)(5)(A)(i) with respect to payments as a result of the transactions contemplated by this Agreement.

(k) **Employment Matters.** The Company is in compliance in all material respects with all applicable Laws respecting employment, employment practices, terms and conditions of employment, worker classification, tax withholding, prohibited discrimination, equal employment, fair employment practices, meal and rest periods, immigration status, employee safety and health, wages (including overtime wages), compensation, and hours of work, and in each case, with respect to Employees: (i) has withheld and reported all amounts required by Law or by agreement to be withheld and reported with respect to wages, salaries and other payments to Employees, (ii) is not liable for any arrears of wages, bonuses, benefits, severance pay or any Taxes or any penalty for failure to comply with any of the foregoing, and (iii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Entity, with respect to unemployment compensation benefits, social security or other benefits or obligations for Employees (other than routine payments to be made in the normal course of business and consistent with past practice). There are no actions, suits, claims, or administrative matters pending or, to the Knowledge of the Company, threatened, against the Company or any of its Employees relating to any Employee, nor to the Knowledge of the Company, any audits or investigations pending or threatened against the Company or any of its Employees relating to any Employee. There are no pending or, to the Knowledge of the Company, threatened, claims or actions against the Company or any Company trustee under any worker's compensation policy. The Company is not party to a conciliation agreement, consent decree, or other agreement or order with any federal, state, or local agency or

Governmental Entity with respect to employment practices. Except as set forth in **Section 2.22(k)(1)** of the Disclosure Schedule, the services provided by the Company's and its ERISA Affiliates' Employees are terminable at the will of the Company and its ERISA Affiliates and any such termination would result in no liability to the Company or any ERISA Affiliate. **Section 2.22(k)(2)** of the Disclosure Schedule lists all material liabilities of the Company to any Employee, that result from the termination by the Company or any Company Subsidiary of such Employee's employment or provision of services, a change of control of the Company, or a combination thereof. The Company does not have any material liability with respect to any misclassification of: (a) any person as an independent contractor rather than as an employee, (b) any employee leased from another employer, or (c) any employee currently or formerly classified as exempt from overtime wages.

(l) **Labor.** No work stoppage or labor strike against the Company is pending, or to the Knowledge of the Company, threatened, or reasonably anticipated. To the Knowledge of the Company, there are no activities or proceedings of any labor union to organize any Employees, nor have there been any such activities or proceedings within the preceding three (3) years. There are no actions, suits, claims, or administrative matters, labor disputes or grievances pending or, to the Knowledge of the Company, threatened, nor, to the Knowledge of the Company, any audits or investigations pending or threatened against the Company, relating to any labor matters, wages, benefits, medical or family leave, classification, safety or discrimination matters involving any Employee, including claims of wage and/or hour violations, unfair business practices, unfair labor practices, discrimination, harassment or wrongful termination complaints. Neither the Company nor any ERISA Affiliate is party to a current conciliation agreement, consent decree, or other agreement or order with any federal, state, or local agency or Governmental Entity with respect to employment practices. The Company has not engaged in any unfair labor practices within the meaning of the National Labor Relations Act. The Company is not presently, nor has it been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to Employees and no collective bargaining agreement is being negotiated by the Company.

(m) **WARN Act.** The Company and any ERISA Affiliate have complied in all material respects with the Workers Adjustment and Retraining Notification Act of 1988, as amended ("**WARN Act**") and all similar Laws including applicable provisions of state or local Law. All liabilities and obligations relating to the employment, termination or employee benefits of any former Employees previously terminated by the Company or an Affiliate including all termination pay, severance pay or other amounts in connection with the WARN Act and all similar state Laws, have been paid and no terminations prior to the Closing Date shall result in unsatisfied liability or obligation under WARN or any similar state or local Law.

(n) **No Interference or Conflict.** To the Knowledge of the Company, no Stockholder or Employee of the Company is obligated under any contract or agreement, subject to any judgment, decree, or order of any court or administrative agency that would interfere with such person's efforts to promote the interests of the Company or that would interfere with the Company's business. None of the execution nor delivery of this Agreement, the carrying on of the Company's business as presently conducted or any activity of such Employees in connection with the carrying

on of the Company's business as presently conducted will, to the Knowledge of the Company, conflict with or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any contract or agreement under which any of such Employees is now bound. For the purposes of this **Section 2.22(n)**, Knowledge of the Company shall mean the actual knowledge of the individuals listed in the definition of Knowledge without any inquiry.

(o) **International Employee Plan.** Except as set forth in **Section 2.22(o)** of the Disclosure Schedule, each International Employee Plan has been established, maintained and administered in all material respects in compliance with its terms and conditions and with the requirements prescribed by any and all Laws that are applicable to such International Employee Plan. Furthermore, no International Employee Plan has unfunded liabilities that, as of the Effective Time, will not be offset by insurance or fully accrued.

**2.23 Insurance. Section 2.23** of the Disclosure Schedule lists all insurance policies and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of the Company, including the type of coverage, the carrier, the amount of coverage, the term and the annual premiums of such policies. There is no claim by the Company pending under any of such policies or bonds as to which coverage has been denied or disputed or that the Company has Knowledge will be denied or disputed by the underwriters of such policies or bonds. In addition, there is no pending claim of which its total value (inclusive of defense expenses) will exceed the policy limits. All premiums due and payable under all such policies and bonds have been paid (or if installment payments are due, will be paid if incurred prior to the Closing Date) and the Company is otherwise in material compliance with the terms of such policies and bonds. Such policies and bonds (or other policies and bonds providing substantially similar coverage) have been in effect since December 31, 2000 and remain in full force and effect. The Company has no Knowledge of threatened termination of, or premium increase with respect to, any of such policies. The Company has never maintained, established, sponsored, participated in or contributed to any self-insurance plan.

**2.24 Compliance with Laws.** Except as set forth in **Section 2.24** of the Disclosure Schedule, the Company has complied in all material respects with, is not in material violation of, and has not received any written notices of material violation with respect to, any Laws.

**2.25 Bank Accounts, Letters of Credit and Powers of Attorney. Section 2.25** of the Disclosure Schedule lists (a) all bank accounts, lock boxes and safe deposit boxes relating to the business and operations of the Company (including the name of the bank or other institution where such account or box is located and the name of each authorized signatory thereto), (b) all outstanding letters of credit issued by financial institutions for the account of the Company (setting forth, in each case, the financial institution issuing such letter of credit, the maximum amount available under such letter of credit, the terms (including the expiration date) of such letter of credit and the party or parties in whose favor such letter of credit was issued), and (c) the name and address of each person who has a power of attorney to act on behalf of the Company. The Company has heretofore made available to Parent true, correct and complete copies of each letter of credit and each power of attorney described in **Section 2.25** of the Disclosure Schedule.

2.26 **Information Supplied.** None of the information supplied in writing by the Company for inclusion or incorporation by reference in the information provided to Stockholders in the Soliciting Materials will, at the time they are mailed to the Stockholders, and at all times during which stockholder consents are solicited in connection with the Merger contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading; *provided, however*, that for the avoidance of doubt, the foregoing representation shall not apply to any information supplied by Parent for inclusion in the Soliciting Materials.

2.27 **Complete Copies of Materials.** The Company has delivered or made available to Parent true and complete copies of each Material Contract and Lease Agreement that exists as of the date of this Agreement.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF PARENT AND SUB

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

3.1 **Organization, Standing and Power.** Parent is a corporation duly organized, validly existing and in good standing under Delaware Law. Sub is a corporation duly organized, validly existing and in good standing under Delaware Law. Sub is newly formed and was formed solely to effectuate the Merger. Each of Parent and Sub has the corporate power to own its properties and to carry on its business as now being conducted and is duly qualified or licensed to do business and is in good standing in each jurisdiction where such qualification or licensure is required by Law, except for those jurisdictions where the failure to be so qualified or licensed and in good standing would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

3.2 **Authority.** Each of Parent and Sub has all requisite corporate power and authority to enter into this Agreement and any Related Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and any Related Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Parent and Sub and no further action is required on the part of Parent or Sub to authorize the Agreement and any Related Agreements to which it is a party and the transactions contemplated hereby and thereby. This Agreement and any Related Agreements to which Parent and Sub are parties have been duly executed and delivered by Parent and Sub and, assuming the due authorization, execution and delivery by the other parties hereto and thereto, constitute the valid and binding obligations of Parent and Sub, enforceable against each of Parent and Sub in accordance with their terms, except as such enforceability may be subject to the Laws of general application relating to bankruptcy, insolvency, and the relief of debtors and rules of Law governing specific performance, injunctive relief, or other equitable remedies. No vote or other action of the

stockholders of Parent is required by applicable Law, Parent's certificate of incorporation or bylaws, or otherwise in order for Parent and Sub to consummate the transactions contemplated hereby.

3.3 **Consents.** No consent, notice, waiver, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity, is required by or with respect to Parent or Sub in connection with the execution and delivery of this Agreement and any Related Agreements to which Parent or Sub is a party or the consummation of the transactions contemplated hereby and thereby, except for (i) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings which, if not obtained or made, would not have a Parent Material Adverse Effect and (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware.

3.4 **No Conflict.** The execution and delivery by Parent and Sub of this Agreement and any Related Agreement to which Parent or Sub is a party, and the consummation of the transactions contemplated hereby and thereby, will not Conflict with (i) any provision of the certificate of incorporation, bylaws, or similar organizational documents of Parent or Sub, each as amended to date and in full force and effect on the date hereof, or (ii) any material Laws applicable to Parent or Sub or any of their respective properties (whether tangible or intangible) or assets.

3.5 **Capital Resources; Solvency.** Parent has sufficient capital resources available to it to pay the Merger Consideration. Parent is not insolvent and consummation of the Merger and the other transactions contemplated by this Agreement will not cause Parent to become insolvent.

3.6 **Interim Operations of Sub.**

(a) Sub was formed solely for the purpose of engaging in the transactions contemplated by this Agreement and has engaged in no business activities other than as contemplated by this Agreement.

(b) All of the issued and outstanding equity of Sub is validly issued, fully paid and non-assessable and is owned, beneficially and of record, by Parent free and clear of all Liens, options, rights of first refusal, stockholder agreements, limitations on Parent's voting rights, charges and other encumbrances of any nature whatsoever.

(c) As of the date hereof and as of the Effective Time, except for (i) obligations or liabilities incurred in connection with its incorporation and (ii) this Agreement and any other agreements or arrangements contemplated by this Agreement or in furtherance of the transactions contemplated hereby, Sub has not incurred, directly or indirectly, through any of its subsidiaries or affiliates, any obligations or liabilities or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any person.

**ARTICLE IV**

**CONDUCT PRIOR TO THE EFFECTIVE TIME**

**4.1 Conduct of Business of the Company.** Except for matters expressly contemplated by this Agreement, during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement and the Effective Time, the Company agrees to conduct its business, except to the extent that Parent shall otherwise consent in writing (which consent shall not be unreasonably withheld, conditioned or delayed), in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, to pay the debts and Taxes of the Company when due (subject to **Section 4.1(f)** below), to pay or perform other obligations when due, and, to the extent consistent with such business, to preserve intact the present business organizations of the Company consistent with past practice, to use commercially reasonable efforts to keep available the services of the present officers and key employees of the Company and to preserve the relationships of the Company with customers, suppliers, distributors, licensors, licensees, and others having business dealings with them, all with the goal of preserving unimpaired the goodwill and ongoing businesses of the Company at the Effective Time. The Company shall promptly notify Parent of any event or occurrence or emergency not in the ordinary course of business of the Company and any material event involving the Company that arises during the period from the date of this Agreement and continuing until the earlier of the termination date of this Agreement or the Effective Time. In addition to the foregoing, except as expressly contemplated by this Agreement or required by applicable law, and except as expressly set forth in **Section 4.1** of the Disclosure Schedule, the Company shall not, without the prior consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed), from and after the date of this Agreement:

(a) cause or permit any amendments to the certificate of incorporation, bylaws or other organizational documents of the Company or any Company Subsidiary;

(b) incur any expenditures or enter into any commitment or transaction exceeding \$50,000 individually or \$200,000 in the aggregate or any commitment or transaction of the type described in **Section 2.10** hereof (other than in the ordinary course of business consistent with past practice);

(c) pay, discharge, waive or satisfy, any indebtedness for borrowed money;

(d) except in the ordinary course of business consistent with past practice, pay, discharge, waive or satisfy, any third party expense in an amount in excess of \$50,000 in any one case, or \$200,000 in the aggregate, or any other claim, liability, right or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than with respect to such other claim, liability right or obligation, the payment, discharge or satisfaction in the ordinary course of business of liabilities reflected or reserved against in the Current Balance Sheet;

(e) adopt or change accounting methods or practices (including any change in depreciation or amortization policies) other than as required by GAAP;

(f) make or change any material Tax election, adopt or change any Tax accounting method, enter into any closing agreement with respect to Taxes, settle or compromise any Tax claim or assessment, consent to any extension or waiver of the limitation period applicable

to any Tax claim or assessment or file any material Tax Return or any amended Tax Return unless a copy of such Tax Return has been delivered to Parent for review a reasonable time prior to filing and Parent has approved such Tax Return;

(g) revalue any of its assets (whether tangible or intangible), including without limitation writing down the value of inventory or writing off notes or accounts receivable other than in the ordinary course of business consistent with past practice;

(h) declare, set aside, or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any Company Common Stock, or split, combine or reclassify any Company Common Stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Common Stock, or repurchase, redeem or otherwise acquire, directly or indirectly, any shares of Company Common Stock (or options, warrants or other rights exercisable therefor);

(i) except as set forth in **Section 4.1(i)** of the Disclosure Schedule, increase the salary or other compensation payable or to become payable to any officer, director, employee, consultant or advisor, or make any declaration, payment or commitment or obligation of any kind for the payment (whether in cash or equity) of a severance payment, termination payment, bonus or other additional salary or compensation to any such person, except payments made pursuant to written agreements, plans and policies outstanding on the date hereof and disclosed in the Disclosure Schedule;

(j) sell, lease, license or otherwise dispose of or grant any security interest in any of its properties or assets (whether tangible or intangible), including without limitation the sale of any accounts receivable of the Company, except in the ordinary course of business and consistent with past practices;

(k) make any loan to any person or entity or purchase debt securities of any person or entity or amend the terms of any outstanding loan agreement;

(l) incur any indebtedness, guarantee any indebtedness of any person or entity, issue or sell any debt securities, or guarantee any debt securities of any person or entity;

(m) waive or release any material right or claim of the Company, including any write-off or other compromise of any account receivable of the Company;

(n) commence or settle any lawsuit, threat of any lawsuit or proceeding or other investigation against the Company involving an amount in dispute greater than \$50,000;

(o) issue, grant, deliver or sell or authorize or propose the issuance, grant, delivery or sale of, or purchase or propose the purchase of, any Company Common Stock or any securities convertible into, exercisable or exchangeable for, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating it to issue or purchase any such shares or other convertible securities, except for (i) the issuance of Company

Common Stock pursuant to the exercise of outstanding Company Options and (ii) the issuance of Company Options to new employees as set forth in **Section 4.1(o)** of the Disclosure Schedule;

(p) (i) except standard end user licenses or other customer agreements entered into in the ordinary course of business, consistent with past practice, sell, lease, license or transfer to any person or entity any rights to any Company Intellectual Property or enter into any agreement or modify any existing agreement with respect to any Company Intellectual Property with any person or entity or with respect to any Intellectual Property Rights of any person or entity, (ii) except in the ordinary course of business, consistent with past practice, purchase or license any Intellectual Property Rights or enter into any agreement or modify any existing agreement with respect to the Content & Technology or Intellectual Property Rights of any person or entity, (iii) enter into any agreement or modify any existing agreement with respect to the development of any Intellectual Property Rights with a third party, or (iv) change pricing or royalties set or charged by the Company to its customers or licensees, or the pricing or royalties set or charged by persons who have licensed Intellectual Property Rights to the Company;

(q) enter into or amend any agreement pursuant to which any other party is granted marketing, distribution, development, manufacturing or similar rights of any type or scope with respect to any Company Product;

(r) enter into any agreement to purchase or sell any interest in real property, grant any security interest in any real property, enter into any lease, sublease, license or other occupancy agreement with respect to any real property or alter, amend, modify or terminate any of the terms of any Lease Agreements;

(s) except as set forth in **Section 4.1(s)** to the Disclosure Schedule, amend or otherwise modify (or agree to do so) any of the Material Contracts;

(t) acquire or agree to acquire by merging or consolidating with, or by purchasing any assets or equity securities of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets which are material, individually or in the aggregate, to the business of the Company;

(u) adopt or amend any Company Employee Plan except as contemplated by this Agreement, enter into any employment contract, pay or agree to pay any bonus or special remuneration to any director or Employee, or increase or modify the salaries, wage rates, or other compensation (including, without limitation, any equity-based compensation) of its Employees except for (i) amendments required by law or to conform any such Company Employee Plan or Employee Agreement to the requirements of any applicable law, (ii) payments contemplated in this Agreement, and (iii) payments made pursuant to written agreements, plans and policies outstanding on the date hereof and disclosed in **Section 4.1(u)** of the Disclosure Schedule;

(v) enter into any strategic alliance, affiliate agreement or joint marketing arrangement or agreement;

(w) except as set forth in **Section 4.1(w)** of the Disclosure Schedule, hire, promote, demote or terminate any Employees, or knowingly encourage any Employees to resign from the Company;

(x) except in cooperation with Parent or in substantial compliance with guidelines provided by Parent, make any representations or issue any communications (including electronic communications) to Employees regarding any benefits of the transactions contemplated by this Agreement, including any representations regarding offers of employment from Parent or the terms thereof;

(y) alter, or enter into any commitment to alter, its interest in any corporation, association, joint venture, partnership or business entity in which the Company directly or indirectly holds any interest;

(z) cancel, amend or renew any insurance policy; or

(aa) take, or agree in writing or otherwise to take, any of the actions described in **Sections 4.1(a)** through **4.1(z)** hereof, or any other action that would (i) prevent the Company from performing, or cause the Company not to perform, its covenants hereunder or (ii) cause or result in any of its representations and warranties contained herein being untrue or incorrect in any material respect.

Parent acknowledges that any action taken with the written consent of Parent pursuant to this **Section 4.1**, or that is disclosed in **Section 4.1** of the Disclosure Schedule, in each case that causes any representation and warranty set forth in **ARTICLE II**, as modified by the Disclosure Schedule, to be inaccurate as of the Closing Date, shall be deemed to not be a breach of such representation or warranty for all purposes of this Agreement.

**4.2 No Solicitation.** Until the earlier of (i) the Effective Time, or (ii) the date of termination of this Agreement pursuant to the provisions of **Section 8.1** hereof, the Company shall not, and the Company shall not authorize any of its officers, directors, employees, stockholders, agents, representatives or affiliates to, directly or indirectly, take any of the following actions with any party other than Parent and its designees: (a) solicit, knowingly encourage, seek, entertain, assist, initiate or participate in any inquiry, negotiations or discussions, or enter into any agreement, with respect to any offer or proposal to acquire all or any material part of the business, properties or technologies of the Company, or any amount of the Company Common Stock (whether or not outstanding), whether by merger, purchase of assets, tender offer, license or otherwise, or effect any such transaction (other than the issuance of Company Common Stock pursuant to the exercise of outstanding Company Options), (b) disclose any information not customarily disclosed to any person concerning the business, technologies or properties of the Company, or afford to any person or entity access to its properties, technologies, books or records, not customarily afforded such access, (c) assist or cooperate with any person to make any proposal to purchase all or any part of the Company Common Stock or assets of the Company, other than sales of Company Products in the ordinary course of business consistent with past practice or pursuant to the exercise of outstanding

Company Options, or (d) enter into any agreement with any person providing for the acquisition of the Company (other than inventory in the ordinary course of business), whether by merger, purchase of assets, license, tender offer or otherwise. The Company shall immediately cease and cause to be terminated any such negotiations, discussion or agreements (other than with Parent) that are the subject matter of clause (a), (b), (c) or (d) above. In the event that the Company or any of the Company's affiliates shall receive, prior to the Effective Time or the termination of this Agreement in accordance with **Section 8.1** hereof, any offer, proposal, or request, directly or indirectly, of the type referenced in clause (a), (c), or (d) above, or any request for disclosure or access as referenced in clause (b) above, the Company shall immediately (x) suspend any discussions with such offeror or party with regard to such offers, proposals, or requests and (y) subject to any pre-existing confidentiality obligations enforceable against the Company, notify Parent thereof, including information as to the identity of the offeror or the party making any such offer or proposal and the specific material terms of such offer or proposal, as the case may be, and such other information related thereto as Parent may reasonably request. If the Company is prohibited from disclosing any information pursuant to this Agreement as a result of pre-existing confidentiality obligations, the Company shall endeavor in good faith to disclose the maximum amount of information possible to Parent without violating the terms of such pre-existing confidentiality obligations. Notwithstanding anything to the contrary contained herein, at any time prior to receipt of the Sufficient Stockholder Vote, if the Company receives a bona fide written proposal regarding the acquisition of all or any material portion of the Company or the Company Common Stock, whether by merger, purchase of assets, tender offer, license or otherwise, that was unsolicited and did not otherwise result from a breach of this **Section 4.2**, the Company may furnish non-public information with respect to the Company to the Person who made such proposal and may participate in discussions regarding such proposal if (x) the Board of Directors of the Company determines in good faith, after receiving advice from outside legal counsel, that failure to do so would constitute a violation of the fiduciary duties of the Company Board to the Stockholders under applicable law and (y) the Company Board determines that such proposal is reasonably likely to lead to a Superior Proposal. For purposes hereof, "**Superior Proposal**" shall mean a third-party acquisition as described in the preceding sentence which the Company Board determines in its good faith judgment (after receiving advice from its financial advisor and taking into account all of the terms and conditions of such proposal) to be more favorable to the Stockholders from a financial point of view than the Merger. The parties hereto agree that irreparable damage would occur in the event that the provisions of this **Section 4.2** were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed by the parties hereto that Parent shall be entitled to an immediate injunction or injunctions, without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting any bond or other security, to prevent breaches of the provisions of this **Section 4.2** and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which Parent may be entitled at law or in equity. Without limiting the foregoing, it is understood that any violation of the restrictions set forth above by any officer, director, agent, representative or affiliate of the Company shall be deemed to be a breach of this Agreement by the Company.

**4.3 Procedures for Requesting Parent Consent.** If the Company desires to take an action which would be prohibited pursuant to **Section 4.1** of this Agreement without the written

consent of Parent, prior to taking such action the Company may request such written consent by sending an e-mail or facsimile to both of the following individuals:

- (a) Craig Safian  
Telephone: (203) 316-6543  
Facsimile: (866) 406-8626  
E-mail address: craig.safian@gartner.com
- (b) Lewis G. Schwartz  
Telephone: (203) 316-6311  
Facsimile: (203) 316-6245  
E-mail address: lew.schwartz@gartner.com

**ARTICLE V**  
**ADDITIONAL AGREEMENTS**

**5.1 Information Statement; Stockholder Approval.**

(a) As soon as practicable after the date hereof, the Company shall use its reasonable best efforts to obtain the Sufficient Stockholder Vote pursuant to a written stockholder consent in accordance with Delaware Law and the Charter Documents of the Company. In connection with such written stockholder consent, the Company shall submit to the Stockholders the Soliciting Materials (as defined below), which shall (i) include a solicitation of the approval of the holders of the Company Common Stock to this Agreement and the Merger, (ii) include a summary and/or copy of this Agreement, and (iii) include a statement that appraisal rights are available for the Company Common Stock pursuant to Section 262 of Delaware Law and a copy of such Section 262. Any materials to be submitted to the Stockholders in connection with the solicitation of their approval of the Merger and this Agreement (the “**Soliciting Materials**”) shall be subject to review and approval by Parent prior to distribution, such approval not to be unreasonably withheld or delayed, and shall also include the unanimous recommendation of the Board of Directors of the Company in favor of the Merger, this Agreement, and the transactions contemplated hereby, and the conclusion of the Company’s Board of Directors that the terms and conditions of the Merger are fair and reasonable to the Stockholders.

(b) Promptly following receipt of written consents of its Stockholders constituting the Sufficient Stockholder Vote, the Company shall deliver notice of the approval of this Agreement and the Merger by written consent of the Company’s Stockholders, pursuant to the applicable provisions of Delaware Law and the Company’s Charter Documents (the “**Stockholder Notice**”), to all Stockholders 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 Common Stock pursuant to Section 262 of Delaware Law (which notice shall include a copy of such Section 262), and shall promptly inform Parent of the date on which the Stockholder Notice was sent. Notwithstanding the foregoing, the Company shall give

Stockholders sufficient notice to the effect that no Stockholder will be able to exercise appraisal rights if such Stockholder has not perfected such appraisal rights in accordance with Section 262 of Delaware Law.

5.2 **Access to Information.** The Company shall afford Parent and its accountants, counsel and other representatives, reasonable access during normal business hours during the period from the date hereof and prior to the Effective Time to (i) all of the properties, books, contracts, commitments and records of the Company, (ii) all other information concerning the business, properties and personnel of the Company as Parent may reasonably request, and (iii) all employees of the Company as identified by Parent (subject, in the case of clauses (i) and (ii), to restrictions imposed by applicable law and pre-existing confidentiality obligations enforceable against the Company). The Company agrees to provide to Parent and its accountants, counsel and other representatives copies of internal financial statements (including Tax Returns and supporting documentation) promptly upon request. All requests for access or other information pursuant to this **Section 5.2** shall be submitted or directed by Parent exclusively to the Chief Executive Officer or Chief Operating Officer of the Company. No information or knowledge obtained in any investigation pursuant to this **Section 5.2** or otherwise shall affect or be deemed to modify any representation or warranty contained herein or the conditions to the obligations of the parties to consummate the Merger in accordance with the terms and provisions hereof.

5.3 **Confidentiality.** Each of the parties hereto hereby agrees that the information obtained in any investigation pursuant to **Section 5.2** hereof, or pursuant to the negotiation and execution of this Agreement or the effectuation of the transactions contemplated hereby, shall be governed by the terms of that certain Confidentiality Agreement by and between Parent and the Company, dated as of September 17, 2009 (the “**Confidential Disclosure Agreement**”). In this regard, the Company acknowledges that Parent’s common stock is publicly traded and that any information obtained by Company regarding Parent could be considered to be material non-public information within the meaning of federal and state securities laws. Accordingly, the Company acknowledges and agrees not to engage in any transactions in the Parent’s common stock in violation of applicable insider trading laws.

5.4 **Expenses.** Whether or not the Merger is consummated, all fees and expenses incurred in connection with the Merger including, without limitation, all legal, accounting, financial advisory, consulting, and all other fees and expenses of third parties (including any costs incurred to obtain consents, waivers or approvals as a result of the compliance with **Section 5.6** hereof) incurred by a party in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby (“**Third Party Expenses**”), shall be the obligation of the respective party incurring such fees and expenses. The Company shall provide Parent with a statement of estimated Third Party Expenses incurred, or to be incurred, by the Company at least five (5) Business Days prior to the Closing Date in form reasonably satisfactory to Parent. Two (2) Business Days prior to the Closing Date, the Company will deliver an updated statement of Third Party Expenses incurred, or to be incurred, by the Company (the “**Closing Date Third Party Expense Statement**”). The Closing Date Third Party Expense Statement shall be in form reasonably satisfactory to Parent and shall be accompanied by invoices from the Company’s

legal, financial and other advisors providing services in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby reflecting such advisors' final billable Third Party Expenses. The amount of any Third Party Expenses reflected on the Closing Date Third Party Expense Statement shall be deducted from the Merger Consideration pursuant to **Section 1.6(a)(xxxvii)** and paid on the Closing Date. The amount of any Third Party Expenses of the Company that are not reflected on the Closing Date Third Party Expense Statement ("**Excess Third Party Expenses**"), shall be subject to the indemnification provisions of **ARTICLE VII** hereof and shall not be limited by the Threshold Amount (as defined in **Section 7.4(a)** hereof).

5.5 **Public Disclosure.** No party shall issue any statement or communication to any third party (other than their respective agents that are bound by confidentiality restrictions and the Company's Stockholders in connection with the Soliciting Materials, the Stockholder Notice, and the satisfaction of any conditions set forth in **ARTICLE VI**) regarding the subject matter of this Agreement or the transactions contemplated hereby, including, if applicable, the termination of this Agreement and the reasons therefor, without the consent of the other party (which consent shall not be unreasonably withheld), except that this restriction shall be subject to Parent's obligation to comply with applicable securities laws and the rules of the New York Stock Exchange or any other securities exchange on which shares of Parent common stock may be listed. In the event that Parent is required by applicable securities laws or the rules of the New York Stock Exchange or any other securities exchange to make any such statement or communication prior to the Effective Time, Parent shall use commercially reasonable efforts to notify the Company and the Stockholder Representative prior to such disclosure.

5.6 **Consents.** The Company shall use commercially reasonable efforts to obtain all necessary consents, waivers and approvals of any parties to any Material Contract as are required thereunder in connection with the Merger or for any such Material Contracts to remain in full force and effect so as to preserve all rights of, and benefits to, the Company under such Material Contract from and after the Effective Time. In the event that, prior to the Effective Time, the other parties to any Material Contract, including lessor or licensor of any Leased Real Property, conditions its grant of a consent, waiver or approval (including by threatening to exercise a "recapture" or other termination right) upon the payment of a consent fee, "profit sharing" payment or other consideration, including increased rent payments or other payments under the Material Contract, and the Company agrees to such condition in its sole discretion, then the Company shall be responsible for making all payments required to obtain such consent, waiver or approval and such amounts shall be deemed Third Party Expenses under **Section 5.4** hereof.

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

5.8 **Notification of Certain Matters.** Each of the Company on the one hand, and Parent, on the other hand, shall give prompt notice to the other of: (i) the occurrence or non-occurrence of

any event, the occurrence or non-occurrence of which is likely to cause any representation or warranty of such party contained in this Agreement to be untrue or inaccurate in any material respect at or prior to the Effective Time, and (ii) any failure of such party to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it hereunder; *provided, however*, that the delivery of any notice pursuant to this **Section 5.8** shall not (a) limit or otherwise affect any remedies available to the party receiving such notice or (b) constitute an acknowledgment or admission of a breach of this Agreement. No disclosure by a party pursuant to this **Section 5.8** shall be deemed to amend or supplement the Disclosure Schedule or prevent or cure any misrepresentations, breach of warranty or breach of covenant.

#### **5.9 Additional Documents and Further Assurances; Reasonable Efforts.**

(a) Each party hereto, at the reasonable request of another party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of the Merger and the transactions contemplated hereby.

(b) Subject to the terms and conditions provided in this Agreement, each of the parties hereto shall use commercially reasonable efforts to take promptly, or cause to be taken, all actions, and to do promptly, or cause to be done, all things necessary, proper or advisable under applicable Laws and regulations to consummate and make effective the transactions contemplated hereby, to satisfy the conditions to the obligations to consummate the Merger, to obtain all necessary waivers, consents and approvals and to effect all necessary registrations and filings and to remove any injunctions or other impediments or delays, legal or otherwise, in order to consummate and make effective the transactions contemplated by this Agreement for the purpose of securing to the parties hereto the benefits contemplated by this Agreement.

#### **5.10 New Employment Arrangements.**

(a) Parent or the Surviving Corporation will offer all Employees “at-will” employment by Parent and/or the Surviving Corporation, to be effective as of the Closing Date, upon proof of a legal right to work in the United States. Such “at-will” employment will: (i) be set forth in offer letters on Parent’s standard form (each, an “**Offer Letter**”), (ii) be subject to and in compliance with Parent’s applicable policies and procedures, including, but not limited to, employment background checks and the execution of an employee proprietary information agreement governing employment conduct and performance, (iii) have terms, including the position and salary, which will be determined by Parent after consultation with the Company’s management (*provided* that the total target cash compensation of each Employee shall not be less than such Employee’s total target cash compensation with the Company), (iv) include, if applicable, a waiver by the Employee of any future equity-based compensation to which such Employee may otherwise have been eligible, and (v) supersede any prior express or implied employment agreements, arrangements, representations, or offer letters in effect prior to the Closing Date. As a condition of employment, Employees will be required to sign Parent’s standard form of Agreement Concerning Terms and Conditions of Employment in substantially the form attached hereto as **Exhibit D**,

including a non-competition covenant in favor of Parent for a period of one (1) year following termination of such employee.

(b) Following the Effective Time, each employee of the Company who remains an employee of Parent or the Surviving Corporation after the Closing Date (a “**Continuing Employee**”) shall become eligible to participate, upon the same terms and conditions, in the various employee benefit plans which Parent or its affiliates maintain for their similarly situated employees, provided that Parent may maintain one or more Company Employee Plans for a transition period following the Closing Date in satisfaction of its obligations under this **Section 5.10(b)**. Each Continuing Employee shall receive credit for all periods of employment with the Company or any Company Subsidiary prior to the Effective Time for purposes of vesting, eligibility and benefit levels under any Parent employee benefit plan in which such employee participates after the Effective Time, to the same extent and for the same purposes as such service was recognized under any analogous Company Employee Plan in effect immediately prior to the Effective Time, except where doing so would result in duplication of benefits. Parent shall use commercially reasonable efforts to (i) waive all pre-existing condition exclusions (or actively at work or similar limitations), evidence of insurability requirements and waiting periods with respect to participation and coverage requirements applicable to Continuing Employees under any medical plans in which such employees participate after the Effective Time and (ii) credit Continuing Employees and their eligible dependents with credit for any co-payments or deductibles made under Company Employee Plans for the year in which the Closing occurs under comparable medical, dental and vision plans of Parent for the purpose of satisfying applicable deductible, out-of-pocket or similar requirements under such Parent plans.

(c) Parent shall, or shall cause the Surviving Corporation to, honor the company severance policy until the first anniversary of the Effective Time in accordance with the terms listed on **Schedule 5.10(c)** hereto. Parent shall, or shall cause the Surviving Corporation to, honor the Company 2009 bonus and commission plans listed on **Schedule 5.10(c)** hereto in accordance with their terms, and shall pay to each Continuing Employee as of February 28, 2010, the aggregate amount of such Continuing Employee’s target bonus (or if greater, actual bonus) under such plans. For a period of six (6) months following the Effective Time, Parent shall, or shall cause the Surviving Corporation to, maintain the total target cash compensation of each Continuing Employee at a level at least equal to the total target cash compensation of such Continuing Employee as of immediately prior to the Effective Time. Furthermore, nothing contained in this **Section 5.10** shall require or imply that the employment of Continuing Employees will continue for any particular period of time following the Effective Time. This **Section 5.10** is not intended, and shall not be deemed, to confer any rights or remedies upon any Person other than the parties to this Agreement and their respective successors and permitted assigns, to create any third-party beneficiary hereunder, or be interpreted as an amendment to any plan of Parent or any subsidiary of Parent. Nothing in this section shall result in duplication of benefits provided to Continuing Employees.

5.11 **Termination of 401(k) Plan.** If requested in writing by Parent no later than three (3) days prior to the Closing Date, the Company shall terminate any and all Company Employee Plans intended to include a Code Section 401(k) arrangement (a “**Company 401(k) Plan**”). The Company

shall provide Parent with evidence that such Company 401(k) Plan(s) have been terminated (effective no later than the day immediately preceding the Closing Date) pursuant to resolutions of the Company's Board of Directors. The form and substance of such resolutions shall be subject to reasonable review and approval of Parent. Parent shall make arrangements to allow Continuing Employees to rollover their distributions from the Company 401(k) Plan, including in-kind distribution of participant loans, to the 401(k) plan of Parent, if Parent elects to terminate the Company 401(k) Plan and only to the extent doing so will not adversely affect the tax-qualified status or ERISA compliance of the Parent 401(k) Plan.

#### **5.12 Officers' and Directors' Indemnification.**

(a) Each of Parent and Sub agree that all rights to indemnification or exculpation existing in favor of, and all limitations on the personal liability of, each present and former director, officer, employee, fiduciary and agent of the Company and the Company Subsidiaries (each, a "**Company Indemnitee**") provided for in Charter Documents shall continue in full force and effect for a period of six (6) years from the Effective Time; *provided, however*, that all rights to indemnification in respect of any claims asserted or made within such period shall continue until the disposition of such claim. From and after the Effective Time, Parent and the Surviving Corporation also agree to indemnify and hold harmless the present and former officers and directors of the Company and the Company Subsidiaries in respect of acts or omissions occurring prior to the Effective Time to the extent provided in any written indemnification agreements between the Company and/or one or more Company Subsidiaries and such officers and directors.

(b) Prior to the Effective Time, the Company shall purchase an extended reporting period endorsement under the Company's existing directors' and officers' liability insurance coverage for the Company's directors and officers in a form acceptable to the Company that shall provide such directors and officers with coverage for six (6) years following the Effective Time of not less than the existing coverage and have other terms not materially less favorable to, the insured persons than the directors' and officers' liability insurance coverage presently maintained by the Company (the "**D&O Tail Policy**"). Parent shall, and shall cause the Surviving Corporation to, maintain such policy in full force and effect, and continue to honor the obligations thereunder.

(c) The obligations under this **Section 5.12** shall not be terminated or modified in such a manner as to adversely affect any Company Indemnitee to whom this **Section 5.12** applies without the consent of such affected Company Indemnitee (it being expressly agreed that the Company Indemnitees to whom this **Section 5.12** applies shall be third party beneficiaries of this **Section 5.12** and shall be entitled to enforce the covenants contained herein).

#### **5.13 Tax Matters.**

(a) **Subchapter S Status.** Neither the Company, any Company Subsidiary nor any Stockholder has taken or will take, or has omitted or will omit to take, any action, or knows of any fact or circumstances, which action, omission, fact or circumstance could result at any time prior to the Effective Time in the loss by the Company or any Company Subsidiary of its

status as an S corporation or a qualified subchapter S subsidiary for Federal income tax purposes or in the states listed on **Section 2.11(b)(xv)** of the Disclosure Schedule, as applicable, within the meaning of the Code (or any comparable state law of those jurisdictions listed on **Section 2.11(b)(xv)** of the Disclosure Schedule). The Company has elected or will elect to be taxed as an S corporation, and each Company Subsidiary has elected or will elect to be treated as a qualified subchapter S subsidiary (or the Company has elected or will elect such status with respect to such Company Subsidiary) for state Tax law purposes in any and all states in which such elections are available and Parent and the Company have jointly agreed that the Company has income tax nexus in such state. Any disputes with respect to the matters set forth in the preceding sentence shall be resolved by the Independent Accounting Firm at least ten (10) days prior to the Closing Date. The costs of the Independent Accounting Firm shall be shared equally between Parent, on the one hand, and the Stockholders, on the other hand. The determination of the Independent Accounting Firm with respect to the disputed items shall be conclusive and binding on Parent and the Stockholders. Subject to the provisions regarding indemnification set forth in **ARTICLE VII** to the extent not expressly inconsistent with this **Section 5.13** and limited to the amounts held in the Escrow Fund, the Escrow Participants shall hold Parent, the Company and each Company Subsidiary harmless against any Losses, including the loss of any Tax benefit that would have been generated, utilized or recognized in any taxable period ending after the Closing Date as a result of the Section 338(h)(10) Election (as defined below), resulting from the failure of the Company or any Company Subsidiary to qualify as an S corporation or a qualified subchapter S subsidiary, as applicable, within the meaning of the Code (or any comparable state law) at all times through the Effective Time.

**(b) Section 338(h)(10) Election.**

(i) The Stockholders and Parent shall make a timely, irrevocable and effective election under Section 338(h)(10) of the Code and any similar election under any applicable state, local or foreign income Tax law (collectively, the "**Section 338(h)(10) Election**") with respect to Parent's purchase of the Company Common Stock pursuant to the Merger.

(ii) To facilitate the Section 338(h)(10) Election, Parent shall deliver to the Stockholders promptly following the date of this Agreement and at least ten (10) days prior to the Closing Date, copies of Internal Revenue Service Form 8023 and any similar forms under applicable state, local and foreign income Tax law (collectively, the "**Forms**") properly completed to the extent pertaining to Parent and the transactions contemplated by this Agreement. The Forms shall be properly completed by the Stockholders to the extent pertaining to the Stockholders and duly executed by each Stockholder and an authorized person for Parent at the Closing. Parent shall duly and timely file the Forms as prescribed by Treasury Regulations Section 1.338(h)(10)-1 or the corresponding provisions of applicable state, local or foreign income Tax law.

(iii) As soon as practicable after the Closing Date and in any event within 90 days following the Closing Date, Parent and the Stockholder Representative shall jointly complete Internal Revenue Service Form 8883. Such Form 8883 shall include the calculation and proposed allocation of the "aggregate deemed sales price" and shall be prepared in a manner consistent with the requirements of Section 338 and the Treasury Regulations promulgated

thereunder. Parent and the Stockholder Representative shall negotiate in good faith with respect to completion of such Internal Revenue Service Form 8883 and attempt to resolve any differences between the parties. If Parent and the Stockholder Representative are unable to reach agreement with respect to such Form 8883 within 150 days following the Closing Date, any disputed items shall be referred for timely resolution by the Independent Accounting Firm. The costs of the Independent Accounting Firm shall be shared equally between Parent, on the one hand, and the Stockholders, on the other hand, from the Stockholder Representative Fund. The determination of the Independent Accounting Firm with respect to the disputed items shall be conclusive and binding on Parent and the Stockholders. The Form 8883, including all information that has been agreed to or finally determined by the Independent Accounting Firm pursuant to this **Section 5.13(b)(iii)**, shall be referred to as the "Final Allocation." Each of Parent, the Company and the Stockholders shall prepare and timely file all Returns consistent with, and shall not take any Tax position inconsistent with, the Final Allocation.

**(c) Responsibility for Taxes and Tax Returns.**

(i) The Company shall prepare, or cause to be prepared, and shall timely file or cause to be timely filed, all Returns for the Company and/or any Company Subsidiary required to be filed on or after the date hereof and on or prior to the Closing Date, and shall timely pay all Taxes reflected on such Returns. The Stockholder Representative shall prepare, or cause to be prepared, and shall timely file or cause to be timely filed, all income tax Returns for the Company and/or any Company Subsidiary for all Tax periods ending on or prior to the Closing Date (each a "**Final Income Tax Return**"), whether required to be filed prior to, on or after the Closing Date, and in accordance with **Section 5.13(c)(ii)**, shall timely pay, or cause the timely payment of, all Taxes reflected on such Returns. Such Returns shall be prepared in accordance with applicable law and consistent with past practices. The Company or the Stockholder Representative, as applicable, shall permit Parent to review each such Return during a reasonable period prior to filing and shall consider in good faith Parent's reasonable comments. Except as set forth in this **Section 5.13(c)(i)**, Parent shall prepare and file, or cause to be prepared and filed, all Returns for the Company and/or any Company Subsidiary required to be filed after the Closing Date. However, to the extent such Returns include a Straddle Period, Parent shall permit the Stockholder Representative to review each such Return during a reasonable period prior to filing and shall consider in good faith the Stockholder Representative's reasonable comments. Any disputed items with respect to the preparation of Returns shall be referred for timely resolution by the Independent Accounting Firm. The costs of the Independent Accounting Firm shall be shared equally between Parent, on the one hand, and the Stockholders, on the other hand. The determination of the Independent Accounting Firm with respect to the disputed items shall be conclusive and binding on Parent and the Stockholders. If a Return is required by applicable Law to be filed or a payment made before the Independent Accounting Firm has resolved the disputed items (taking into account valid extensions of time within which to file, which shall be obtained to the extent necessary to permit the resolution of disputed items), the Return shall be filed or payment made as determined by the party responsible for the preparation of such Return pursuant to this Agreement, and shall be amended if necessary to reflect the determination of the Independent Accounting Firm with respect to the disputed items.

(ii) Notwithstanding anything to the contrary in this Agreement, the Stockholders shall be solely responsible for and in accordance with this **Section 5.13(c)(ii)**, shall timely pay, or cause the timely payment of, any and all Taxes, whether under applicable U.S. federal, state, local or non-U.S. law, imposed on the Company or any Company Subsidiary as a result of the transactions contemplated by this Agreement, including Taxes resulting from the Section 338(h)(10) Election (the “**Section 338(h)(10) Taxes**”), and including any sales, use, transfer, value added, stamp, stock transfer, documentary, recordation or similar Taxes and fees (collectively with the Section 338(h)(10) Taxes, the “**Transaction Taxes**”). Parent and the Company will cooperate in good faith to mutually agree prior to Closing on an estimate of the aggregate amount (without duplication) of any Taxes required to be reflected on any Final Income Tax Return and any Transaction Taxes (such estimate, the “**Closing Tax Amount**”). The Closing Tax Amount shall be deposited with the Escrow Agent in an escrow fund separate and apart from the Escrow Fund and the Sales Tax Escrow Fund (the “**Closing Tax Escrow Fund**”), and shall be disbursed as directed by Parent and the Stockholder Representative for the payment (without duplication) of any Taxes required to be reflected on any Final Income Tax Return and any Transaction Taxes, in each case promptly after the actual amount of such Taxes or Transaction Taxes is determined in connection with the filing of the relevant Tax Return in accordance with **Section 5.13(c)(i)** hereof. To the fullest extent possible, such disbursement shall be made directly to the appropriate taxing authority, and otherwise to the party required by law to pay (without duplication) such Taxes or Transaction Taxes. Any amounts remaining in the Closing Tax Escrow Fund after the payment (without duplication) of all such Taxes and Transaction Taxes shall be delivered and paid over (as reduced by all applicable income and employment tax withholdings) in the form of immediately available funds to the Stockholder Representative for the benefit of the Escrow Participants within four (4) Business Days after the last of such payments. To the extent that the amounts in the Closing Tax Escrow Fund are insufficient to fully pay (without duplication) all such Taxes and Transaction Taxes, additional amounts shall be disbursed as directed by Parent and the Stockholder Representative from the Escrow Fund. Any disputes regarding the Closing Tax Amount or the amount of any disbursement from the Closing Tax Escrow Fund or the Escrow Fund pursuant to this **Section 5.13(c)(ii)** shall be resolved by the Independent Accounting Firm in accordance in all material respects with the terms and conditions of **Section 1.7(b)(iii)(B)**. If a Return is required by applicable Law to be filed or a payment made before the Independent Accounting Firm has resolved the disputed items (taking into account valid extensions of time within which to file, which shall be obtained to the extent necessary to permit the resolution of disputed items), the Return shall be filed or payment made as determined by the party responsible for the preparation of such Return pursuant to this Agreement, and shall be amended if necessary to reflect the determination of the Independent Accounting Firm with respect to the disputed items. For the avoidance of doubt, the Stockholders shall be solely responsible for any Taxes of the Stockholders for any Tax period or portion thereof.

(iii) None of Parent, the Company, the Surviving Corporation or any of their Subsidiaries shall file any new Returns or amend any previously filed Returns of the Company or any Company Subsidiary for any Pre-Closing Tax Period without the prior written consent of the Stockholder Representative, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Parent, the Company, the Surviving Corporation and any of their Subsidiaries may amend any such Returns (x) in accordance with the last sentence of

**Section 5.13(c)(i)** or (y) except as set forth in **Section 5.13(c)(iv)** below, with respect to sales, use, value added, goods and services, transfer and other similar Taxes of the Company or any of its Subsidiaries relating or attributable to any Pre-Closing Tax Period (the “**Pre-Closing Sales Taxes**”) as necessary in Parent’s reasonable judgment to comply with applicable Law.

(iv) Notwithstanding any other provision of this Agreement, the parties acknowledge and agree that prior to the Effective Time, the Company shall (subject to the Parent’s joint control rights), undertake to resolve any liability with respect to Pre-Closing Sales Taxes in the states set forth on **Schedule 5.13(c)(iv)** (the “**VDA States**”), by making voluntary disclosures to the appropriate taxing authorities and filing amended Returns. The Company (and following the Effective Time, the Stockholder Representative) and Parent, shall jointly control any and all actions with respect to such Pre-Closing Sales Taxes in the VDA States, including the selection of outside advisors, the preparation or presentation of any oral or written communication or submission, the filing of any closing or settlement agreement or amended Return, with any dispute over the foregoing resolved by the Independent Accounting Firm. All out-of-pocket costs and expenses of undertaking such actions, including reasonable accounting and auditors’ fees and expenses of the Company and Parent, shall constitute Losses for purposes of this Agreement and shall be paid first from the Sales Tax Escrow Fund and then from the Escrow Fund in accordance with **Section 7.4(b)** hereof.

(v) Parent and the Stockholder Representative shall cooperate, as and to the extent reasonably requested by the other party, in connection with the filing of any Returns with respect to the Company, any Company Subsidiary or their respective operations, and any audit, litigation or other proceeding with respect to Taxes of or attributable to the Company, any Company Subsidiary or their respective operations. Such cooperation shall include taking all commercially reasonable and legally permissible actions to minimize the amount of any applicable Tax, including by obtaining and providing appropriate forms, and the retention and provision of records and information that are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any materials provided hereunder,

(d) **Refunds and Credits.** Except to the extent included as an asset in the calculation of Actual Closing Net Working Capital, any Tax refunds or credits for overpayment that are actually received in cash, or actually reduce the cash Taxes required to be paid, by Parent, the Company, or the Surviving Corporation or any of their Subsidiaries that relate to any Pre-Closing Tax Period or portions of a Straddle Period ending on the Closing Date, using the conventions of **Section 2.11(b)(v)**, shall be for the account of the Stockholders, and Parent will, and will cause the Surviving Corporation or any of their affiliates to, deliver and pay over, in the form of immediately available funds, to the Stockholder Representative for the benefit of the Stockholders any such refund or the amount of any such credit within four (4) Business Days after receipt. For purposes of this **Section 5.13(d)**, the parties agree that to the extent permitted by Law, any Transaction Deductions shall be reported on the Final Income Tax Returns of the Company. All other refunds and credits shall be for the account of the Surviving Corporation, Parent or their respective Subsidiaries, as applicable. “Transaction Deductions” shall mean the sum of all items of deduction,

credits or loss attributable to (A) any payment of Option Merger Consideration, (B) the repayment of any Company Debt at Closing or as contemplated by this Agreement, (C) any bonuses paid by the Company or Company Subsidiaries on the Closing Date and paid in connection with the transactions contemplated by this Agreement, (D) payments in respect of any restricted shares of the Company at the Closing, or as contemplated by this Agreement, and (E) payments in respect of the Third Party Expenses of the Company as contemplated by this Agreement, but only to the extent the items in clauses (A) through (E) are deductible for U.S. federal income tax purposes.

**(e) Post-Closing Audits and Other Proceedings.**

(i) If notice of any audit, examination, or other administrative or judicial proceeding, contest, assessment, notice of deficiency, or other adjustment or proposed adjustment relating to Taxes or any Return of the Company or any Company Subsidiary (a "**Tax Contest**") shall be received by any party for which another party would or could be liable, the notified party shall notify such other party in writing of such Tax Contest.

(ii) In the case of any Tax Contest concerning Taxes (other than Pre-Closing Sales Taxes) that are a direct or indirect liability of the Stockholders, the Stockholder Representative shall have the right, at his own expense and using the counsel and representatives of his choice, to represent the interests of the Company and/or any Company Subsidiary in such Tax Contest and control the conduct and resolution of such Tax Contest; *provided* that Parent shall have the right to participate at its own expense in any proceeding, or portion thereof, relating to the Company or any Company Subsidiary that the Stockholder Representative controls; and *provided further* that the Stockholder Representative shall not settle or compromise any such Tax Contest in a manner that reasonably would be expected to adversely affect Parent, the Company, or the Surviving Corporation or any of their Subsidiaries in any Tax period or portion thereof beginning after the Closing Date without Parent's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Parent and the Company shall execute appropriate powers of attorney so as to allow the Stockholder Representative to control any such Tax Contest as described above.

(f) **Purchase Price Adjustment.** All amounts paid with respect to indemnity claims under this Agreement shall be treated by the parties hereto for all purposes as an adjustment to the Final Adjusted Net Merger Consideration unless otherwise required by Law.

(g) **Survival; Conflicts.** Notwithstanding anything to the contrary in this Agreement, the obligations set forth in this **Section 5.13** (and any claim for breach thereof) shall terminate on the Extended Survival Date, with the exception of the obligations set forth in **Sections 5.13(c)(v)** and **5.13(e)** which shall remain in force until the close of business on the thirtieth (30th) day following the expiration of the applicable statute of limitations with respect to the Tax Liabilities in question (giving effect to any waiver, mitigation or extension thereof). To the extent of any conflict between this Section 5.13 and any other provision of this Agreement, this Section 5.13 shall govern; *provided, however*, that the obligations set forth in this Section 5.13 shall be subject to the

provisions regarding indemnification set forth in **ARTICLE VII** hereof to the extent not expressly inconsistent with this **Section 5.13**.

## ARTICLE VI

### CONDITIONS TO THE MERGER

6.1 **Conditions to Obligations of Each Party to Effect the Merger.** The respective obligations of the Company and Parent to effect the Merger shall be subject to the satisfaction, at or prior to the Effective Time, of the following conditions:

(a) **No Order.** No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, injunction or other order (whether temporary, preliminary or permanent) which is in effect and which has the effect of making the Merger illegal or otherwise prohibiting consummation of the Merger.

(b) **No Injunctions or Restraints; Illegality.** No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger shall be in effect, nor shall any proceeding brought by an administrative agency or commission or other Governmental Entity or instrumentality, domestic or foreign, seeking any of the foregoing be threatened or pending.

(c) **Stockholder Approval.** Stockholders constituting the Sufficient Stockholder Vote shall have approved this Agreement.

6.2 **Conditions to the Obligations of Parent and Sub.** The obligations of Parent and Sub to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, by Parent and Sub:

(a) **Representations, Warranties and Covenants.** (i) The representations and warranties of the Company in this Agreement (disregarding, for this purpose, all exceptions in those representations and warranties relating to materiality, Company Material Adverse Effect or any similar standard or qualification) shall be true and correct on and as of the date of this Agreement and as of the Effective Time as though made on and as of the Effective Time (except to the extent expressly made as of a specified date, in which case as of such date), except where such failure to be so true and correct would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, and (ii) the Company shall have performed and complied in all material respects with all covenants and obligations under this Agreement required to be performed and complied with by it as of the Closing.

(b) **Governmental Approval.** Approvals from any Governmental Entity, instrumentality, agency, or commission (if any) necessary for the consummation of the Merger and the other transactions contemplated hereby shall have been timely obtained.

(c) **Company Board Approval.** This Agreement, the Merger and the transactions contemplated hereby shall have been unanimously approved by the Board of Directors of the Company, which unanimous approval shall not have been modified or revoked.

(d) **Third Party Consents.** The Company shall have delivered to Parent all necessary consents, waivers and approvals of parties to any Material Contract that are listed on **Schedule 6.2(d)** to this Agreement, each in such form and substance that is reasonably acceptable to Parent.

(e) **No Material Adverse Effect.** Since the date of this Agreement, there shall not have occurred any event or condition of any character that has had, or is reasonably likely to have, a Company Material Adverse Effect.

(f) **Resignation of Officers and Directors.** Parent shall have received a written resignation from each of the officers and directors of the Company effective as of the Effective Time.

(g) **Legal Opinion.** Parent shall have received a legal opinion from legal counsel to the Company, substantially in the form attached hereto as **Exhibit E**.

(h) **Appraisal Rights.** The holders of no greater than five percent (5%) of the outstanding Company Common Stock shall continue to have a right to exercise appraisal, dissenters' or similar rights under applicable law with respect to such equity securities of the Company by virtue of the Merger, or the Company shall have provided to Parent other reasonable evidence of the waiver or extinguishment of such rights.

(i) **Certificate of the Company.** The Company shall deliver to Parent a true and correct certificate, validly executed by the Chief Executive Officer of the Company for and on the Company's behalf, which represents that the conditions to the obligations of Parent and Sub set forth in **Section 6.2(a)** and **6.2(e)** have been satisfied in full (unless otherwise waived in accordance with the terms hereof).

(j) **Certificate of Secretary of Company.** Parent shall have received a certificate, validly executed by the Secretary of the Company, certifying (i) as to the terms and effectiveness of the Charter Documents, (ii) as to the valid adoption of resolutions of the Board of Directors of the Company (whereby this Agreement was approved by the Board of Directors) and (iii) that the Stockholders constituting the Sufficient Stockholder Vote have approved this Agreement.

(k) **Certificates of Good Standing.** Parent shall have received (i) a long form certificate of good standing from the Secretary of State of the State of Delaware, and (ii) a good

standing certificate from each jurisdiction in which the Company is qualified to do business, each of which to be dated within a reasonable period prior to Closing with respect to the Company.

(l) **Stockholder Forms 8023.** Parent shall have received the Forms, properly completed and duly executed by each Stockholder.

(m) **FIRPTA Certificate.** Parent shall have received a copy of a properly executed statement in a form reasonably acceptable to Parent for purposes of satisfying Parent's obligations under Treasury Regulation Section 1.1445-2(c)(3), validly executed by a duly authorized officer of the Company.

(n) **S-Corporation Elections.** The Company shall have elected in accordance with **Section 5.13(a)** to be taxed as an S corporation, and each Company Subsidiary shall have elected to be treated as a qualified subchapter S subsidiary (or the Company shall have elected such status with respect to such Company Subsidiary) for state Tax law purposes in any and all states in which such elections are available and Parent and the Company have jointly agreed under **Section 5.13** that the Company has income tax nexus in such state.

(o) **Termination of 401(k) Plan.** If so requested in writing by Parent, Parent shall have received from the Company evidence reasonably satisfactory to Parent that all 401(k) Plans have been terminated pursuant to resolution of the Board of Directors of the Company or the ERISA Affiliate, as the case may be, (the form and substance of which shall have been subject to review and approval of Parent), effective as of no later than the day immediately preceding the Closing Date.

(p) **Litigation.** There shall be no material action, suit, claim, order, injunction or proceeding of any nature pending, or overtly threatened, against Parent or the Company, their respective properties or any of their respective officers or directors arising out of, or in any way connected with, the Merger or the other transactions contemplated by the terms of this Agreement.

(q) **Annualized Contract Value.** Parent shall have received evidence from the Company of annualized contract value as of September 30, 2009 of \$33,600,000 and as of October 31, 2009 of \$34,200,000 as measured on an internal management basis.

(r) **Stockholder Non-Competition Agreements.** The Stockholder listed on **Schedule 6.2(r)(1)** to this Agreement (the "**Controlling Stockholder**") shall have entered into a non-competition agreement with Parent in substantially the form attached hereto as **Exhibit F-1** (the "**Controlling Stockholder Non-Competition Agreement**") and such agreement shall be in full force and effect as of the Effective Time. Each of the Stockholders listed on **Schedule 6.2(r)(2)** to this Agreement (the "**Key Stockholders**") shall have entered into a non-competition agreement with Parent in substantially the form attached hereto as **Exhibit F-2** (the "**Key Stockholder Non-Competition Agreement**") and such agreements shall be in full force and effect as of the Effective Time.

(s) **Employees.** The persons listed on **Schedule 6.2(s)(1)** to this Agreement (the "**Key Employees**") (i) shall have signed an Offer Letter accepting "at-will" employment (or an

independent contractor relationship, as applicable) with Parent or the Surviving Corporation and Parent's standard form of Agreement Concerning Terms and Conditions of Employment on or prior to the Effective Time and such agreements shall be in full force and effect as of the Effective Time, (ii) shall still be employees of the Company and performing their usual and customary duties for the Company immediately before the Effective Time, and (iii) shall not have formally notified Parent or the Company of such employee's intention of leaving the employ of Parent or the Surviving Corporation following the Effective Time. At least the specified percentage of the Employees of the Company listed on **Schedule 6.2(s)(2)** to this Agreement (the "**Tier 1 Employees**") (i) shall have signed an Offer Letter accepting "at-will" employment (or an independent contractor relationship, as applicable) with Parent or the Surviving Corporation and Parent's standard form of Agreement Concerning Terms and Conditions of Employment on or prior to the Effective Time and such agreements shall be in full force and effect as of the Effective Time, (ii) shall still be employees of the Company and performing their usual and customary duties for the Company immediately before the Effective Time, and (iii) shall not have formally notified Parent or the Company of such employee's intention of leaving the employ of Parent or the Surviving Corporation following the Effective Time. At least the specified percentage of the Employees of the Company listed on **Schedule 6.2(s)(3)** to this Agreement (the "**Tier 2 Employees**") (i) shall have signed an Offer Letter accepting "at-will" employment (or an independent contractor relationship, as applicable) with Parent or the Surviving Corporation and Parent's standard form of Agreement Concerning Terms and Conditions of Employment on or prior to the Effective Time and such agreements shall be in full force and effect as of the Effective Time, (ii) shall still be employees of the Company and performing their usual and customary duties for the Company immediately before the Effective Time, and (iii) shall not have formally notified Parent or the Company of such employee's intention of leaving the employ of Parent or the Surviving Corporation following the Effective Time. At least the specified percentage of the Employees of the Company listed on **Schedule 6.2(s)(4)** to this Agreement (the "**Tier 3 Employees**") (i) shall have signed an Offer Letter accepting "at-will" employment (or an independent contractor relationship, as applicable) with Parent or the Surviving Corporation and Parent's standard form of Agreement Concerning Terms and Conditions of Employment on or prior to the Effective Time and such agreements shall be in full force and effect as of the Effective Time, (ii) shall still be employees of the Company and performing their usual and customary duties for the Company immediately before the Effective Time, and (iii) shall not have formally notified Parent or the Company of such employee's intention of leaving the employ of Parent or the Surviving Corporation following the Effective Time.

**6.3 Conditions to Obligations of the Company.** The obligations of the Company and each of the Stockholders to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by the Company:

(a) **Representations, Warranties and Covenants.** (i) The representations and warranties of Parent and Sub in this Agreement (disregarding for this purpose all exceptions in those representations and warranties relating to materiality or Parent Material Adverse Effect or any similar standard or qualification) shall be true and correct on and as of the date of this Agreement and as of the Effective Time as though made on and as of the Effective Time (except to the extent

expressly made as of a specified date, in which case as of such date), except where such failure to be so true and correct would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, and (ii) each of Parent and Sub shall have performed and complied in all material respects with all covenants and obligations under this Agreement required to be performed and complied with by such parties as of the Closing.

(b) **Certificate of Parent.** Company shall have received a certificate, validly executed on behalf of Parent by a Vice President for and on its behalf to the effect that, as of the Closing the conditions set forth in **Section 6.3** hereof have been satisfied.

## ARTICLE VII

### SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 **Survival of Representations, Warranties and Covenants.** The representations and warranties of the Company contained in this Agreement, or in any certificate or other instruments delivered pursuant to this Agreement, shall terminate on the one (1) year anniversary of the Closing Date (the expiration of such one-year period, the “**Survival Date**”), *provided, however*, that the representations and warranties of the Company contained in **Sections 2.2** and **2.11** hereof shall terminate on the second anniversary of the Closing Date (the “**Extended Survival Date**”); *provided further, however*, that if, at any time prior to 11:59 p.m. (ET) on the Survival Date or the Extended Survival Date, as applicable, an Officer’s Certificate (as defined in **Section 7.4(b)**) is delivered alleging Losses and a claim for recovery under **Section 7.4(b)**, then the claim asserted in such notice shall survive the Survival Date or the Extended Survival Date, as applicable, until such claim is fully and finally resolved. The representations and warranties of Parent and the Sub contained in this Agreement, or in any certificate or other instrument delivered pursuant to this Agreement, shall terminate at the Closing; *provided, however*, that the representations and warranties of Parent and the Sub contained in **Section 3.2** hereof shall terminate on the Survival Date. Notwithstanding anything to the contrary herein, the Stockholder Representative shall have the right to pursue on behalf of the Escrow Participants any remedy available at law or in equity for a breach of any covenant of Parent or the Sub set forth in this Agreement.

7.2 **Indemnification.** The Escrow Participants shall, severally and not jointly, indemnify and hold Parent and its officers, directors, and affiliates, including the Surviving Corporation (the “**Indemnified Parties**”), harmless against all claims, losses, liabilities, damages, Taxes, deficiencies, costs and expenses, including reasonable accounting and auditors’ fees, attorneys’ fees and expenses of investigation and defense but excluding consequential, exemplary and punitive damages and any multiple of damages (unless Parent has paid, or is obligated to pay, such damages in connection with a Third Party Claim) (hereinafter individually a “**Loss**” and collectively “**Losses**”) incurred or sustained by the Indemnified Parties, or any of them (including the Surviving Corporation), directly or indirectly, as a result of, or with respect to or in connection with (a) any breach or inaccuracy of any representation or warranty of the Company contained in this Agreement or in any certificate delivered by or on behalf of the Company pursuant to this Agreement, (b) any failure by the Company or the Escrow Participants to perform, fulfill or comply with any covenant or obligation

applicable to it contained in this Agreement, (c) any Excess Third Party Expenses, (d) any Dissenting Share Payments, (e) any and all Company Debt, to the extent such Company Debt exceeds the amount of Company Debt used to calculate the Final Adjusted Net Merger Consideration (“**Excess Company Debt**”), or (f) any Shortfall Amount. The Escrow Participants shall not have any right of contribution from the Surviving Corporation or Parent with respect to any Loss claimed by an Indemnified Party under this **Section 7.2**.

### **7.3 Escrow Arrangements.**

(a) **Escrow Fund.** Promptly after the Effective Time, Parent shall deposit with the Escrow Agent the Escrow Amount and the Sales Tax Escrow Amount out of the Merger Consideration pursuant to **Section 1.6** hereof and shall confirm such deposit with the Escrow Agent. Such deposit of each of the Escrow Amount and the Sales Tax Escrow Amount shall constitute an escrow fund (respectively, the “**Escrow Fund**” and the “**Sales Tax Escrow Fund**”) to be governed by the terms set forth herein. The cash comprising the Escrow Fund and the Sales Tax Escrow Fund shall be deposited by Parent with respect to each Escrow Participant without any act by them, in accordance with their respective Pro Rata Portions of the Escrow Amount and the Sales Tax Escrow Amount. The Escrow Fund shall be security for the indemnity obligations provided for in **Section 7.2** hereof. The Escrow Fund shall be available to compensate the Indemnified Parties for any claims by such parties for any Losses suffered or incurred by them and for which they are entitled to recovery under this **ARTICLE VII**. The Sales Tax Escrow Fund shall be additional security and available to compensate the Indemnified Parties for any claim by such parties for any Losses suffered or incurred by them and for which they are entitled to recovery under this **ARTICLE VII** solely with respect to any Pre-Closing Sales Taxes in the VDA States. Interests in the Escrow Fund and the Sales Tax Escrow Fund shall be non-transferable. On or before the Closing Date, the Company shall provide Parent with the maximum potential amounts payable to the Escrow Participants from the Escrow Fund, the Closing Tax Escrow Fund and the Sales Tax Escrow Fund.

(b) **Stockholder Representative Fund.** Promptly after the Effective Time, Parent shall deposit with the Escrow Agent the Stockholder Representative Amount (less all applicable income and employment Tax withholdings) out of the Merger Consideration pursuant to **Section 1.6** hereof and shall confirm such deposit with the Escrow Agent. Such deposit of the Stockholder Representative Amount (less all applicable income and employment Tax withholdings) shall constitute an escrow fund (the “**Stockholder Representative Fund**”) to be governed by the terms set forth herein. The cash comprising the Stockholder Representative Fund shall be deposited by Parent for the Escrow Participants, who shall thereupon, without any act by them, be treated as having received from Parent under **Section 1.6** hereof such cash (less all applicable income and employment Tax withholdings) in accordance with their respective Pro Rata Portions of the Stockholder Representative Amount and then as having deposited such cash (less all applicable income and employment Tax withholdings) into the Stockholder Representative Fund. The Stockholder Representative Fund shall be held in an account to reimburse the Stockholder Representative for out-of-pocket fees and expenses and to pay other obligations to or of the Stockholder Representative in connection with **Section 7.4(g)** and **Section 7.5** hereof, or shall (to the extent not previously distributed to the Stockholder Representative as provided for or subject to a

claim by the Stockholder Representative) be distributed to the Escrow Participants at such time, and in such manner, as the Stockholder Representative directs, consistent with the last sentence of **Section 7.3(e)(ii)** hereof. Interests in the Stockholder Representative Fund shall be non-transferable.

(c) **Escrow Period; Distribution upon Termination of Escrow Period.** Subject to the following requirements, the Escrow Fund shall be in existence immediately following the Effective Time and shall automatically terminate at 11:59 p.m. (ET) on the Extended Survival Date (the “**Escrow Period**”). Subject to the following requirements, the Sales Tax Escrow Fund shall be in existence immediately following the Effective Time and shall automatically terminate at 11:59 p.m. (ET) on the earlier of (x) the latest date on which final and binding written closing agreements have been entered into with the Tax authorities in the VDA States with respect to Pre-Closing Sales Taxes and all payments pursuant to such agreements have been rendered (the “**VDA Date**”) and (y) the Extended Survival Date (the “**Sales Tax Escrow Period**”). Promptly following the Survival Date (and in any event within two (2) Business Days thereafter), the Escrow Agent shall distribute to the Escrow Participants in accordance with their respective Pro Rata Portions, an aggregate amount equal to (i) fifty percent (50%) of the Escrow Amount minus (ii) the sum of (A) any amounts paid by the Escrow Agent to Parent from the Escrow Fund on or prior to the Survival Date pursuant to this **Section 7.3** and (B) an amount sufficient to cover all outstanding and unpaid indemnification claims that are subject to Officer’s Certificates (as defined in **Section 7.4(b)**) delivered to the Escrow Agent and the Stockholder Representative in accordance with the terms hereof on or before 11:59 p.m. (ET) on the Survival Date (whether disputed or undisputed). Promptly following the Extended Survival Date (and in any event within two (2) Business Days thereafter), the Escrow Agent shall distribute any amounts remaining in the Escrow Fund to the Escrow Participants in accordance with their respective Pro Rata Portions; *provided, however*, that the Escrow Period shall not terminate (and the Escrow Agent shall not make a distribution) with respect to any amount which, in the reasonable judgment of Parent, is or may be necessary to satisfy any unsatisfied claims specified in any Officer’s Certificate delivered to the Escrow Agent and the Stockholder Representative prior to 11:59 p.m. (ET) on the Extended Survival Date. Promptly following the earlier of the VDA Date and the Extended Survival Date (and in any event within two (2) Business Days thereafter), the Escrow Agent shall distribute any amounts remaining in the Sales Tax Escrow Fund to the Escrow Participants in accordance with their respective Pro Rata Portions; *provided, however*, that the Sales Tax Escrow Period shall not terminate (and the Escrow Agent shall not make a distribution) with respect to any amount which, in the reasonable judgment of Parent, is or may be necessary to satisfy any unsatisfied claims specified in any Officer’s Certificate delivered to the Escrow Agent and the Stockholder Representative prior to 11:59 p.m. (ET) on the Extended Survival Date if such Extended Survival Date occurs prior to the VDA Date. Within two (2) Business Days following the resolution of such claims in accordance with **Section 7.4(d)**, the Escrow Agent shall deliver the remaining portion of the Escrow Fund and the Sales Tax Escrow Fund not required to satisfy such claims to the Escrow Participants. Deliveries of amounts out of the Escrow Fund and the Sales Tax Escrow Fund to the Escrow Participants pursuant to this **Section 7.3(c)** shall be made in proportion to their respective Pro Rata Portions of the remaining Escrow Fund or Sales Tax Escrow Fund, as applicable, with the amount of cash delivered to each Escrow Participant rounded down to the nearest cent. Any distribution of all or a portion of the cash in the Escrow Fund or the Sales Tax Escrow Fund, as applicable, to the Escrow Participants shall be made by delivery of payment by

check to each such Escrow Participant equal to the amount of cash being distributed, allocated among the Escrow Participants based on their Pro Rata Portion of the Escrow Amount or the Sales Tax Escrow Amount, as applicable, and mailed by first class mail to such Escrow Participants' address as set forth on the schedule delivered to the Escrow Agent at Closing (or to such other address as any such Escrow Participant may have previously instructed the Escrow Agent in writing). The Escrow Participants agree that, for tax reporting purposes, any distribution from the Escrow Fund or the Sales Tax Escrow Fund, as applicable, to the Stockholders shall be reportable on Internal Revenue Service Form 1099B for the tax year in which the distribution is made, except to the extent required to be treated as interest pursuant to Section 483 or Section 1274 of the Code. Parent will provide Escrow Agent with the necessary information to perform tax reporting to the Stockholders. Any distribution of all or a portion of the cash in the Escrow Fund and the Sales Tax Escrow Fund, as applicable, to Escrow Participants who are Optionholders on the schedule delivered to the Escrow Agent at Closing shall be made by remitting such payment to Parent, and Parent shall pay such amounts on the first administratively practicable payroll date to the respective Optionholders less any required federal and state withholding taxes, which Parent shall cause to be paid to the applicable taxing authorities and which shall be treated for all other purposes under this Agreement as distributed to the Optionholders. The Escrow Agent shall have no liability for the actions or omissions of, or any delay on the part of, the Parent in connection with the foregoing.

(d) **Release of the Stockholder Representative Fund.** The Escrow Agent shall not distribute the Stockholder Representative Fund (or any portion thereof) to any Escrow Participant except in accordance with this **Section 7.3(d)**. The Escrow Agent shall disburse the Stockholder Representative Fund only in accordance with a written instrument delivered to the Escrow Agent that is executed by the Stockholder Representative and that instructs the Escrow Agent as to the disbursement of some or all of the Stockholder Representative Fund. Upon receipt by the Escrow Agent of a written instrument that is executed by the Stockholder Representative and that instructs the Escrow Agent as to the disbursement of some or all of the Stockholder Representative Fund, the Escrow Agent shall within two (2) Business Days of such instruction, disburse to the Stockholder Representative the amount so instructed in such written instrument whereupon the then current Stockholder Representative Fund balance shall be reduced by such amount and distributed to the Escrow Participants in accordance with their respective Pro Rata Portions of the remaining Stockholder Representative Fund.

(e) **Protection of the Escrow Funds and the Stockholder Representative Fund.**

(i) The Escrow Agent shall hold and safeguard the Escrow Fund, the Sales Tax Escrow Fund and the Stockholder Representative Fund during the Escrow Period and the Sales Tax Escrow Period and shall hold and dispose of the Escrow Fund, the Sales Tax Escrow Fund and the Stockholder Representative Fund only in accordance with the terms of this **Section 7.3(e)**.

(ii) The Escrow Fund and the Sales Tax Escrow Fund shall be invested in the Escrow Agent's Money Market Insured Savings Account (the "**Money Market Account**") and as described in **Exhibit G** hereto, and any interest paid on such cash shall be added to the Escrow Fund or the Sales Tax Escrow Fund, as applicable, and shall be a part thereof. The Escrow Agent

shall have no liability for any investment losses suffered absent gross negligence or willful misconduct. The parties hereto agree that Parent is the owner of the cash in the Closing Tax Escrow Fund, the Sales Tax Escrow Fund and the Escrow Fund unless and until distributed to the Escrow Participants in accordance with **Section 5.13(c)(ii)** and **ARTICLE VII** hereof, and that all interest on or other taxable income, if any, earned from the investment of the cash in the Escrow Fund and the Sales Tax Escrow Fund pursuant to this Agreement shall be treated for tax purposes as earned by Parent; *provided* that all interest or other income, if any, earned on such cash that remains in the Escrow Fund and the Sales Tax Escrow Fund on the final distribution date shall be distributed to the Escrow Participants in accordance with their respective Pro Rata Portions. The Closing Tax Escrow Fund and the Stockholder Representative Fund shall not be invested, shall remain uninvested for the duration of the Escrow Periods, and shall earn no interest or other income. The parties hereto agree that the Escrow Participants are the owners of the cash in the Stockholder Representative Fund in accordance with their respective Pro Rata Portions of the Stockholder Representative Amount, except that, solely for this purpose, the Pro Rata Portion of each Optionholder shall be reduced by all applicable income and employment Tax withholdings made with respect to such Optionholder.

(iii) The parties hereto agree to provide the Escrow Agent with a certified tax identification number by signing and returning a Form W-9 (or Form W-8 BEN, in case of non-U.S. persons) to the Escrow Agent, immediately upon completion of the Closing.

#### **7.4 Indemnification Claims.**

(a) **Threshold Amount.** Notwithstanding any provision of this Agreement to the contrary, except as set forth in the second sentence of this **Section 7.4(a)**, an Indemnified Party may not recover any Losses under **Section 7.2(a)** unless and until one or more Officer's Certificates (as defined below) identifying such Losses under **Section 7.2(a)** in excess of \$250,000 in the aggregate (the "**Threshold Amount**") has or have been delivered to the Stockholder Representative and the Escrow Agent as provided in **Section 7.4(b)** hereof, in which case, subject to **Section 7.6(a)**, such Indemnified Party shall be entitled to recover all Losses so identified in excess of the Threshold Amount. Notwithstanding the foregoing, an Indemnified Party shall be entitled to recover for, and the Threshold Amount shall not apply as a threshold to, any and all claims or payments made with respect to (A) all Losses incurred pursuant to clauses (b), (c), (d), (e) and (f) of **Section 7.2** hereof, and (B) Losses resulting from any breach of a representation or warranty contained in **Section 2.2** or **Section 2.11** hereof.

(b) **Claims for Indemnification.** In order to seek indemnification under **Section 7.2**, Parent shall deliver an Officer's Certificate to the Stockholder Representative and the Escrow Agent at any time on or before 11:59 p.m. (ET) on the Survival Date; *provided, however*, that Parent may seek indemnification under **Section 7.2** on or before 11:59 p.m. on the Extended Survival Date for a breach of a representation and warranty of the Company contained in **Section 2.2** or **2.11** hereof or for any failure by the Company or the Escrow Participants to perform, fulfill or comply with any covenant or obligation applicable to it contained in this Agreement (other than the covenants set forth in **Section 4.1**, for which claims must be made on or before 11:59 p.m. (ET) on the Survival Date). During the Sales Tax Escrow Period, any claim with respect to the Pre-Closing

Sales Taxes for the VDA States shall first be made against the Sales Tax Escrow Fund until such time as the Sales Tax Escrow Fund is fully exhausted, and then against the Escrow Fund. For the avoidance of doubt, any claims for indemnification relating to Pre-Closing Sales Taxes other than in the VDA States shall be made solely against the Escrow Fund in accordance with the procedures set forth in this Agreement. Unless the Stockholder Representative shall have delivered an Objection Notice pursuant to **Section 7.4(c)** hereof, for any claim made against the Escrow Fund or the Sales Tax Escrow Fund, as applicable, the Escrow Agent shall promptly, and in no event later than the thirty-first (31<sup>st</sup>) day after its receipt of the Officer's Certificate, deliver to the Indemnified Party from the Escrow Fund or the Sales Tax Escrow Fund, as applicable, an amount equal to the Loss set forth in such Officer's Certificate. Any payment from the Escrow Fund or the Sales Tax Escrow Fund, as applicable, to Indemnified Parties shall be made in cash and shall be deemed to have been made pro rata amongst the Escrow Participants based on their respective Pro Rata Portions of the Escrow Amount or the Sales Tax Escrow Amount, as applicable. For the purposes hereof, "**Officer's Certificate**" shall mean a certificate signed by any officer of Parent (A) stating that an Indemnified Party has paid, sustained, incurred, or properly accrued, or reasonably anticipates that it will have to pay, sustain, incur, or accrue Losses, (B) specifying the amount of such Losses or a good faith estimate thereof, and (C) specifying in reasonable detail the individual items of Losses included in the amount so stated, the date each such item was paid, sustained, incurred, or properly accrued, or the basis for such anticipated liability, and the nature of the misrepresentation, breach of warranty or covenant to which such item is related.

(c) **Objections to Claims for Indemnification.** No payment shall be made under **Section 7.4(b)** if the Stockholder Representative shall object in a written statement to the claim made in the Officer's Certificate (an "**Objection Notice**"), and such Objection Notice shall have been delivered to Parent and the Escrow Agent prior to 11:59 p.m. (ET) on the thirtieth (30th) day after the Stockholder Representative's receipt of the Officer's Certificate. Notwithstanding the foregoing, the Stockholder Representative hereby waives the right to object to any claims in respect of any Agreed-Upon Loss, except to the extent that the Stockholder Representative disagrees with the mathematical calculation of the amount of such Agreed-Upon Loss or whether such amount is included within the definition of "Dissenting Share Payments," "Excess Third Party Expenses," "Excess Company Debt," "Shortfall Amount," or "Agent Interpleader Expenses or Agent Indemnification Expenses", as the case may be. If the Stockholder Representative does not object in writing within such thirty (30)-day period, such failure to so object shall be an irrevocable acknowledgment by the Stockholder Representative that the Indemnified Party is entitled to the full amount of the claim for Losses set forth in such Officer's Certificate, and payment in respect of such Losses shall thereafter be made in accordance with **Section 7.4(b)**.

(d) **Resolution of Conflicts.**

(i) In case the Stockholder Representative delivers an Objection Notice in accordance with **Section 7.4(c)**, the Stockholder Representative and Parent shall attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims. If the Stockholder Representative and Parent should so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties and furnished to the Escrow Agent. The Escrow Agent

shall be entitled to rely on any such memorandum and make distributions from the Escrow Fund or the Sales Tax Escrow Fund, as applicable, in accordance with the terms thereof.

(ii) At any time following delivery of an Objection Notice by the Stockholder Representative to Parent and the Escrow Agent or in the event of any dispute arising pursuant to **ARTICLE VII** hereof, either Parent, on the one hand, or the Stockholder Representative, on the other hand, may pursue any and all legal or equitable remedies available to them under applicable Law, and the Escrow Agent shall only distribute funds thereafter pursuant to a memorandum of agreement as described in **Section 7.4(d)(i)** or a court order.

(e) **Third-Party Claims.** In the event any Indemnified Party becomes aware of a third party claim (other than a Tax Contest, which shall be governed by **Section 5.13**) (a “**Third Party Claim**”) which such Indemnified Party reasonably believes may result in a demand for indemnification pursuant to this **ARTICLE VII**, such Indemnified Party shall promptly notify the Escrow Agent and the Stockholder Representative of such claim after it becomes aware of such Third Party Claim specifying the nature of such Third Party Claim and the amount or estimated amount thereof, together with copies of all notices and documents (including court papers) served on or received by such Indemnified Party; *provided* that the failure to promptly provide such notice shall not affect the rights of such Indemnified Parties to indemnification pursuant to this **ARTICLE VII** except to the extent that the Stockholder Representative or any Escrow Participant shall have been materially prejudiced thereby. If the Third Party Claim may result in a claim for which the Escrow Participants would be liable, the Stockholder Representative on behalf of the Escrow Participants, shall be entitled, at its expense, to participate in, but not to determine or conduct (except as expressly provided below), the defense of such Third Party Claim. Parent shall have the right in its sole discretion to conduct the defense, and to settle, any such claim; *provided, however*, that if the settlement of a Third Party Claim shall result in a demand for indemnification pursuant to this **ARTICLE VII**, Parent shall not settle the claim without the prior written consent of the Stockholder Representative, which consent shall not be unreasonably withheld. If after fifteen (15) days prior written notice from the Stockholder Representative, an Indemnified Party fails to defend or if, after commencing or undertaking any such defense, such Indemnified Party fails to prosecute or withdraws from such defense, the Stockholder Representative, on behalf of the Escrow Participants, shall have the right to undertake the defense or settlement thereof. If the Stockholder Representative elects to direct the defense of any such claim or proceeding, the Indemnified Party shall not pay, or permit to be paid, any part of any claim or demand arising from such asserted liability unless the Stockholder Representative consents in writing to such payment or unless the Stockholder Representative withdraws from the defense of such asserted liability or unless a final judgment from which no appeal may be taken by or on behalf of the Escrow Participants is entered against such Indemnified Party for such liability. An Indemnified Party shall provide the Stockholder Representative and counsel with reasonable access to its records and personnel relating to any such claim, assertion, event or proceeding during normal business hours and shall otherwise reasonably cooperate with the Stockholder Representative in the defense or settlement thereof. In the event that the Stockholder Representative has consented to any such settlement, subject to the limitations on indemnification set forth herein, the Stockholder Representative shall have no power or authority on behalf of the Escrow Participants to object to the amount of the corresponding Third

Party Claim by Parent. If the Stockholder Representative assumes the defense of any such claim or proceeding pursuant to this **Section 7.4(e)** and proposes to settle such claim or proceeding prior to a final judgment thereon or to forego any appeal with respect thereto, then the Stockholder Representative shall give the Parent prompt written notice thereof, and Parent shall have the right to participate in the settlement or assume or reassume the defense of such claim or proceeding.

**(f) Escrow Agent's Duties.**

(i) The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth herein, and as set forth in any additional written escrow instructions which the Escrow Agent may receive after the date of this Agreement which are signed by an officer of Parent and the Stockholder Representative and are not inconsistent with the terms of this Agreement, or, in the reasonable opinion of Escrow Agent, will not result in additional obligations or liabilities to the Escrow Agent, and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent's duties hereunder are ministerial in nature and shall not be deemed fiduciary. The Escrow Agent shall not be liable for any act done or omitted hereunder as Escrow Agent while acting in good faith and in the exercise of reasonable judgment, and any act done or omitted pursuant to the advice of legal counsel shall be conclusive evidence of such good faith.

(ii) The Escrow Agent is hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person, excepting only orders or process of courts of law, and is hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case the Escrow Agent obeys or complies with any such order, judgment or decree of any court, the Escrow Agent shall not be liable to any of the parties hereto or to any other person by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

(iii) The Escrow Agent shall not be liable in any respect on account of the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver this Agreement or any documents or papers deposited or called for hereunder.

(iv) The Escrow Agent shall not be liable for the expiration of any rights under any statute of limitations with respect to this Agreement or any documents deposited with the Escrow Agent.

(v) In performing any duties under this Agreement, the Escrow Agent shall not be liable to any party for damages, losses, or expenses, except for gross negligence or willful misconduct on the part of the Escrow Agent. The Escrow Agent shall not incur any such liability for (A) any act or failure to act made or omitted in good faith, or (B) any action taken or omitted in reliance upon any instrument, including any written statement or affidavit provided for in this Agreement that the Escrow Agent shall in good faith believe to be genuine, nor will the Escrow

Agent be liable or responsible for forgeries, fraud, impersonations, or determining the scope of any representative authority. In addition, the Escrow Agent may consult with legal counsel in connection with performing the Escrow Agent's duties under this Agreement and shall be fully protected in any act taken, suffered, or permitted by him/her in good faith in accordance with the advice of counsel. The Escrow Agent is not responsible for determining and verifying the authority of any person acting or purporting to act on behalf of any party to this Agreement.

(vi) If any controversy arises between the parties to this Agreement, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, the Escrow Agent will not be required to determine the controversy or to take any action regarding it. The Escrow Agent may hold all documents, the Escrow Fund and the Sales Tax Escrow Fund and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in the Escrow Agent's discretion, may be required, despite what may be set forth elsewhere in this Agreement. In such event, the Escrow Agent will not be liable for damages. Furthermore, the Escrow Agent may at its option, file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. The Escrow Agent is authorized to deposit with the clerk of the court all documents, the Escrow Fund and the Sales Tax Escrow Fund held in escrow, except all costs, expenses, charges and reasonable attorney fees incurred by the Escrow Agent due to the interpleader action (the "**Agent Interpleader Expenses**") and which the parties agree to pay as follows: fifty percent (50%) to be paid by Parent and fifty percent (50%) to be paid by the Escrow Participants in proportion to their respective Pro Rata Portions of the remaining Escrow Amount directly from the Escrow Fund. Upon initiating such action, the Escrow Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of this Agreement.

(vii) The parties and their respective successors and assigns agree jointly and severally to indemnify and hold Escrow Agent harmless against any and all losses, claims, damages, liabilities, and out-of-pocket expenses, including reasonable costs of investigation, counsel fees, and disbursements that may be imposed on Escrow Agent or incurred by Escrow Agent in connection with the performance of its duties under this Agreement, including but not limited to any litigation arising from this Agreement or involving its subject matter, other than those arising out of the gross negligence or willful misconduct of the Escrow Agent (the "**Agent Indemnification Expenses**") as follows: fifty percent (50%) to be paid by Parent and fifty percent (50%) to be paid by the Escrow Participants in proportion to their respective Pro Rata Portions of the remaining Escrow Amount directly from the Escrow Fund.

(viii) The Escrow Agent may resign at any time upon giving at least thirty (30) days written notice to Parent and the Stockholder Representative; *provided, however*, that no such resignation shall become effective until the appointment of a successor escrow agent which shall be accomplished as follows: Parent and the Stockholder Representative shall use their reasonable best efforts to mutually agree on a successor escrow agent within thirty (30) days after receiving such notice. If the parties fail to agree upon a successor escrow agent within such time, the Escrow Agent shall have the right to appoint a successor escrow agent authorized to do business in the State of New York or appeal to a court of competent jurisdiction to appoint a successor escrow

agent and shall remain the escrow agent until such order is received. The successor escrow agent shall execute and deliver an instrument accepting such appointment and it shall, without further acts, be vested with all the estates, properties, rights, powers, and duties of the predecessor escrow agent as if originally named as escrow agent. Upon appointment of a successor escrow agent, the Escrow Agent shall be discharged from any further duties and liability under this Agreement.

(ix) The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Agreement, or in carrying out any sale of the Escrow Fund or the Sales Tax Escrow Fund permitted by this Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as a subagent of the Escrow Agent or for any third person or dealing as principal for its own account.

(x) Notwithstanding anything to the contrary, any provision seeking to limit the liability of the Escrow Agent shall not be applicable in the event such liability arises from the gross negligence or willful misconduct of the Escrow Agent.

(xi) Notwithstanding any term appearing in this Agreement to the contrary, in no instance shall the Escrow Agent be required or obligated to distribute any of the Escrow Fund or the Sales Tax Escrow Fund (or take other action that may be called for hereunder to be taken by the Escrow Agent) sooner than two (2) Business Days after (i) it has received the applicable documents required under this Agreement in good form, or (ii) passage of the applicable time period (or both, as applicable under the terms of this Agreement), as the case may be.

(xii) The Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, terrorism, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters.

(g) **Fees.** All fees (including reasonable attorney's fees) of the Escrow Agent and/or the Paying Agent for performance of their duties hereunder shall be paid (i) by Parent, with respect to the Merger Consideration, the Closing Tax Escrow Amount, the Escrow Amount and the Sales Tax Escrow Amount and (ii) by the Stockholder Representative out of the Stockholder Representative Fund, to the extent related thereto; *provided, however*, that to the extent that distributions are made simultaneously from the Escrow Fund or the Sales Tax Escrow Fund, on the one hand, and the Stockholder Representative Fund on the other hand, the fees of the Escrow Agent and/or the Paying Agent related to such distribution shall be paid by Parent and only the incremental costs (if any) associated with the additional distribution from the Stockholder Representative Fund shall be deducted from the Stockholder Representative Amount. It is understood that the fees and usual charges agreed upon for services of the Escrow Agent shall be considered compensation for ordinary services as contemplated by this Agreement. In the event that the conditions of this Agreement are not promptly fulfilled, or if the Escrow Agent renders any service not provided for in this Agreement but that has been requested by an officer of Parent (with respect to the Escrow Amount, the Sales Tax Escrow Amount or the Closing Tax Amount) or the Stockholder

Representative (with respect to the Stockholder Representative Amount), or if the parties request a substantial modification of the terms of the Agreement, or if any controversy arises, or if the Escrow Agent is made a party to, or intervenes in, any litigation pertaining to the Escrow Fund, the Sales Tax Escrow Fund or the Closing Tax Escrow Fund or their subject matter, the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all out-of-pocket costs and expenses and reasonable attorney's fees occasioned by such default, delay, controversy or litigation.

(h) **Successor Escrow Agents.** Any corporation or other entity into which the Escrow Agent in its individual capacity may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Escrow Agent in its individual capacity shall be a party, or any corporation or other entity to which substantially all the corporate trust business of the Escrow Agent in its individual capacity may be transferred, shall be the Escrow Agent under this Agreement without further act.

(i) **Customer Identification Program.** Each of the parties acknowledge receipt of the notice set forth on **Exhibit H** attached hereto and made part hereof and that information may be requested to verify their identities.

#### **7.5 Stockholder Representative.**

(a) Anthony J. Friscia shall serve as the Stockholder Representative for and on behalf of the Escrow Participants to give and receive notices and communications, obtaining reimbursement as provided for herein for all out-of-pocket fees and expenses and other obligations of or incurred by the Stockholder Representative in connection with this Agreement, to authorize payment to any Indemnified Party from the Escrow Fund or the Sales Tax Escrow Fund in satisfaction of claims by any Indemnified Party, to object to such payments, to agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to such claims, to assert, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to, any other claim by any Indemnified Party against any Escrow Participant or by any such Escrow Participant against any Indemnified Party or any dispute between any Indemnified Party and any such Escrow Participant, in each case relating to this Agreement or the transactions contemplated hereby, and to take all other actions that are either (i) necessary or appropriate in the judgment of the Stockholder Representative for the accomplishment of the foregoing or (ii) specifically mandated by the terms of this Agreement. Such agency may be changed by the Escrow Participants from time to time upon not less than thirty (30) days prior written notice to Parent; *provided, however*, that the Stockholder Representative may not be removed unless holders of a two-thirds interest of the Escrow Fund agree to such removal and to the identity of the substituted agent. A vacancy in the position of Stockholder Representative may be filled by the holders of a majority in interest of the Escrow Fund. No bond shall be required of the Stockholder Representative, and the Stockholder Representative shall not receive any compensation for his services. Notices or communications to or from the Stockholder Representative shall constitute notice to or from the Escrow Participants.

(b) The Stockholder Representative shall not be liable for any act done or omitted hereunder as Stockholder Representative while acting in good faith and in the exercise of reasonable judgment. The Escrow Participants shall indemnify the Stockholder Representative and hold the Stockholder Representative harmless against any loss, liability or expense incurred without gross negligence or bad faith on the part of the Stockholder Representative and arising out of or in connection with the acceptance or administration of the Stockholder Representative's duties hereunder, including the reasonable fees and expenses of any legal counsel retained by the Stockholder Representative ("**Stockholder Representative Expenses**"). The Stockholder Representative Expenses, including the costs and expenses of enforcing this right of indemnification, shall be paid from the Stockholder Representative Fund. A decision, act, consent or instruction of the Stockholder Representative, including but not limited to an amendment, extension or waiver of this Agreement, shall constitute a decision of the Escrow Participants and shall be final, binding and conclusive upon the Escrow Participants; and the Escrow Agent and Parent may rely upon any such decision, act, consent or instruction of the Stockholder Representative as being the decision, act, consent or instruction of the Escrow Participants. The Escrow Agent and Parent are hereby relieved from any liability to any person for any decision, act, consent or instruction of the Stockholder Representative.

(c) The Stockholder Representative may, in all questions arising under this Agreement, rely on the advice of counsel. In no event shall the Stockholder Representative be liable hereunder or in connection herewith for any indirect, punitive, special or consequential damages.

(d) The Stockholder Representative shall have reasonable access to information reasonably requested by the Stockholder Representative and the reasonable assistance of the Surviving Corporation's officers and employees for purposes of performing the Stockholder Representative duties under this Agreement and exercising his rights under this Agreement.

(e) In the performance of his duties hereunder, the Stockholder Representative shall be entitled to (i) rely upon any document or instrument reasonably believed to be genuine, accurate as to content and signed by any Escrow Participant or any party hereunder and (ii) assume that any person purporting to give any notice in accordance with the provisions hereof has been duly authorized to do so.

#### **7.6 Maximum Payments; Remedy; Limitations on Indemnity.**

(a) The maximum aggregate amount for which the Indemnified Parties may recover pursuant to the indemnity set forth in **Section 7.2** (other than for Pre-Closing Sales Taxes in the VDA States) hereof shall be limited to the amounts held in the Escrow Fund. The maximum aggregate amount for which the Indemnified Parties may recover pursuant to the indemnity set forth in **Section 7.2** hereof for Pre-Closing Sales Taxes in the VDA States shall be limited to the amounts held in the Escrow Fund and the Sales Tax Escrow Fund. The maximum aggregate amount for which the Indemnified Parties may recover pursuant to the indemnity set forth in **Section 7.2** hereof for breaches of the covenants and obligations under **Section 5.13(c)(ii)** shall be limited to the amounts held in the Closing Tax Escrow Fund and the Escrow Fund. Notwithstanding anything to

the contrary contained in this Agreement, except as set forth in **Section 7.6(b)**, in no case may an Indemnified Party seek recourse directly against any Stockholder or Optionholder for indemnification hereunder. No indemnification shall be payable to an Indemnified Party with respect to any claims asserted by such Indemnified Party pursuant to **Sections 7.2 and 7.4(b)** after the Survival Date, *provided, however*, that the Indemnified Parties may make claims for indemnification under **Section 7.2** for breaches of the representations and warranties set forth in **Sections 2.2 and 2.11** hereof or for any failure by the Company or the Escrow Participants to perform, fulfill or comply with any covenant or obligation applicable to it contained in this Agreement until the Extended Survival Date (other than the covenants set forth in **Section 4.1**, for which claims must be made on or before 11:59 p.m. (ET) on the Survival Date); *provided further, however*, that if, at any time prior to 11:59 p.m. (ET) on the Survival Date or the Extended Survival Date, as applicable, an Officer's Certificate is delivered alleging Losses and a claim for recovery under **Sections 7.2 and 7.4(b)**, then the claim asserted in such notice shall survive the Survival Date or the Extended Survival Date, as applicable, until such claim is fully and finally resolved.

(b) Notwithstanding anything to the contrary set forth in this Agreement, nothing in this Agreement shall limit the liability of any party in respect of Losses arising out of any fraud, or any intentional breaches of representations and warranties on the part of such party (it is agreed and understood that the Survival Date, the Extended Survival Date and the Threshold Amount shall not apply in respect of any such Losses).

(c) The liability of the Escrow Participants to indemnify the Indemnified Parties pursuant to **Section 7.2** hereof shall be several and not joint based on their respective Pro Rata Portions, and in no event shall any Escrow Participant be obligated to indemnify the Indemnified Parties for any Losses pursuant to **Section 7.2** hereof in excess of such Escrow Participant's Pro Rata Portion of the Escrow Fund, the Sales Tax Escrow Fund and the Closing Tax Escrow Fund.

(d) The amount of Losses otherwise recoverable under **Section 7.2** hereof shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar cash payment actually received by the Indemnified Parties from any third party with respect thereto.

(e) If any Indemnified Party collects an amount in discharge of a claim in respect of a Loss pursuant to **Section 7.2** hereof and such Indemnified Party (or an affiliate thereof) subsequently recovers (by payment of cash) from a third party a sum which is referable to that claim in respect of such breach, such Indemnified Party shall (or, as appropriate, shall procure that such affiliate shall) forthwith repay to the indemnifying party or parties: (i) an amount equal to the sum recovered from the third party in cash, less reasonable out-of-pocket costs and expenses incurred by such Indemnified Party recovering the same; or (ii) if the figure resulting under paragraph (i) is greater than the amount paid by the applicable indemnifying parties to the Indemnified Parties in respect of the claim, such lesser amount as shall have been so paid by such indemnifying parties (including any out-of-pocket expenses related thereto), so as to leave the Indemnified Party in no better or worse position than it would have been in had the claim not arisen in the first place.

(f) Any Losses for which any Indemnified Party is entitled to indemnification under this **ARTICLE VII** shall be determined without duplication of recovery by reason of the state of facts giving rise to such Losses constituting a breach of more than one representation, warranty, covenant or agreement.

(g) Nothing in this **ARTICLE VII** shall limit the liability of the Company for any breach or inaccuracy of any representation, warranty or covenant contained in this Agreement or any Related Agreement if the Merger does not close.

(h) Anything herein to the contrary notwithstanding, no breach of any representation, warranty, covenant or agreement contained herein shall give rise to any right on the part of any party hereto, after the consummation of the transactions contemplated hereby, to rescind this Agreement or any of the transactions contemplated hereby.

7.7 **Remedies Exclusive.** From and after the Closing, the rights of the Indemnified Parties to indemnification relating to this Agreement or the transactions contemplated hereby shall be strictly limited to those contained in this **ARTICLE VII**, and such indemnification rights shall be the exclusive remedies of the Indemnified Parties subsequent to the Closing Date with respect to any matter in any way relating to this Agreement or arising in connection herewith.

## **ARTICLE VIII**

### **TERMINATION, AMENDMENT AND WAIVER**

8.1 **Termination.** Except as provided in this **Section 8.1** and **Section 8.2**, this Agreement may be terminated and the Merger abandoned at any time prior to the Closing:

(a) by unanimous agreement of the Company and Parent;

(b) by Parent or the Company if the Closing Date shall not have occurred by January 31, 2010; provided, however, that the right to terminate this Agreement under this **Section 8.1(b)** shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Merger to occur on or before such date and such action or failure to act constitutes a breach of this Agreement;

(c) by Parent or the Company if: (i) there shall be a final non-appealable order of a federal or state court in effect preventing consummation of the Merger, or (ii) there shall be any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Closing by any Governmental Entity that would make consummation of the Closing illegal;

(d) by Parent if there shall be any action taken, or any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Merger by any Governmental Entity, which would: (i) prohibit Parent's ownership or operation of any material portion of the business of the Company or (ii) compel Parent or the Company to dispose of or hold separate all or any material portion of the business or assets of the Company or Parent as a result of the Merger;

(e) by Parent if it is not in material breach of its obligations under this Agreement and there has been a breach of any representation, warranty, covenant or agreement of the Company contained in this Agreement such that the conditions set forth in **Section 6.2(a)** hereof would not be satisfied and such breach has not been cured within ten (10) calendar days after written notice thereof to the Company and the Stockholder Representative; provided, however, that no cure period shall be required for a breach which by its nature cannot be cured;

(f) by the Company if the Company is not in material breach of its obligations under this Agreement and there has been a breach of any representation, warranty, covenant or agreement of Parent contained in this Agreement such that the conditions set forth in **Section 6.3(a)** hereof would not be satisfied and such breach has not been cured within ten (10) calendar days after written notice thereof to Parent; provided, however, that no cure period shall be required for a breach which by its nature cannot be cured; or

(g) by Parent, if the Company does not deliver written consents of the Stockholders constituting the Sufficient Stockholder Vote by 11:59 p.m. (ET) on the date hereof.

**8.2 Effect of Termination.** In the event of termination of this Agreement as provided in **Section 8.1** hereof, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent, the Company or the Stockholders, or their respective officers, directors or stockholders, if applicable; *provided, however*, that each party hereto shall remain liable for any breaches of this Agreement prior to its termination; and *provided further, however*, that, the provisions of **Sections 5.3, 5.4 and 5.5** hereof, **ARTICLE IX** hereof and this **Section 8.2** shall remain in full force and effect and survive any termination of this Agreement pursuant to the terms of this **ARTICLE VIII**.

**8.3 Amendment.** Except as is otherwise required by applicable Law, this Agreement may be amended by the parties hereto at any time by execution of an instrument in writing signed on behalf of the party against whom enforcement is sought.

**8.4 Extension; Waiver.** Parent, on the one hand, and the Company and the Stockholder Representative, on the other hand, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations of the other party hereto, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto, and (iii) waive compliance with any of the covenants, agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

## **ARTICLE IX GENERAL PROVISIONS**

**9.1 Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial messenger or overnight or same-day

courier service of national reputation (including U.S. Postal Service overnight delivery), or sent via facsimile (with acknowledgment of complete transmission) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice); *provided, however*, that notices sent by mail will not be deemed given until received:

(a) if to Parent or Sub, to:

Gartner, Inc.  
56 Top Gallant Road  
Stamford, CT 06904-2212  
Attention: Lewis G. Schwartz  
Facsimile No.: (203) 316-6245

with a copy to:

Wilson Sonsini Goodrich & Rosati, Professional Corporation  
1700 K Street N.W., Fifth Floor  
Washington, D.C. 20006  
Attention: Robert Sanchez, Esq.  
Facsimile No.: (202) 973-8899

(b) if to the Company or the Stockholder Representative, to:

AMR Research, Inc.  
125 Summer Street  
Boston, MA 02110  
Attention: Anthony J. Friscia  
Facsimile No.: (603) 584-1180

with a copy to:

Goodwin Procter LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attention: Lisa Haddad, Esq.  
Facsimile No.: (617) 523-1231

(c) if to the Escrow Agent, to:

U.S. Bank National Association  
Corporate Trust Services  
225 Asylum Street, 23<sup>rd</sup> Floor  
Hartford, CT 06103

Attention: Susan Merker  
Re: *Gartner, Inc./AMR Research, Inc. Escrow*  
Facsimile No.: (860) 241-6891

9.2 **Interpretation.** The words “include,” “includes” and “including” when used herein shall be deemed in each case to be followed by the words “without limitation.” The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

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

9.4 **Entire Agreement; Assignment; Beneficiaries.** This Agreement, the Exhibits hereto, the Disclosure Schedule, the Confidential Disclosure Agreement, and the documents and instruments and other agreements among the parties hereto referenced herein: (i) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings both written and oral, among the parties with respect to the subject matter hereof, (ii) are not intended to confer upon any other person any rights or remedies hereunder, except as set forth in **Section 5.12**, and (iii) shall not be assigned by operation of law or otherwise without the consent of the parties hereto, other than by Parent in connection with a Parent change of control. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. No party hereto is relying upon any express or implied representations or warranties of any nature, whether in writing, orally or otherwise, made by or on behalf of or imputed to any other party hereto, except as set forth in this Agreement.

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

9.6 **Other Remedies; Specific Performance.** Any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy and nothing in this Agreement shall be deemed a waiver by any party of any right to specific performance or injunctive relief. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is

accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at Law or in equity.

9.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware, regardless of the Laws that might otherwise govern under applicable principles of conflicts of laws thereof. Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of any court within the State of Delaware in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the Laws of the State of Delaware for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue and such process.

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

9.9 **Waiver of Jury Trial.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PARTY HERETO IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, Parent, Sub, the Company, the Stockholder Representative and the Escrow Agent have caused this Agreement and Plan of Merger to be signed, all as of the date first written above.

**GARTNER, INC.**

By: /s/ Christopher Lafond  
Name: Christopher Lafond  
Title: Executive Vice President and Chief Financial Officer

**AMR RESEARCH, INC.**

By: /s/ Anthony Friscia  
Name: Anthony Friscia  
Title: President and Chief Executive Officer

**CLOVER ACQUISITION CORPORATION**

By: /s/ Christopher Lafond  
Name: Christopher Lafond  
Title: President

**[Signature Page to Agreement and Plan of Merger]**

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**STOCKHOLDER REPRESENTATIVE**

/s/ Anthony Friscia

Name: Anthony Friscia

**U.S. BANK NATIONAL ASSOCIATION, as Escrow Agent:**

By: /s/ Susan C. Merker

Name: Susan C. Merker

Title: Vice President

**[Signature Page to Agreement and Plan of Merger]**

**SUBSIDIARIES OF THE REGISTRANT**

<u>Subsidiaries</u>	<u>State/Country</u>
• AMR Research, Inc.	Delaware, USA
• AMR Research International, Ltd.	Delaware, USA
• Burton Group, Inc.	Utah, USA
• Computer Financial Consultants, Inc.	Delaware, USA
• Computer Financial Consultants, Limited	United Kingdom
• Computer Financial Consultants (Management) Limited	United Kingdom
• Dataquest Australia Pty. Ltd.	Australia
• Dataquest, Inc.	California, USA
• Decision Drivers, Inc.	Delaware, USA
• G.G. Properties, Ltd.	Bermuda
• Gartner Advisory (Singapore) PTE LTD.	Singapore
• Gartner Australasia Pty Limited	Australia
• Gartner Austria GmbH	Austria
• Gartner Belgium BVBA	Belgium
• Gartner Canada Co.	Nova Scotia, Canada
• Gartner Consulting Beijing Co., LTD.	China
• Gartner Denmark ApS	Denmark
• Gartner Deutschland, GmbH	Germany
• Gartner do Brasil S/C Ltda.	Brazil
• Gartner Enterprises, Ltd.	Delaware, USA
• Gartner Espana, S.L.	Spain
• Gartner Europe Holdings, B.V.	The Netherlands
• Gartner France S.A.R.L.	France
• Gartner Gulf FZ, LLC	United Arab Emirates
• Gartner Group Argentina S.A.	Argentina
• Gartner Group Taiwan Ltd.	Taiwan
• Gartner (Thailand) Ltd.	Thailand
• Gartner Holdings Ireland	Ireland
• Gartner Holdings, LLC	Delaware, USA
• Gartner Hong Kong, Limited	Hong Kong
• Gartner India Research & Advisory Services Private Ltd.	India
• Gartner Investments I, LLC	Delaware, USA
• Gartner Investments II, LLC	Delaware, USA
• Gartner Ireland Limited	Ireland
• Gartner Italia, S.r.l.	Italy
• Gartner Japan Ltd.	Japan
• Gartner Mexico S. D. DE R. .L. de C.V.	Mexico
• Gartner Nederland B.V.	The Netherlands
• Gartner Norge A.S.	Norway
• Gartner Research & Advisory Malaysia	Malaysia
• Gartner Research & Advisory Korea Co., Ltd.	Korea
• Gartner Sverige AB	Sweden
• Gartner Switzerland GmbH	Switzerland
• Gartner UK Limited	United Kingdom
• The Research Board, Inc.	Delaware, USA
• Wentworth Research Limited	United Kingdom
• 1422722 Ontario, Inc.	Canada
• Meta Group, LLC	Delaware, USA
• META Group AG	Germany
• META Group CESE GmbH	Germany
• META Group Deutschland GmbH	Germany
• META Group IT Corp.	Philippines
• META Group UK Holdings Ltd.	United Kingdom
• META Group UK Ltd.	United Kingdom
• META Saudi Arabia	Saudi Arabia

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Stockholders  
Gartner, Inc.:

We consent to the incorporation by reference in the registration statements (No. 33-85926, No. 33-92486, No. 333-77015, No. 333-30546, No. 333-91256, No. 333-97557, No. 333-104753, No. 333-120767, No. 333-127349 and No. 333-160924) on Form S-8 of Gartner, Inc. of our reports dated February 19, 2010, with respect to the consolidated balance sheets of Gartner, Inc. as of December 31, 2009 and 2008 and the related consolidated statements of operations, stockholders' equity (deficit) and comprehensive income (loss), and cash flows for each of the years in the three-year period ended December 31, 2009, and the effectiveness of internal control over financial reporting as of December 31, 2009, which reports appear in the December 31, 2009 annual report on Form 10-K of Gartner, Inc.

**KPMG LLP**

New York, New York  
February 19, 2010

**CERTIFICATION**

I, Eugene A. Hall, certify that:

- (1) I have reviewed this Annual Report on Form 10-K of Gartner, 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 we 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.

/s/ Eugene A. Hall \_\_\_\_\_

Eugene A. Hall

Chief Executive Officer

Date: February 19, 2010

**CERTIFICATION**

I, Christopher J. Lafond, certify that:

- (1) I have reviewed this Annual Report on Form 10-K of Gartner, 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 we 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.

/s/ Christopher J. Lafond \_\_\_\_\_  
Christopher J. Lafond  
Chief Financial Officer  
Date: February 19, 2010

**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 of Gartner, Inc. (the "Company") on Form 10-K for the year ended December 31, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Eugene A. Hall Chief Executive Officer of the Company, and Christopher J. Lafond, Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my 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/ Eugene A. Hall*

\_\_\_\_\_  
Name: Eugene A. Hall  
Title: Chief Executive Officer  
Date: February 19, 2010

*/s/ Christopher J. Lafond*

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Name: Christopher J. Lafond  
Title: Chief Financial Officer  
Date: February 19, 2010

A signed original of this written statement required by Section 906 has been provided to Gartner, Inc. and will be retained by Gartner, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.