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As filed with the Securities and Exchange Commission on November 18, 2011.

Registration No. 333-

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

# Form S-1
# REGISTRATION STATEMENT

*UNDER*
*THE SECURITIES ACT OF 1933*

# SYNACOR, INC.

*(Exact Name of Registrant as Specified in its Charter)*

| Delaware | 7370 | 16-1542712 |
|---|---|---|
| *(State or Other Jurisdiction of Incorporation or Organization)* | *(Primary Standard Industrial Classification Code Number)* | *(I.R.S. Employer Identification Number)* |

**40 La Riviere Drive, Suite 300**
**Buffalo, NY 14202**
**(716) 853-1362**
*(Address, including zip code and telephone number, including area code, of registrant's principal executive offices)*

**Ronald N. Frankel**
**President and Chief Executive Officer**
**Synacor, Inc.**
**40 La Riviere Drive, Suite 300**
**Buffalo, NY 14202**
**(716) 853-1362**
*(Name, address, including zip code and telephone number, including area code, of agent for service)*

***Copies to:***

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

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

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See 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 ☒ (Do not check if a smaller reporting company) Smaller reporting company ☐

**CALCULATION OF REGISTRATION FEE**

| Title of Each Class of Securities to be Registered | Proposed Maximum Aggregate Offering Price (1)(2) | Amount of Registration Fee (1)(3) |
|---|---|---|
| Common stock, par value $0.01 per share | $75,000,000 | $8,595 |

(1) Includes offering price of shares of common stock that may be purchased by the underwriters to cover over-allotments, if any.

(2) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act.
(3) Of the total fee, $5,947 is being paid concurrently with the filing of this registration statement. Pursuant to Rule 457(p) under the Securities Act, the registration fee is offset by the $2,648 registration fee previously paid by the registrant, Synacor, Inc., in connection with the registration statement on Form S-1 (File No. 333-145077) initially filed by the registrant on August 2, 2007 and subsequently withdrawn.

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

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

Subject to Completion
Preliminary Prospectus dated November 18, 2011

PROSPECTUS

# Shares

synacor

## Common Stock

This is Synacor, Inc.'s initial public offering. We are selling shares of our common stock.

We expect the public offering price to be between $ and $ per share. Currently, no public market exists for the shares. After pricing of the offering, we expect that the shares will trade on the under the symbol " ."

**Investing in the common stock involves risks that are described in the " Risk Factors " section beginning on page 11 of this prospectus.**

| | Per Share | Total |
|---|---|---|
| Public offering price | $ | $ |
| Underwriting discount | $ | $ |
| Proceeds, before expenses, to us | $ | $ |

The underwriters may also exercise their option to purchase up to an additional shares from us, at the public offering price, less the underwriting discount, for 30 days after the date of this prospectus to cover overallotments, if any.

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

The shares will be ready for delivery on or about , .

**BofA Merrill Lynch** **Citigroup** **Stifel Nicolaus Weisel**

**BMO Capital Markets** **Needham & Company, LLC** **Oppenheimer & Co.**

The date of this prospectus is , .

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## PROSPECTUS SUMMARY

*This summary highlights selected information contained in greater detail elsewhere in this prospectus. This summary does not contain all the information you should consider before investing in our common stock. You should carefully read the entire prospectus, including "Risk Factors" and our financial statements and related notes, before making an investment decision. Unless the context otherwise requires, we use the terms "Synacor," the "company," "we," "us" and "our" in this prospectus to refer to Synacor, Inc.*

### Our Business

We are a leading provider of authentication and aggregation solutions for delivery of online content and services. We deliver our solutions as a set of services through our hosted and managed platform, enabling cable and telecom service providers and consumer electronics manufacturers to provide the online content and services that their consumers increasingly demand. Our platform allows our customers to package a wide array of online content and services with their high-speed Internet, communications, television and other offerings. Our customers offer our services under their own brands on Internet-enabled devices such as PCs, tablets, smartphones and connected TVs. As of September 30, 2011, our high-speed Internet service provider customers used our platform to offer an engaging Internet experience to over 25% of the estimated 79 million United States high-speed Internet households.

Our hosted and managed platform allows our customers to enhance their consumers' online experience. Individuals are spending more time consuming online content at home and on the go, and as a result, it has become increasingly important for our customers to provide consumers with choice, a personalized experience and seamless, single sign-on, access to online content and services. We believe the increased functionality we offer through our platform results in a compelling user experience for consumers, broadened relationships between our customers and their consumers, and increased overall monetization.

Our platform provides single sign-on capability, enabling consumers to seamlessly sign in and consume packaged online content and services from numerous programmers and content providers. These services include e-mail, security, online games, music and authentication of TV Everywhere, a technology enabling consumers with applicable rights to access on-demand television online via multiple devices including PCs, tablets, smartphones and connected TVs. We enable our customers to up-sell a menu of content and services to their consumers either on a pay-per-view basis or as a new service tier added to their existing subscription relationship.

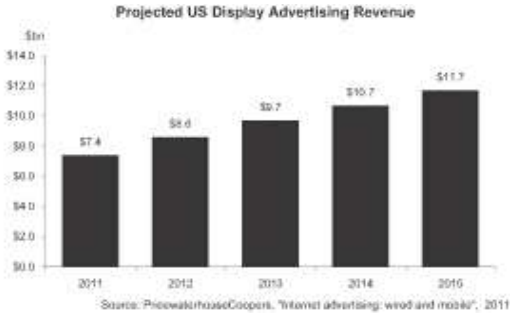
Our customers direct consumers to their branded websites, which comprise the consumer-facing components of our platform, where consumers have access to the online content and services available to them at their respective subscription levels. We monetize the online traffic generated by these consumers through search and display advertising. We also charge fees for value added services delivered through our platform. Our business model creates deep customer relationships: as we monetize our customers' online traffic, we share a portion of this revenue with our customers, resulting in a mutually beneficial partnership.

We have historically experienced growth in the number of consumers whose online traffic can generate search and display advertising revenues through our platform. The number of these consumers who are subscribers through our high-speed Internet customers has increased from 5.2 million in December 2006 to 9.5 million in December 2009 to 21.1 million in September 2011. These subscribers, along with other consumers, such as those attributable to our consumer electronics manufacturer customer, have driven a 71% increase in average monthly unique visitors to our customers' websites, an 81% increase in average monthly search queries by consumers on our platform and a 64% increase in average monthly advertising impressions, each on a comparative quarterly basis since the first quarter of 2010.

For the nine months ended September 30, 2011, our revenue was $62.1 million, which represented a 29.3% increase over $48.0 million in the same period in 2010. For the nine months ended September 30, 2011, adjusted EBITDA was $4.9 million compared to ($0.5) million over the same period in 2010. For a reconciliation of adjusted EBITDA to net income, the most closely comparable financial measure calculated in accordance with GAAP, for each of these periods, see “Selected Financial Data.”

**Market Overview**

According to PwC, from 2006 through 2010, high-speed Internet penetration (measured on a household basis) has increased substantially both within the United States and globally, from 45% and 19% to 68% and 35%, respectively. This represents an increase from 50 million subscribers with high-speed Internet to 79 million subscribers in the United States, and from 248 million subscribers to 490 million subscribers globally. Individuals are spending more time online driven by a growing selection of online services, higher bandwidth speeds, the increased amount of content available online and the societal shift towards virtual socialization. According to Capital IQ Solutions, in 2010, Americans consumed 36% of their media on the Internet compared with only 19% in 2005 (as measured in minutes). This growth in Internet usage has driven advertisers to expand their reach and market to these consumers who are increasingly spending their time online. According to PwC, Internet advertising is expected to continue to grow rapidly, with United States search advertising revenue growing at a rate of approximately 10% per annum from 2011 to 2015, and United States display advertising revenue growing at a rate of approximately 12% per annum over the same period. Taken together, the market for search and display advertising in the United States is expected to grow from $21 billion in 2011 to $31 billion in 2015.


High-speed Internet service providers have continuously upgraded their networks in recent years, providing users with significantly faster connection speeds and enabling online access through multiple types of devices, thus reinforcing and enabling the growth in Internet usage. These higher speeds and increased number of platforms have resulted in an increased number of services available online. In addition, the proliferation of new types of connected mobile devices, such as smartphones and tablets, has enabled consumers to increase the amount and type of content they consume online. Rapid innovations in technology have made it possible for users to easily transition between smartphones, tablets, laptops and desktops, thereby significantly increasing the total amount of time spent online and the quality of the viewing experience.

The rapid growth of online content offerings across a multitude of websites and apps, while embraced by consumers, has also created a new challenge, as consumers sometimes find it difficult to ascertain which online content they already have rights to access. Furthermore, the disaggregation of content forces consumers to sign on across multiple online platforms, making it cumbersome for them to access authorized content. Consumers want a simplified solution that allows them to sign on once and view all of their content in a seamless manner.

Increasingly available Internet connectivity, increases in high-speed Internet penetration and speed, and the expansion of online video content services, have driven explosive growth in consumption of video content delivered over the Internet to televisions, computers, tablets and smartphones, more commonly referred to as “over-the-top” (OTT). Nevertheless, the OTT landscape remains highly fragmented, making specific content often difficult to find or consume. We believe high-speed Internet providers that also provide television services face a growing threat of disintermediation from these OTT providers, and are increasingly seeking compelling solutions to help them compete.

**The Synacor Solution**

Our customers face a number of challenges, including responding to changing consumer preferences, maintaining relevance in the face of increasing competitive pressure, addressing OTT and finding new ways to increase their average revenue per subscriber. We tailored our platform to provide solutions to these challenges and to enable our customers to:

- *Deliver a compelling consumer experience* . Our platform simplifies the consumer Internet experience by packaging online content and services with the goal of providing consumers easy access to the content they are entitled to receive – anytime, anywhere, on any device.

- *Broaden relationships with consumers* . We provide our customers with a platform that enables multiple touch points with consumers and increases engagement through an extensive offering of online content and services across multiple devices.

- *Increase monetization* . We enable our customers to generate additional revenue by monetizing their consumer Internet traffic and packaging value added services which we partner with them to provide.

**Our Strengths**

- *Robust platform at scale* . We benefit from scalable technology, our customers’ large subscriber base and extensive relationships with content providers. By applying our proprietary platform and investment in research and development, we are able to offer our services to new and existing customers on what we believe are highly competitive terms. As a result, we believe our customers benefit from the decrease in capital expenditures and ongoing maintenance expense required to implement and operate their own platform. In addition, we believe that our scale enables us to obtain more favorable terms from third parties (such as search and display advertising partners) than our customers could obtain on their own. Finally, our customers’ large subscriber base draws many programmers and content providers with whom we have content licensing agreements. We believe that our economies of scale make it difficult for our customers to cost-effectively develop comparable solutions in-house or for a competitor to replicate our comprehensive suite of solutions.

- *Flexible and easily integrated solution* . Our flexible platform allows our customers to package content that meets the specific requirements of their consumers. We designed our platform to fully integrate with our customers’ billing and subscriber management systems, enabling consumers to access content and services that they are authorized to receive across multiple devices. Our integration also provides our customers with an opportunity to package, cross-sell and up-sell premium content and additional tiers of service to their consumers.

- *Large and engaged consumer base* . Over the three months ended September 30, 2011, we had an average of 14.1 million unique visitors per month, as measured by comScore. These unique visitor levels represent a large and engaged consumer base that has developed as we have attracted new

customers and added more content and services to our platform. We have the ability to target specific consumer segments, enabling us to attract advertisers seeking to target specific local and national audiences.

- *Established customer base with predictable search and display advertising revenue* . We have long-term relationships with many of our customers which, together with what we believe is a high cost of switching (from our platform to another solution), have resulted in very low levels of customer turnover over time. The majority of our revenue attributable to these customers is generated through search and display advertising. Given the relatively predictable consumer search and page view behavior patterns on our platform, we have experienced historically predictable search and display advertising revenue.

- *Well-positioned in large and growing market* . The market for Internet-delivered content has grown rapidly over the past several years. We believe we are one of the only companies that has a platform solution with the scale and functionality to allow the largest high-speed Internet service providers and consumer electronics manufacturers to develop or expand their online video or other online content offerings.

**Our Strategy**

We intend to:

- Increase penetration and monetization of existing customers.

- Acquire new customers.

- Continue to invest in platform enhancements and technology solutions.

- Expand internationally.

**Risks Related to Our Business**

Our business is subject to a number of risks that you should be aware of before making an investment decision. These risks are discussed more fully in “Risk Factors” beginning on page 11.

Some of these risks are:

- We have a history of significant net losses and may not be profitable in future periods.

- Google Inc., or Google, accounts for a significant portion of our revenue, and any loss of, or diminution in, our business relationship with Google would materially and adversely affect our financial performance.

- A loss of any significant customer could negatively affect our financial performance.

- Our sales growth will be adversely affected if we are unable to expand the breadth of our services and products or to introduce new services and products on a timely basis.

- The market for Internet-based services and products in which we operate is highly competitive, and if we cannot compete effectively, our business may be harmed.

## Our History and Corporate Information

Synacor was originally formed as a New York corporation in January 1998 with the name Chek, Inc., or Chek. Chek, an Internet messaging technology provider, designed and managed a proprietary messaging platform that supported the hosting of branded e-mail and time management applications. In December 2000, Chek acquired MyPersonal.com, Inc., or MyPersonal, through a recapitalization and stock swap and changed its name to CKMP, Inc. MyPersonal developed white-label Internet community portals and built and managed a flexible platform for delivering content-rich, branded portals to affinity groups with a focus on the educational marketplace. In July 2001, CKMP, Inc. changed its name to Synacor, Inc., and in November 2002, Synacor re-incorporated under the laws of the State of Delaware. MyPersonal remained a subsidiary of Synacor until May 2007 when it was dissolved. As of the date of this prospectus, Synacor has no subsidiaries.

Our corporate headquarters are located at 40 La Riviere Drive, Suite 300, Buffalo, New York 14202. Our telephone number is (716) 853-1362. Our website address is *www.synacor.com* . Information contained on our website is not incorporated by reference into this prospectus, and you should not consider information contained on our website to be part of this prospectus or in deciding whether to invest in our common stock.

Synacor ® and other trademarks of Synacor appearing in this prospectus are the property of Synacor. All other service marks, trademarks and trade names appearing in this prospectus are the property of their respective holders. We do not intend our use or display of other companies' trade names or trademarks to imply a relationship with, or endorsement or sponsorship of us by, these other companies.

## Industry Data

We make statements in this prospectus about our industry, including statements about historical and projected future high-speed Internet subscribers and usage and online advertising expenditures. We have derived this information from reports and analyses prepared by third-party market research firms, including the following: PricewaterhouseCoopers LLP, or PwC, Cisco Systems, Inc., or Cisco, Capital IQ Solutions, Google AdSense, DoubleClick, comScore and Veronis Suhler Stevenson, or VSS.

## Key Business Metrics

We measure our business by using the following key business metrics: unique visitors, search queries and advertising impressions. For a description of how our key business metrics are defined and measured, see the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Business Metrics."

**The Offering**

| | |
|---|---|
| Common stock offered by Synacor | shares |
| Common stock to be outstanding after this offering | shares |
| Use of proceeds | We intend to use the net proceeds from this offering for working capital and other general corporate purposes. We may also use a portion of the net proceeds to acquire other businesses, products or technologies. We do not have agreements or commitments for any specific acquisitions at this time. See "Use of Proceeds." |
| Dividend policy | We do not anticipate paying cash dividends for the foreseeable future. See "Dividend Policy." |
| Proposed trading symbol | |

The number of shares of our common stock to be outstanding following this offering is based on 39,990,379 shares of our common stock outstanding as of September 30, 2011, which assumes the conversion of all outstanding shares of our preferred stock, but excludes:

- 9,929,693 shares of common stock issuable upon exercise of options outstanding as of September 30, 2011 at a weighted average exercise price of $0.93 per share; and
- shares of common stock reserved for future issuance under our 2012 Equity Incentive Plan, which will become effective on the effective date of the registration statement of which this prospectus is a part.

Unless otherwise indicated, this prospectus reflects and assumes the following:

- a 3-for-1 forward split of our common stock that became effective July 31, 2008;
- the automatic conversion of all outstanding shares of our preferred stock into 34,790,277 shares of common stock concurrently with the closing of the offering;
- the filing of our amended and restated certificate of incorporation and the adoption of our amended and restated bylaws immediately prior to the closing of this offering; and
- no exercise by the underwriters of their option to purchase up to an additional shares from Synacor in the offering.

In addition, we anticipate effecting a -for- stock split prior to the completion of this offering. This prospectus does not reflect the effects of this stock split.

**Summary Financial Data**

The following tables summarize the financial data for our business for the periods presented. You should read this summary financial data in conjunction with "Selected Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes, all included elsewhere in this prospectus.

We derived the summary financial data for the years ended December 31, 2008, 2009 and 2010 and as of December 31, 2009 and 2010 from our audited financial statements and related notes, which are included in this prospectus. The summary financial data for the nine months ended September 30, 2010 and 2011 and as of September 30, 2011 are derived from our unaudited condensed financial statements appearing elsewhere in this prospectus. We have prepared the unaudited financial data on the same basis as the audited financial statements. We have included, in our opinion, all adjustments, consisting only of normal recurring adjustments that we consider necessary for a fair presentation of the financial information set forth in those statements. Our historical results are not necessarily indicative of the results that should be expected in the future, and our interim results are not necessarily indicative of the results that should be expected for the full year.

The pro forma basic and diluted net income (loss) per share attributable to common stockholders data for the year ended December 31, 2010 and for the nine months ended September 30, 2011 reflect the conversion of all of our outstanding shares of preferred stock into 34,790,277 shares of common stock in connection with this offering. See Note 1 of Notes to the Financial Statements and Note 1 of Notes to the Condensed Financial Statements—Unaudited for an explanation of the method used to determine the number of shares used in computing pro forma basic and diluted net income (loss) per share.

| | Year Ended December 31, | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | 2010 | 2011 |
| | (in thousands except share and per share data) | | | | |
| Revenue | $ 52,571 | $ 60,798 | $ 66,232 | $ 48,041 | $ 62,115 |
| Costs and operating expenses: | | | | | |
| Cost of revenue (1) | 28,575 | 34,074 | 36,703 | 26,907 | 32,872 |
| Research and development (1)(2) | 12,783 | 13,627 | 18,494 | 13,710 | 14,270 |
| Sales and marketing (2) | 5,732 | 5,591 | 6,211 | 4,597 | 5,811 |
| General and administrative (1)(2) | 4,997 | 4,966 | 5,656 | 3,941 | 4,887 |
| Withdrawn initial public offering expenses | 3,405 | — | — | — | — |
| Depreciation | 1,574 | 2,005 | 2,506 | 1,884 | 1,950 |
| Other operating expenses | 1,121 | — | — | — | — |
| Total costs and operating expenses | 58,187 | 60,263 | 69,570 | 51,039 | 59,790 |
| Income (loss) from operations | (5,616) | 535 | (3,338) | (2,998) | 2,325 |
| Other income (expense) | 156 | 69 | (2) | (17) | (18) |
| Interest expense | 294 | 285 | 240 | 189 | 64 |
| Income (loss) before income taxes | (5,754) | 319 | (3,580) | (3,204) | 2,243 |
| Provision for income taxes | 10 | 15 | 11 | 18 | 55 |
| Net income (loss) | $ (5,764) | $ 304 | $ (3,591) | $ (3,222) | $ 2,188 |
| Net income (loss) attributable to common stockholders | $ (5,764) | $ 25 | $ (3,591) | $ (3,222) | $ 285 |
| Net income (loss) per share attributable to common stockholders: | | | | | |
| Basic | $ (1.70) | $ 0.01 | $ (0.96) | $ (0.87) | $ 0.07 |
| Diluted | $ (1.70) | $ 0.01 | $ (0.96) | $ (0.87) | $ 0.05 |
| Weighted average shares used to compute net income (loss) per share attributable to common stockholders: | | | | | |
| Basic | 3,380,917 | 3,628,058 | 3,730,588 | 3,711,130 | 4,013,478 |
| Diluted | 3,380,917 | 44,586,142 | 3,730,588 | 3,711,130 | 44,866,723 |
| Pro forma net income (loss) per share attributable to common stockholders: | | | | | |
| Basic | | | $ (0.09) | | $ 0.06 |
| Diluted | | | $ (0.09) | | $ 0.05 |
| Pro forma weighted average shares used to compute net income (loss) per share attributable to common stockholders: | | | | | |
| Basic | | | 38,520,865 | | 38,803,755 |
| Diluted | | | 38,520,865 | | 44,866,723 |
| Other Financial Data: | | | | | |
| Adjusted EBITDA (3) | $ (3,374) | $ 3,441 | $ 36 | $ (509) | $ 4,915 |

*(footnotes on following pages)*

(1) Exclusive of depreciation shown separately.
(2) Includes stock-based compensation as follows:

| | Year Ended December 31, | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | 2010 | 2011 |
| | | | (in thousands) | | |
| Research and development | $ 221 | $ 252 | $ 398 | $ 278 | $ 205 |
| Sales and marketing | 142 | 189 | 202 | 140 | 141 |
| General and administrative | 305 | 460 | 268 | 187 | 294 |
| | $ 668 | $ 901 | $ 868 | $ 605 | $ 640 |

(3) We define adjusted EBITDA as net income (loss), plus: provision for income taxes, interest expense, other (income) expense, depreciation, and stock-based compensation. Please see "Adjusted EBITDA" below for more information and for a reconciliation of adjusted EBITDA to net income (loss), the most directly comparable financial measure calculated and presented in accordance with GAAP.

The following table sets forth balance sheet data as of December 31, 2009 and 2010 on an actual basis and as of September 30, 2011:

- on an actual basis;
- on a pro forma basis to give effect to the automatic conversion of all outstanding shares of preferred stock into common stock concurrently with the closing of this offering; and
- on a pro forma as adjusted basis to give effect to (i) the conversion of all outstanding shares of preferred stock into common stock concurrently with the closing of this offering and (ii) the receipt of the estimated net proceeds from the sale of shares of common stock offered by us in this offering at an assumed initial public offering price of $ , which is the midpoint of the range of the initial public offering price listed on the cover page of this prospectus, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us, and the filing of our amended and restated certificate of incorporation immediately prior to the closing of this offering.

| | As of December 31, | | As of September 30, 2011 | | |
|---|---|---|---|---|---|
| | 2009 | 2010 | Actual | Pro Forma | Pro Forma As Adjusted |
| | | | (in thousands) | | |
| **Balance Sheet Data:** | | | | | |
| Cash and cash equivalents | $ 10,462 | $ 5,412 | $ 7,253 | $ 7,253 | |
| Trade receivables, net | 7,773 | 9,654 | 12,004 | 12,004 | |
| Property and equipment, net | 6,631 | 7,110 | 7,377 | 7,377 | |
| Total assets | 26,004 | 24,327 | 28,801 | 28,801 | |
| Long-term bank financing and capital lease obligations | 1,247 | 1,203 | 1,501 | 1,501 | |
| Convertible preferred stock | 28,432 | 28,432 | 28,432 | — | |
| Total stockholders' equity | 13,053 | 10,156 | 13,278 | 13,278 | |

**Adjusted EBITDA**

To provide investors with additional information regarding our financial results, we have disclosed within this prospectus adjusted EBITDA, a non-GAAP financial measure. We have provided a reconciliation below of adjusted EBITDA to net income (loss), the most directly comparable GAAP financial measure.

We have included adjusted EBITDA in this prospectus because it is a key measure used by our management and board of directors to understand and evaluate our core operating performance and trends, to prepare and approve our annual budget and to develop short- and long-term operational plans. In particular, the exclusion of certain expenses in calculating adjusted EBITDA can provide a useful measure for period-to-period comparisons of our core business. Additionally, adjusted EBITDA is a key financial measure used by the compensation committee of our board of directors in connection with the payment of bonuses to our executive officers. Accordingly, we believe that adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors.

Our use of adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- although depreciation is a non-cash charge, the assets being depreciated may have to be replaced in the future, and adjusted EBITDA does not reflect capital expenditure requirements for such replacements or for new capital expenditure requirements;
- adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- adjusted EBITDA does not consider the potentially dilutive impact of equity-based compensation;
- adjusted EBITDA does not reflect tax payments that may represent a reduction in cash available to us; and
- other companies, including companies in our industry, may calculate adjusted EBITDA differently, which reduces its usefulness as a comparative measure.

Because of these limitations, you should consider adjusted EBITDA alongside other financial performance measures, including various cash flow metrics, net income (loss) and our other GAAP results. The following table presents a reconciliation of adjusted EBITDA to net income (loss) for each of the periods indicated:

| | Year Ended December 31, | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | 2010 | 2011 |
| | | | (in thousands) | | |
| **Reconciliation of Adjusted EBITDA:** | | | | | |
| Net income (loss) | $ (5,764) | $ 304 | $ (3,591) | $ (3,222) | $ 2,188 |
| Provision for income taxes | 10 | 15 | 11 | 18 | 55 |
| Interest expense | 294 | 285 | 240 | 189 | 64 |
| Other (income) expense(1) | (156) | (69) | 2 | 17 | 18 |
| Depreciation | 1,574 | 2,005 | 2,506 | 1,884 | 1,950 |
| Stock-based compensation | 668 | 901 | 868 | 605 | 640 |
| Adjusted EBITDA | $ (3,374) | $ 3,441 | $ 36 | $ (509) | $ 4,915 |

(1) Other (income) expense consists primarily of interest income earned and foreign exchange gains and losses.

## RISK FACTORS

*Investing in our common stock involves a high degree of risk. You should carefully consider the following risk factors and all other information contained in this prospectus before deciding to invest in our common stock. If any of the following events actually occur or risks actually materialize, our business, financial condition or results of operations could be materially and adversely affected. In that case, the trading price of our common stock could decline, and you might lose some or all of your investment.*

### Risks Related to Our Business

**We have a history of significant net losses and may not be profitable in future periods.**

We have incurred significant losses in each year of operation other than 2009, including a net loss of $5.8 million in 2008 and a net loss of $3.6 million in 2010. Our net income in 2009 was $0.3 million, and our net income in the nine months ended September 30, 2011 was $2.2 million. We expect that our expenses will increase in future periods as we implement initiatives designed to grow our business including, among other things, the development and marketing of new services and products, licensing of content, expansion of our infrastructure, international expansion and general and administrative expenses associated with being a public company. If our revenue does not sufficiently increase to offset these expected increases in operating expenses, we may incur significant losses and may not be profitable. Our revenue growth in recent periods may not be indicative of our future performance. In fact, in future periods, our revenue could decline. Accordingly, we may not be able to achieve profitability in the future. Any failure to achieve profitability may materially and adversely affect our business, financial condition and results of operations, as well as the trading price of our common stock.

**Google accounts for a significant portion of our revenue, and any loss of, or diminution in, our business relationship with Google would materially and adversely affect our financial performance.**

We rely on traffic on our platform to generate search and display advertising revenue, a substantial portion of which is derived from text-based links to advertisers' websites as a result of Internet searches. We have a revenue-sharing relationship with Google under which we include a Google-branded search tool on our customers' websites. When a consumer makes a search request using this tool, we deliver it to Google, and Google returns search results to us that include advertiser-sponsored links. If the consumer clicks on a sponsored link, Google receives payment from the sponsor of that link and shares a portion of that payment with us. We then typically share a portion of that payment with the applicable customer. Our Google-related revenue, which consists of the portion of the payment from the sponsor that Google shares with us, accounted for approximately 48%, 45% and 49% of our revenue in 2008, 2009 and 2010, respectively, and approximately 55% of our revenue for the nine months ended September 30, 2011. Our agreement with Google expires in February 2014 unless we and Google mutually elect to renew it. Additionally, Google may terminate our agreement if we experience a change in control or enter into an agreement providing for a change in control, if we do not maintain certain search and display advertising revenue levels, or upon the two-year anniversary of the agreement, in February 2013. The consummation of this offering will not constitute a change in control for this purpose. If advertisers were to discontinue their advertising via Internet searches, if Google's revenue from search-based advertising were to decrease, if our share of Google's revenue were to be reduced or if our agreement with Google were to be terminated for any reason or renewed on less favorable terms, our business, financial condition and results of operations would be materially and adversely affected.

**A loss of any significant customer could negatively affect our financial performance.**

We derive a substantial portion of our revenue from a small number of customers. For example, revenue attributable to two customers, Charter Communications Inc., or Charter, and CenturyLink, Inc., or CenturyLink (including our revenue attributable to Qwest Communications International, Inc., or Qwest, which merged with

CenturyLink in April 2011), together accounted for approximately 65%, 62% and 60% of our revenue for the years ended December 31, 2008, 2009 and 2010, respectively, with revenue attributable to each of these customers accounting for 20% or more in each such period. In addition, revenue attributable to Charter, CenturyLink (including revenue attributable to Qwest) and Toshiba America Information Systems, Inc., or Toshiba, together accounted for approximately 63% of our revenue for the nine months ended September 30, 2011, with revenue attributable to two of these customers each accounting for 20% or more in such period and revenue attributable to the third customer accounting for more than 10% in such period. Revenue attributable to these customers includes the subscriber-based revenue earned directly from them, as well as the search and display advertising revenue earned from third parties, such as Google, based on traffic generated from their websites.

Our contracts with our customers generally have an initial term of approximately two to three years from the launch of their websites and frequently provide for subsequent renewal terms. Our agreements with both Charter and CenturyLink are currently in such a renewal term. If any one of these key contracts is not renewed or is otherwise terminated, or if revenue from these significant customers declines because of competitive or other reasons, our revenue would decline and our ability to achieve or sustain profitability would be impaired. In addition to loss of subscriber-based revenue, including website and paid content sales, we would also lose significant revenue from the related search and display advertising services that we provide.

**Many individuals are using devices other than personal computers and software applications other than Internet browsers to access the Internet. If users of these devices and software applications do not widely adopt the applications and other solutions we develop for them, our business could be adversely affected.**

The number of people who access the Internet through devices other than PCs, including tablets, smartphones and connected TVs, has increased dramatically in the past few years and is projected to continue to increase. Similarly, individuals are increasingly accessing the Internet through applications, or apps, other than Internet browsers, such as those available for download through Apple Inc.'s App Store and the Android Market. While we are developing solutions to these alternative means of accessing the Internet, we do not currently offer our customers and their subscribers a wide variety of apps and other non-browser solutions. Additionally, as new devices and new apps are continually being released, it is difficult to predict the problems we may encounter in developing new versions of our apps and other solutions for use on these alternative devices and apps, and we may need to devote significant resources to the creation, support and maintenance of such applications and solutions. If users of these devices and apps do not widely adopt the apps and other solutions we develop, our business, financial condition and results of operations could be adversely affected.

**Consumer tastes continually change and are unpredictable, and our sales may decline if we fail to enhance our service and content offerings to achieve continued subscriber acceptance.**

Our business depends on aggregating and providing services and content that our customers will place on their websites, including television programming, news, entertainment, sports and other content that their subscribers find engaging, and value added services and paid content that their subscribers will buy. Accordingly, we must continue to invest significant resources in licensing efforts, research and development and marketing to enhance our service and content offerings, and we must make decisions about these matters well in advance of product releases to implement them in a timely manner. Our success depends, in part, on unpredictable and volatile factors beyond our control, including consumer preferences, competing content providers and websites and the availability of other news, entertainment, sports and other services and content. While each consumer's homepage is set to our applicable customer's website upon the installation of our customer's services or the sale of our customer's product, a consumer may easily change that setting, which would likely decrease the use of our platform. If our services are not responsive to the requirements of our customers or the preferences of their consumers, or the services are not brought to market in a timely and effective manner, our business, financial condition and results of operations would be harmed. Even if our services and content are successfully introduced

and initially adopted, a subsequent shift in the preferences of our customers or their consumers could cause a decline in the popularity of our services and content that could materially reduce our revenue and harm our business, financial condition and results of operations.

**Our sales growth will be adversely affected if we are unable to expand the breadth of our services and products or to introduce new services and products on a timely basis.**

To retain our existing customers, attract new customers and increase revenue, we must continue to develop and introduce new services and products on a timely basis and continue to develop additional features to our existing product base. If our existing and prospective customers do not perceive that we will deliver our services and products on schedule, and if they do not perceive our services and products to be of sufficient value and quality, we may lose the confidence of our existing customer base and fail to increase sales to these existing customers, and we may not be able to attract new customers, each of which would adversely affect our operating results.

**Our sales cycles and the contracting process with new customers are long and unpredictable and may require us to incur expenses before executing a customer agreement, which makes it difficult to project when, if at all, we will obtain new customers and when we will generate additional revenue and cash flows from those customers.**

We market our services and products directly to high-speed Internet service providers and consumer electronics manufacturers. New customer relationships typically take time to obtain and finalize. Due to operating procedures in many organizations, a significant time period may pass between selection of our services and products by key decision-makers and the signing of a contract. The length of time between the initial customer sales call and the realization of significant sales is difficult to predict and can range from several months to several years. As a result, it is difficult to predict when we will obtain new customers and when we will begin to generate revenue and cash flows from these potential new customers.

As part of our sales cycle, we may incur significant expenses in the form of compensation and related expenses and equipment acquisition before executing a definitive agreement with a prospective customer so that we may be ready to launch shortly following execution of a definitive agreement. If conditions in the marketplace generally or with a specific prospective customer change negatively, it is possible that no definitive agreement will be executed, and we will be unable to recover any expenses incurred before a definitive agreement is executed, which would in turn have an adverse effect on our business, financial condition and results of operations.

**Most of our customers are high-speed Internet service providers, and consolidation within the cable and telecommunications industries could adversely affect our business, financial condition and results of operations.**

Our revenue from high-speed Internet service providers, including our search and display advertising revenue generated by online consumer traffic on our platform, accounted for more than 95% of our revenue in each of 2008, 2009 and 2010 and nearly 90% in the nine months ended September 30, 2011. The cable and telecommunications industries have experienced consolidation over the past several years, and we expect that this trend will continue. As a result of consolidation, some of our customers may be acquired by companies with which we do not have existing relationships and which may have relationships with one of our competitors or may have the in-house capacity to perform the services we provide. As a result, such acquisitions could cause us to lose customers and the associated subscriber-based and search and display advertising revenue. Additionally, under certain of our customer agreements, including our agreement with CenturyLink, the customer has a right to terminate the agreement if it experiences a change in control.

Consolidation may also require us to renegotiate our agreements with our customers as a result of enhanced customer leverage. We may not be able to offset the effects of any such renegotiations, and we may not be able to expand our customer base to counter any revenue declines resulting from the loss of customers or their subscribers.

**As technology continues to evolve, the use of our products by consumer electronics manufacturers may decrease and our business could be adversely affected.**

The consumer electronics industry is subject to rapid change, and our contract with our consumer electronics manufacturer customer is not exclusive. As consumer electronics manufacturers continue to develop new technologies and introduce new models and devices, there can be no assurance that we will be able to develop solutions that will persuade consumer electronic manufacturers that are our customers to utilize our platform for those new devices. If consumer electronics manufacturers that are our customers elect not to integrate our solutions into their new products, our business, financial condition and results of operations could be adversely affected.

**We invest in features and functionality designed to increase consumer engagement with our customers' websites; however, these investments may not lead to increased revenue.**

Our future growth and profitability will depend in large part on the effectiveness and efficiency of our efforts to provide a compelling consumer experience that increases consumer engagement with our platform. We have made and will continue to make substantial investments in features and functionality for our platform that are designed to drive consumer engagement. Not all of these activities directly generate revenue, and we cannot assure you that we will reap sufficient rewards from these investments to make them worthwhile. If the expenses that we incur in connection with these activities do not result in increased consumer engagement that in turn results in revenue increases that exceed these expenses, our business, financial condition and results of operations will be adversely affected.

**Our services and products may become less competitive or even obsolete if we fail to respond to technological developments.**

Our future success will depend, in part, on our ability to modify or enhance our services and products to meet customer and consumer needs, to add functionality and to address technological advancements that would improve their performance. For example, if our services and products do not adapt to the increasing video usage on the Internet or to take into account evolving developments in social networking, then they could begin to appear obsolete. Similarly, if we fail to develop new ways to deliver content and services through apps other than traditional Internet browsers, consumers could seek alternative means of accessing content and services.

To remain competitive, we will need to develop new services and products and adapt our existing ones to address these and other evolving technologies and standards. However, we may be unsuccessful in identifying new opportunities or in developing or marketing new services and products in a timely or cost-effective manner. In addition, our product innovations may not achieve the market penetration or price levels necessary for profitability. If we are unable to develop enhancements to, and new features for, our existing services and products or if we are unable to develop new services and products that keep pace with rapid technological developments or changing industry standards, our services and products may become obsolete, less marketable and less competitive, and our business will be harmed.

**We depend on third parties for content that is critical to our business, and our business could suffer if we do not continue to obtain high-quality content at a reasonable cost.**

We license the content that we aggregate on our platform from numerous third-party content providers, and our future success is highly dependent upon our ability to maintain and enter into new relationships with these and other content providers. In the future, some of our content providers may not give us access to high-quality content, may fail to adapt to changes in consumer tastes or may increase the royalties, fees or percentages that they charge us for their content, any of which could have a material negative effect on our operating results. Our rights to the content that we offer to our customers and their consumers are not exclusive, and the content providers could license their content to our competitors. Our content providers could even grant our competitors

exclusive licenses. In addition, our customers are not prohibited from entering into content deals directly with our content providers. Any failure to enter into or maintain satisfactory arrangements with content providers would adversely affect our ability to provide a variety of attractive services and products to our customers. Our reputation and operating results could suffer as a result, and it may be more difficult for us to develop new relationships with potential customers. Our costs as a percentage of revenue may also increase due to price competition.

**Our quarterly revenue and operating results can fluctuate, and if we fail to meet or exceed the expectations of securities analysts or investors, our stock price and the value of your investment could decline substantially.**

As a result of the rapidly changing nature of the markets in which we compete, our quarterly revenue and operating results are likely to fluctuate from period to period. These fluctuations may be caused by a number of factors, many of which are beyond our control, including:

- any failure to maintain strong relationships and favorable revenue-sharing arrangements with our search and display advertising partners, in particular Google, including a reduction in the quantity or pricing of sponsored links that consumers click on or a reduction in the pricing of display advertisements by advertisers;
- any failure of significant customers to renew their agreements with us;
- our ability to attract new customers;
- our ability to increase sales of value added services and paid content to existing subscribers;
- the timing and success of new service and product introductions by us, our customers or our competitors;
- variations in the demand for our services and products and the implementation cycles of our services and products by our customers;
- changes in our pricing policies or those of our competitors;
- changes in the prices our customers charge for value added services and paid content;
- service outages, other technical difficulties or security breaches;
- limitations relating to the capacity of our networks, systems and processes;
- our failure to accurately estimate or control costs, including costs related to the initial launch of new customers on our platform;
- maintaining appropriate staffing levels and capabilities relative to projected growth;
- the timing of costs related to the development or acquisition of technologies, services or businesses to support our existing customer base and potential growth opportunities; and
- general economic, industry and market conditions and those conditions specific to Internet usage and online businesses.

Because the market for our services and products is relatively new and rapidly changing, it is difficult to predict future financial results. For these reasons, you should not rely on period-to-period comparisons of our financial results, if any, as indications of future results. Our future operating results could fall below the expectations of securities analysts or investors and significantly reduce the trading price of our common stock. Fluctuations in our operating results will likely increase the volatility of our stock price.

**Expansion into international markets, which is an important part of our strategy, but where we have limited experience, will subject us to risks associated with international operations.**

We plan to expand our product offerings internationally, particularly in Europe and, over the long term, in Asia and Latin America. We have limited experience in marketing and operating our services and products in international markets, and we may not be able to successfully develop our business in these markets. Our success in these markets will be directly linked to the success of relationships with potential customers, content partners and other third parties.

As the international markets in which we plan to operate continue to grow, we expect that competition in these markets will intensify. Local companies may have a substantial competitive advantage because of their greater understanding of, and focus on, the local markets. Some of our domestic competitors who have substantially greater resources than we do may be able to more quickly and comprehensively develop and grow in international markets. International expansion may also require significant financial investment including, among other things, the expense of developing localized products, the costs of acquiring foreign companies and the integration of such companies with our operations, expenditure of resources in developing customer and content relationships and the increased costs of supporting remote operations.

Other risks of doing business in international markets include the increased risks and burdens of complying with different legal and regulatory standards, difficulties in managing and staffing foreign operations, recruiting and retaining talented direct sales personnel, limitations on the repatriation of funds and fluctuations of foreign exchange rates, varying levels of Internet technology adoption and infrastructure, and our ability to enforce contracts in foreign jurisdictions. In addition, our success in international expansion could be limited by barriers to international expansion such as tariffs, adverse tax consequences and technology export controls. If we cannot manage these risks effectively, the costs of doing business in some international markets may be prohibitive or our costs may increase disproportionately to our revenue.

**Our agreements with some of our customers and content providers require fixed payments, which could adversely affect our financial performance.**

Certain of our agreements with customers and content providers require us to make fixed payments to them. As of September 30, 2011, the aggregate amount of such fixed payments for the years ending December 31, 2011 and 2012 are approximately $6.9 million and $4.3 million, respectively. We are required to make these fixed payments regardless of the achievement of any revenue objectives or subscriber or usage levels. If we do not achieve our financial objectives, these contractual commitments would constitute a greater percentage of our revenue than originally anticipated and would adversely affect our profitability.

**Our agreements with some of our customers and content providers contain penalties for non-performance, which could adversely affect our financial performance.**

We have entered into service level agreements with most of our customers. These agreements generally call for specific system “up times” and 24 hours per day, seven days per week support and include penalties for non-performance. We may be unable to fulfill these commitments due to circumstances beyond our control, which could subject us to substantial penalties under those agreements, harm our reputation and result in a reduction of revenue or the loss of customers, which would in turn have an adverse effect on our business, financial condition and results of operations.

**System failures or capacity constraints could harm our business and financial performance.**

The provision of our services and products depends on the continuing operation of our information technology and communications systems. Any damage to or failure of our systems could result in interruptions in our service. Such interruptions could harm our business, financial condition and results of operations, and our

reputation could be damaged if people believe our systems are unreliable. Our systems are vulnerable to damage or interruption from snow storms, terrorist attacks, floods, fires, power loss, telecommunications failures, security breaches, computer malware, computer hacking attacks, computer viruses, computer denial of service attacks or other attempts to, or events that, harm our systems. Our data center is also subject to break-ins, sabotage and intentional acts of vandalism and to potential disruptions if the operators of the facility have financial difficulties. Although we maintain insurance to cover a variety of risks, the scope and amount of our insurance coverage may not be sufficient to cover our losses resulting from system failures or other disruptions to our online operations. For example, the limit on our business interruption insurance is approximately $5.0 million. Any system failure or disruption and any resulting losses that are not recoverable under our insurance policies may materially harm our business, financial condition and results of operations.

Although we regularly back-up our systems and store the system back-ups in Atlanta, Georgia and Buffalo, New York, we do not have full second-site redundancy. If we were forced to relocate to an alternate site and to rely on our system back-ups to restore the systems, we would experience significant delays in restoring the functionality of our platform and could experience loss of data, which could materially harm our business and our operating results.

**Security breaches, computer viruses and computer hacking attacks could harm our business, financial condition and results of operations.**

Security breaches, computer malware and computer hacking attacks are prevalent in the technology industry. Any security breach caused by hacking, which involves efforts to gain unauthorized access to information or systems, or to cause intentional malfunctions or loss or corruption of data, software, hardware or other computer equipment, and the inadvertent transmission of computer viruses could harm our business, financial condition and results of operations. We have previously experienced hacking attacks on our systems, and may in the future experience hacking attacks. Though it is difficult to determine what harm may directly result from any specific interruption or breach, any failure to maintain performance, reliability, security and availability of our platform infrastructure to the satisfaction of our customers and their subscribers may harm our reputation and our ability to retain existing customers and attract new customers.

**We may not maintain acceptable website performance for all of our customers' consumers, which may negatively impact our relationships with our customers and harm our business, financial condition and results of operations.**

A key element to our continued growth is the ability of our customers' consumers in all geographies to access our platform within acceptable load times. We refer to this as website performance. We may in the future experience platform disruptions, outages and other performance problems due to a variety of factors, including infrastructure changes, human or software errors, capacity constraints due to an overwhelming number of users accessing our platform simultaneously, and denial of service or fraud or security attacks. In some instances, we may not be able to identify the cause or causes of these website performance problems within an acceptable period of time. It may become increasingly difficult to maintain and improve website performance, especially during peak usage times, and as our solutions become more complex and our user traffic increases. If our customers' websites are unavailable when consumers attempt to access them or do not load as quickly as they expect, consumers may seek other websites to obtain the information for which they are looking, and may not return to our customers' websites as often in the future, or at all. This would negatively impact our relationships with our customers. We expect to continue to make significant investments to maintain and improve website performance. To the extent that we do not effectively address capacity constraints, upgrade our systems as needed and continually develop our technology and network architecture to accommodate actual and anticipated changes in technology, our business and operating results may be harmed.

**We rely on our management team and need additional personnel to expand our business, and the loss of key officers or an inability to attract and retain qualified personnel could harm our business, financial condition and results of operations.**

We depend on the continued contributions of our senior management and other key personnel, especially Ronald N. Frankel, our chief executive officer, George G. Chamoun, our executive vice president of sales and marketing, Scott A. Bailey, our chief operating officer, and William J. Stuart, our chief financial officer. The loss of the services of any of our executive officers or other key employees could harm our business and our prospects. All of our executive officers and key employees are at-will employees, which means they may terminate their employment relationship with us at any time.

Our future success also depends on our ability to identify, attract and retain highly skilled technical, managerial, finance, marketing and creative personnel. For example, we will need to hire personnel outside the United States to pursue an international expansion strategy, and we will need to hire additional advertising salespeople in connection with our own plans to sell more advertisements directly. We face intense competition for qualified individuals from numerous technology, marketing and media companies, and we may incur significant costs to attract them. We may be unable to attract and retain suitably qualified individuals, or we may be required to pay increased compensation in order to do so. If we were to be unable unable to attract and retain the qualified personnel we need to succeed, our business could suffer.

Volatility or lack of performance in the trading price of our common stock following the consummation of this offering may also affect our ability to attract and retain qualified personnel. Many of our senior management personnel and other key employees have become, or will become, vested in a substantial amount of stock or stock options. Employees may be more likely to leave us if the shares they own or the shares underlying their options have significantly appreciated in value relative to the original purchase prices of the shares or the exercise prices of the options or if the exercise prices of the options that they hold are significantly above the trading price of our common stock. If we are unable to retain our employees, our business, financial condition and results of operations would be harmed.

**If we fail to manage our growth effectively, our business, financial condition and results of operations may suffer.**

Following the merger of our predecessor companies, Chek and MyPersonal, to form Synacor, we have expanded our business through organic growth. We expect to continue to grow organically, and we may choose to grow through strategic acquisitions in the future. This growth has placed, and may continue to place, significant demands on our management and our operational and financial infrastructure. Our ability to manage our growth effectively and to integrate new technologies and acquisitions into our existing business will require us to continue to expand our operational, financial and management information systems and to continue to retain, attract, train, motivate and manage key employees. Continued growth could strain our ability to:

- develop and improve our operational, financial and management controls;
- enhance our reporting systems and procedures;
- recruit, train and retain highly skilled personnel;
- maintain our quality standards; and
- maintain customer and content owner satisfaction.

Managing our growth will require significant expenditures and allocation of valuable management resources. If we fail to achieve the necessary level of efficiency in our organization as it grows, our business, financial condition and results of operations would be harmed.

**We may expand our business through acquisitions of, or investments in, other companies or new technologies, which may divert our management's attention or prove not to be successful.**

We may decide to pursue acquisitions of other businesses in the future. Such acquisitions could divert our management's time and focus from operating our business. In addition, integrating an acquired company, business or technology is risky and may result in unforeseen operating difficulties and expenditures, including, among other things, with respect to:

- incorporating new technologies into our existing business infrastructure;
- consolidating corporate and administrative functions;
- coordinating our sales and marketing functions to incorporate the new business or technology;
- maintaining morale, retaining and integrating key employees to support the new business or technology and managing our expansion in capacity; and
- maintaining standards, controls, procedures and policies (including effective internal controls over financial reporting and disclosure controls and procedures).

In addition, a significant portion of the purchase price of companies we may acquire may be allocated to acquired goodwill and other intangible assets, which must be assessed for impairment at least annually. In the future, if our acquisitions do not yield expected returns, we may be required to take charges to our earnings based on this impairment assessment process, which could harm our operating results.

Future acquisitions could result in potentially dilutive issuances of our equity securities, including our common stock, or the incurrence of debt, contingent liabilities, amortization expenses or acquired in-process research and development expenses, any of which could harm our business, financial condition and results of operations. Future acquisitions may also require us to obtain additional financing, which may not be available on favorable terms or at all.

**We may require additional capital to grow our business, and this capital may not be available on acceptable terms or at all.**

We have historically relied on outside financing, principally equity investments by venture capital investors, which comprise a substantial majority of our existing stockholders and, to a lesser degree, cash flows from operations, to fund our operations, capital expenditures and expansion. In the future, the operation of our business and our growth strategy may require significant additional capital, especially if we were to accelerate our expansion and acquisition plans. If the cash generated from operations and from this offering are not sufficient to meet our capital requirements, we will need to seek additional capital, potentially through debt or equity financings, to fund our growth. We may not be able to raise needed capital on terms acceptable to us or at all. Financings, if available, may be on terms that are dilutive or potentially dilutive to our stockholders, and the prices at which new investors would be willing to purchase our securities may be lower than the initial public offering price, in which case our existing stockholders may suffer substantial dilution. The holders of new securities may also receive rights, preferences or privileges that are senior to those of existing holders of our common stock. Any debt financing obtained by us in the future could contain restrictive covenants that may potentially restrict our operations, and if we do not effectively manage our business to comply with those covenants, our business, financial condition and results of operations could be adversely affected. If new sources of financing are required but are insufficient or unavailable, we could be required to delay, abandon or otherwise modify our growth and operating plans to the extent of available funding, which would harm our ability to grow our business.

**Our business depends, in part, on our ability to protect and enforce our intellectual property rights.**

The protection of our intellectual property is critical to our success. We rely on copyright and service mark enforcement, contractual restrictions and trade secret laws to protect our proprietary rights. We have

entered into confidentiality and invention assignment agreements with our employees and contractors, and nondisclosure agreements with certain parties with whom we conduct business to limit access to and disclosure of our proprietary information. However, if we are unable to adequately protect our intellectual property, our business may suffer from the piracy of our technology and the associated loss in revenue.

Protecting against the unauthorized use of our intellectual property and other proprietary rights is expensive, difficult and, in some cases, impossible. Litigation may be necessary in the future to enforce or defend our intellectual property rights, to protect our trade secrets or to determine the validity and scope of the proprietary rights of others. Such litigation could be costly and divert management resources, either of which could harm our business. Furthermore, many of our current and potential competitors have the ability to dedicate substantially greater resources to enforce their intellectual property rights than we do. Accordingly, despite our efforts, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property.

We are not currently involved in any legal proceedings with respect to protecting our intellectual property; however, we may from time to time become a party to various legal proceedings with respect to protecting our intellectual property arising in the ordinary course of our business.

**Any claims from a third party that we are infringing upon its intellectual property, whether valid or not, could subject us to costly and time-consuming litigation or expensive licenses or force us to curtail some services or products.**

Companies in the Internet and technology industries tend to own large numbers of patents, copyrights, trademarks and trade secrets, and frequently enter into litigation based on allegations of infringement or other violations of intellectual property rights. We have been subject to claims that the presentation of certain licensed content on our customer's websites infringes certain patents of a third party, none of which have resulted in direct settlement or payments by us or any determination of infringement by us, and as we face increasing competition, the possibility of further intellectual property rights claims against us grows. Our technologies may not be able to withstand any third party claims or rights against their use. Any intellectual property claims, with or without merit, could be time-consuming, expensive to litigate or settle and could divert management resources and attention. An adverse determination also could prevent us from offering our services and products to others and may require that we procure substitute products or services for our customers.

In the case of any intellectual property rights claim, we may have to pay damages or stop using technology found to be in violation of a third party's rights. We may have to seek a license for the technology, which may not be available to us on reasonable terms and may significantly increase our operating expenses. The technology also may not be available for license to us at all. As a result, we may also be required to develop alternative non-infringing technology, which could require significant effort and expense. If we cannot license or develop technology for the infringing aspects of our business, we may be forced to limit our service and product offerings and may be unable to compete effectively. Any of these consequences could harm our operating results.

In addition, we typically have contractual obligations to our customers to indemnify and defend them with respect to third-party intellectual property infringement claims that arise from our customers' use of our products or services. Such claims, whether valid or not, could harm our relationships with our customers and could result in us or our customers entering into licenses with the claimants and causing us to incur additional costs or reduced revenues. Such claims could also subject us to costly and time-consuming litigation as well as diverting management attention and resources. Satisfying our contractual indemnification obligations could also give rise to significant liability, and thus harm our business and our operating results.

We are not currently subject to any legal proceedings with respect to third party claims that we or our customers' use of our products and services are infringing upon their intellectual property; however, we may from time to time become a party to various legal proceedings with respect to such claims arising in the ordinary course of our business.

**Any unauthorized disclosure or theft of personal information we gather could harm our reputation and subject us to claims or litigation.**

We collect, and have access to, personal information of subscribers, including names, addresses, account numbers, credit card numbers and e-mail addresses. Unauthorized disclosure of personal information regarding website visitors, whether through breach of our systems by an unauthorized party, employee theft or misuse, or otherwise, could harm our business. If there were an inadvertent disclosure of personal information, or if a third party were to gain unauthorized access to the personal information we possess, our operations could be seriously disrupted and we could be subject to claims or litigation arising from damages suffered by subscribers or our customers. In addition, we could incur significant costs in complying with the multitude of state, federal and foreign laws regarding the unauthorized disclosure of personal information. Finally, any perceived or actual unauthorized disclosure of the information we collect could harm our reputation, substantially impair our ability to attract and retain customers and have an adverse impact on our business.

**We collect and may access personal information and other data, which subjects us to governmental regulation and other legal obligations related to privacy, and our actual or perceived failure to comply with such obligations could harm our business.**

We collect, and have access to, personal information of subscribers, including names, addresses, account numbers, credit card numbers and e-mail addresses. There are numerous federal, state and local laws around the world regarding privacy and the storing, sharing, use, processing, disclosure and protection of personal information and other subscriber data, the scope of which are changing, subject to differing interpretations, and may be inconsistent between countries or conflict with other rules. We generally comply with industry standards and are subject to the terms of our privacy policies and privacy-related obligations to third parties (including voluntary third-party certification bodies such as TRUSTe). We strive to comply with all applicable laws, policies, legal obligations and industry codes of conduct relating to privacy and data protection to the extent possible. However, it is possible that these obligations may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other rules or our practices. Any failure or perceived failure by us to comply with our privacy policies, our privacy-related obligations to users or other third parties, or our privacy-related legal obligations, or any compromise of security that results in the unauthorized release or transfer of personal information or other subscriber data, may result in governmental enforcement actions, litigation or public statements against us by consumer advocacy groups or others and could cause our customers to lose trust in us, which could have an adverse effect on our business. Additionally, if third parties we work with, such as customers, vendors or developers, violate applicable laws or our policies, such violations may also put subscriber information at risk and could in turn have an adverse effect on our business.

**Any failure to convince advertisers of the benefits of advertising with us would harm our business, financial condition and results of operations.**

We have derived and expect to continue to derive a substantial portion of our revenue from display advertising on our platform. Such advertising accounted for approximately 14%, 19% and 20% of our revenue for the years ended December 31, 2008, 2009 and 2010, respectively, and approximately 23% of our revenue for the nine months ended September 30, 2011. Our ability to attract and retain advertisers and, ultimately, to generate advertising revenue depends on a number of factors, including:

- increasing the numbers of consumers using our platform;
- maintaining consumer engagement on those websites;
- competing effectively for advertising spending with other online and offline advertising providers; and
- continuing to grow our direct advertising sales force and develop and diversify our advertising platform.

If we are unable to provide high-quality advertising opportunities and convince advertisers and agencies of our value proposition, we may not be able to retain existing advertisers or attract new ones, which would harm our business, financial condition and results of operations.

**Migration of high-speed Internet service providers' subscribers from one high-speed Internet service provider to another could adversely affect our business, financial condition and results of operations.**

Our high-speed Internet service provider customers' subscribers may become dissatisfied with their current high-speed Internet service provider and may switch to another provider. In the event that there is substantial subscriber migration from our existing customers to service providers with which we do not have relationships, the fees that we receive on a per-subscriber basis, and the related search and display advertising revenue, could decline.

**Investors could lose confidence in our financial reports and the trading price of our common stock may be adversely affected, if our internal controls over financial reporting are found by management or by our independent registered public accounting firm not to be adequate.**

Effective internal controls are necessary for us to provide reliable financial reports and prevent fraud. In addition, Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, will require us to evaluate and report on our internal control over financial reporting beginning with our Annual Report on Form 10-K for the year ending December 31, 2012. We have begun the process of preparing an internal plan for compliance with Section 404 and strengthening and testing our system of internal controls to provide the basis for our report. The process of implementing our internal controls and complying with Section 404 will be expensive and time consuming, and will require significant attention of management. We cannot be certain that these measures will ensure that we implement and maintain adequate controls over our financial processes and reporting in the future. Even if we conclude our internal control over financial reporting provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, because of its inherent limitations, internal control over financial reporting may not prevent or detect fraud or misstatements. Failure to implement required new or improved controls, or difficulties encountered in their implementation, could harm our operating results or cause us to fail to meet our reporting obligations.

In addition, a delay in compliance with Section 404 could subject us to a variety of administrative sanctions, including ineligibility for short form resale registration, action by the SEC, the suspension or delisting of our common stock from and the inability of registered broker-dealers to make a market in our common stock, which would further reduce the trading price of our common stock and could harm our business.

**Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.**

As of September 30, 2011, we had substantial federal and state net operating loss carryforwards. Under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, or the Code, if a corporation undergoes an "ownership change," the corporation's ability to use its pre-change net operating loss carryforwards to offset its post-change income and taxes may be limited. In general, an "ownership change" generally occurs if there is a cumulative change in our ownership by "five-percent stockholders" that exceeds 50 percentage points over a rolling three-year period. For these purposes, a five-percent stockholder is generally any person or group of persons that at any time during the applicable testing period has owned 5% or more of our outstanding stock. In addition, persons who own less than 5% of the outstanding stock are grouped together as one or more "public groups," which are also treated as five-percent stockholders. Similar rules may apply under state tax laws. We may experience ownership changes in the future as a result of this issuance or future transactions in our stock, some of which may be outside our control. As a result, our ability to use our pre-change net operating loss carryforwards to offset United States federal and state taxable income and taxes may be subject to limitations.

## Risks Related to Our Industry

**The growth of the market for our services and products depends on the continued growth of the Internet as a medium for content, advertising, commerce and communications.**

Expansion in the sales of our services and products depends on the continued acceptance of the Internet as a platform for content, advertising, commerce and communications. The acceptance of the Internet as a medium for such uses could be adversely impacted by delays in the development or adoption of new standards and protocols to handle increased demands of Internet activity, security, privacy protection, reliability, cost, ease-of-use, accessibility and quality-of-service. The performance of the Internet and its acceptance as such a medium has been harmed by viruses, worms, and similar malicious programs, and the Internet has experienced a variety of outages and other delays as a result of damage to portions of its infrastructure. If for any reason the Internet does not remain a medium for widespread content, advertising, commerce and communications, the demand for our services and products would be significantly reduced, which would harm our business.

**The growth of the market for our services and products depends on the development and maintenance of the Internet infrastructure.**

Our business strategy depends on continued Internet and high-speed Internet access growth. Any downturn in the use or growth rate of the Internet or high-speed Internet access would be detrimental to our business. If the Internet continues to experience significant growth in number of users, frequency of use and amount of data transmitted, the Internet infrastructure might not be able to support the demands placed on it and the performance or reliability of the Internet may be adversely affected. The success of our business therefore depends on the development and maintenance of a sound Internet infrastructure. This includes maintenance of a reliable network backbone with the necessary speed, data capacity and security, as well as timely development of complementary products, such as routers, for providing reliable Internet access and services. Consequently, as Internet usage increases, the growth of the market for our products depends upon improvements made to the Internet as well as to individual customers' networking infrastructures to alleviate overloading and congestion. In addition, any delays in the adoption of new standards and protocols required to govern increased levels of Internet activity or increased governmental regulation may have a detrimental effect on the Internet infrastructure.

**A substantial portion of our revenue is derived from search and display advertising; our revenue might decline if advertisers do not continue their usage of the Internet as an advertising medium.**

We have derived and expect to continue to derive a substantial portion of our revenue from search and display advertising on our platform. Such search and display advertising revenue accounted for approximately 61%, 65% and 69% of our revenue for the years ended December 31, 2008, 2009 and 2010, respectively, and approximately 77% of our revenue for the nine months ended September 30, 2011. However, the prospects for continued demand and market acceptance for Internet advertising are uncertain. If advertisers do not continue to increase their usage of the Internet as an advertising medium, our revenue might stagnate or decline. Advertisers that have traditionally relied on other advertising media may not advertise on the Internet. Most advertising agencies and potential advertisers, particularly local advertisers, have only limited experience advertising on the Internet and devote only a small portion of their advertising expenditures to online advertising. As the Internet evolves, advertisers may find online advertising to be a less attractive or less effective means of promoting their services and products than traditional methods of advertising and may not continue to allocate funds for Internet advertising. Many historical predictions by industry analysts and others concerning the growth of the Internet as a commercial medium have overstated the growth of the Internet and you should not rely upon them. This growth may not occur or may occur more slowly than estimated.

Most of our search revenue are based on the number of paid "clicks" on sponsored links that are included in search results generated from our platform. Generally, each time a consumer clicks on a sponsored

link, the search provider that provided the commercial search result receives a fee from the advertiser who paid for such commercial click and the search provider pays us a portion of that fee. We, in turn, typically share a portion of the fee we receive with our customer. If an advertiser receives what it perceives to be a large number of clicks for which it needs to pay, but that do not result in a desired activity or an increase in sales, the advertiser may reduce or eliminate its advertisements through the search provider that provided the commercial search result to us. This reaction may lead to a loss of revenue to our search providers and consequently to lesser fees paid to us, which could have a material negative effect on our financial results.

Market prices for online advertising may decrease due to competitive or other factors. In addition, if a large number of Internet users use filtering software programs that limit or remove advertising from the users' view, advertisers may perceive that Internet advertising is not effective and may choose not to advertise on the Internet.

**The market for Internet-based services and products in which we operate is highly competitive, and if we cannot compete effectively, our sales may decline and our business may be harmed.**

Competition in the market for Internet-based services and products in which we operate is intense and involves rapidly-changing technologies and customer and subscriber requirements, as well as evolving industry standards and frequent product introductions. Our competitors may develop solutions that are similar or superior to our technology. Our primary competitors include high-speed Internet service providers with internal information technology staff capable of developing solutions similar to our technology. Other competitors include Yahoo! Inc., or Yahoo!, Google, AOL LLC, or AOL, and MSN, a division of Microsoft Corporation, or Microsoft. Advantages some of our existing and potential competitors hold over us include the following:

- significantly greater revenue and financial resources;
- stronger brand and consumer recognition;
- the capacity to leverage their marketing expenditures across a broader portfolio of services and products;
- more extensive proprietary intellectual property from which they can develop or aggregate content without having to pay fees or paying significantly lower fees than we do;
- pre-existing relationships with content providers that afford them access to content while blocking the access of competitors to that same content;
- pre-existing relationships with high-speed Internet service providers that afford them a strong customer base;
- lower labor and development costs; and
- broader global distribution and presence.

If we are unable to compete effectively or we are not as successful as our competitors in our target markets, our sales could decline, our margins could decline and we could lose market share, any of which would materially harm our business, financial condition and results of operations.

**Government regulation of the Internet continues to evolve, and new laws and regulations could significantly harm our financial performance.**

Today, there are relatively few laws specifically directed towards conducting business over the Internet. We expect more stringent laws and regulations relating to the Internet to be enacted. The adoption or modification

of laws related to the Internet could harm our business, financial condition and results of operations by, among other things, increasing our costs and administrative burdens. Due to the increasing popularity and use of the Internet, many laws and regulations relating to the Internet are being debated at the international, federal and state levels, which are likely to address a variety of issues such as:

- user privacy and expression;
- ability to collect and/or share necessary information that allows us to conduct business on the Internet;
- export compliance;
- pricing and taxation;
- fraud;
- advertising;
- intellectual property rights;
- consumer protection;
- protection of minors;
- content regulation;
- information security; and
- quality of services and products.

Several federal laws that could have an impact on our business have been adopted. The Digital Millennium Copyright Act of 1998 reduces the liability of online service providers of third-party content, including content that may infringe copyrights or rights of others. The Children's Online Privacy Protection Act imposes additional restrictions on the ability of online services to collect user information from minors. In addition, the Protection of Children from Sexual Predators Act requires online service providers to report evidence of violations of federal child pornography laws under certain circumstances.

It could be costly for us to comply with existing and potential laws and regulations, and they could harm our marketing efforts and our attractiveness to advertisers by, among other things, restricting our ability to collect demographic and personal information from consumers or to use or disclose that information in certain ways. If we were to violate these laws or regulations, or if it were alleged that we had, we could face private lawsuits, fines, penalties and injunctions and our business could be harmed.

Finally, the applicability to the Internet and other online services of existing laws in various jurisdictions governing issues such as property ownership, sales and other taxes, libel and personal privacy is uncertain. Any new legislation or regulation, the application of laws and regulations from jurisdictions whose laws do not currently apply to our business, or the application of existing laws and regulations to the Internet and other online services could also increase our costs of doing business, discourage Internet communications, reduce demand for our services and expose us to substantial liability.

**Public scrutiny of Internet privacy issues may result in increased regulation and different industry standards, which could deter or prevent us from providing our current products and solutions to our customers, thereby harming our business.**

The regulatory framework for privacy issues worldwide is currently in flux and is likely to remain so for the foreseeable future. Practices regarding the collection, use, storage, transmission and security of personal

information by companies operating over the Internet have recently come under increased public scrutiny. The United States government, including the Federal Trade Commission and the Department of Commerce, has announced that it is reviewing the need for greater regulation for the collection of information concerning consumer behavior on the Internet, including regulation aimed at restricting certain targeted advertising practices. In addition, the European Union is in the process of proposing reforms to its existing data protection legal framework, which may result in a greater compliance burden for companies with users in Europe. Various government and consumer agencies have also called for new regulation and changes in industry practices.

Our business, including our ability to operate and expand internationally, could be adversely affected if legislation or regulations are adopted, interpreted or implemented in a manner that is inconsistent with our current business practices and that require changes to these practices, our services or our privacy policies.

## Risks Related to this Offering and Ownership of Our Common Stock

**Our existing stockholders will continue to have substantial control over us after this offering, which could limit your ability to influence the outcome of key corporate decisions, such as an acquisition of our company.**

Following the consummation of this offering, our directors, executive officers and holders of more than 5% of our common stock, together with their affiliates, will beneficially own, in the aggregate, approximately % of our outstanding common stock, or % if the underwriters exercise their over-allotment option in full. As a result, these stockholders, if they act together, would have the ability to control the outcome of matters submitted to our stockholders for approval, including the election of directors and any merger, consolidation or sale of all or substantially all of our assets. In addition, these stockholders, if they act together, would have the ability to control the management and affairs of our company. Accordingly, this concentration of ownership might harm the trading price of our common stock by:

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

**Future sales of our common stock may cause the trading price of our common stock to decline.**

If our existing stockholders, particularly our directors, their affiliated venture capital funds and our executive officers, sell substantial amounts of our common stock in the public market, or are perceived by the public market as intending to sell, the trading price of our common stock could decline below the initial public offering price. Based on shares outstanding as of September 30, 2011, upon completion of this offering, we will have outstanding shares of common stock (or shares if the underwriters exercise their over-allotment option in full). Of these shares, only the shares of common stock sold in this offering and not subsequently held by “affiliates,” as that term is defined in Rule 144 under the Securities Act of 1933, as amended, or the Securities Act, will be immediately freely tradable, without restriction, in the public market.

Our directors, executive officers, holders of substantially all of our common stock and holders of options and warrants to purchase our stock have agreed with the underwriters, subject to certain exceptions, not to dispose of or hedge any of their common stock or securities convertible into or exchangeable or exercisable for shares of common stock for a period through the date that is 180 days after the date of this prospectus, except with the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc. In addition, the holders of substantially all of our common stock and options to purchase our common stock have previously entered into agreements with us not to sell or otherwise transfer any of their

common stock or securities convertible into or exchangeable for shares of common stock for a period through the date 180 days after the date of this prospectus.

The 180-day restricted period under the agreements with the underwriters described in the preceding paragraph will be automatically extended if: (1) during the last 17 days of the 180-day restricted period we issue an earnings release or material news or a material event relating to us occurs; or (2) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results or become aware that material news or a material event will occur during the 16-day period following the last day of the 180-day period, in which case the restrictions described in the preceding paragraph will continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event, as applicable, unless Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc. waive, in writing, such extension.

Upon the expiration of the contractual lock-up agreements pertaining to this offering 180 days from the date of this prospectus, or such longer period described above, up to an additional shares will be eligible for sale in the public market, of which will be held by directors, executive officers and other affiliates and will be subject to volume limitations under Rule 144 under the Securities Act and, in certain cases, various vesting agreements. Some of our existing stockholders have demand and piggyback rights to require us to register with the SEC up to 37,630,875 of our common stock, subject to contractual lock-up agreements. See “Description of Capital Stock—Registration Rights” for more information. If we register any of these shares of common stock, the stockholders would be able to sell those shares freely in the public market.

In addition, the shares that are either subject to outstanding options or that may be granted in the future under our 2012 Equity Incentive Plan, and the shares that are subject to outstanding warrants, will become eligible for sale in the public market to the extent permitted by the provisions of various vesting agreements, the contractual lock-up agreements and Rules 144 and 701 under the Securities Act.

After this offering, we intend to register the shares of our common stock that we may issue under our equity plans. Once we register these shares, they can be freely sold in the public market upon issuance, subject to any vesting or contractual lock-up agreements.

If any of these additional shares described are sold, or if it is perceived that they will be sold, in the public market, the trading price of our common stock could decline. For additional information, see “Shares Eligible for Future Sale.”

**Some provisions of our certificate of incorporation, bylaws and Delaware law may discourage, delay or prevent a merger or acquisition that you may consider favorable or prevent the removal of our current board of directors and management.**

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions that may discourage, delay or prevent a merger or acquisition that you may consider favorable or prevent the removal of our current board of directors and management. We have a number of anti-takeover devices in place that will hinder takeover attempts, including:

- our board of directors is classified into three classes of directors with staggered three-year terms;
- our directors may only be removed for cause, and only with the affirmative vote of a majority of the voting interest of stockholders entitled to vote;
- only our board of directors and not our stockholders will be able to fill vacancies on our board of directors;

- only our chairman of the board, our chief executive officer or a majority of our board of directors, and not our stockholders, are authorized to call a special meeting of stockholders;
- our stockholders will be able to take action only at a meeting of stockholders and not by written consent;
- our amended and restated certificate of incorporation authorizes undesignated preferred stock, the terms of which may be established and shares of which may be issued without stockholder approval; and
- advance notice procedures apply for stockholders to nominate candidates for election as directors or to bring matters before an annual meeting of stockholders.

These provisions and other provisions in our charter documents could discourage, delay or prevent a transaction involving a change in our control. Any delay or prevention of a change of control transaction could cause stockholders to lose a substantial premium over the then-current trading price of their shares. These provisions could also discourage proxy contests and could make it more difficult for you and other stockholders to elect directors of your choosing or to cause us to take other corporate actions you desire.

In addition, we are subject to Section 203 of the Delaware General Corporation Law, which, subject to some exceptions, prohibits “business combinations” between a Delaware corporation and an “interested stockholder,” which is generally defined as a stockholder who becomes a beneficial owner of 15% or more of a Delaware corporation’s voting stock, for a three-year period following the date that the stockholder became an interested stockholder. Section 203 could have the effect of delaying, deferring or preventing a change of control that our stockholders might consider to be in their best interests. See “Description of Capital Stock—Anti-Takeover Effects of Our Certificate of Incorporation and Bylaws and Delaware Law.”

**We have not paid cash dividends on our capital stock, and we do not expect to do so in the foreseeable future.**

We have not historically paid cash dividends on our capital stock. We anticipate that we will retain all future earnings and cash resources for the future operation and development of our business, and as a result, we do not anticipate paying any cash dividends to holders of our capital stock for the foreseeable future. Any future determination regarding the payment of any dividends will be made at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, general business conditions and other factors that our board may deem relevant. Consequently, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment. Investors seeking cash dividends should not invest in our common stock.

**We will have broad discretion in the use of the net proceeds from this offering and may fail to apply these proceeds effectively.**

Our management will have broad discretion in the application of the net proceeds of this offering, including for working capital, general corporate purposes and possible acquisitions. We cannot specify with certainty the actual uses of the net proceeds of this offering. You may not agree with the manner in which our management chooses to allocate and spend the net proceeds. Pending their use, we may invest the net proceeds from this offering in a manner that does not produce income or that loses value. The failure by our management to apply these funds effectively could harm our business, financial condition and results of operations.

**Purchasers in this offering will suffer immediate and substantial dilution.**

The initial public offering price of our common stock is substantially higher than the net tangible book value per share of our common stock outstanding immediately after this offering. Our pro forma net tangible

book value as of September 30, 2011 was $13.3 million, or approximately $0.33 per share. Our pro forma net tangible book value per share represents the amount of our total tangible assets reduced by the amount of our total liabilities and divided by 39,990,379 shares of common stock outstanding as of September 30, 2011 after giving effect to the automatic conversion of all outstanding shares of preferred stock into shares of common stock upon the closing of this offering. Investors who purchase our common stock in this offering will pay a price per share that substantially exceeds the pro forma net tangible book value per share of our common stock. If you purchase our common stock in this offering, you will experience immediate and substantial dilution of $ in the net tangible book value per share of our common stock, based upon the initial public offering price of $ per share, which represents the mid-point of the range set forth on the cover page of this prospectus. Investors who purchase our common stock in this offering will have purchased % of the shares outstanding immediately after the offering, but will have paid % of the total consideration for those shares. If previously granted options are exercised, additional dilution will occur. As of September 30, 2011, options to purchase 9,929,693 shares of our common stock with a weighted average exercise price of approximately $0.93 per share were outstanding. Exercise of these options will result in additional dilution to purchasers of our common stock in this offering.

**No public market for our common stock currently exists and an active market for our common stock may not develop, which could make it difficult for you to sell your shares of common stock and could have a material adverse effect on the value of your investment.**

Prior to this offering, there has been no public market for shares of our common stock. After pricing of this offering, we expect that the shares will trade on the under the symbol “ .” However, we cannot assure you that an active public trading market for our common stock will develop on that exchange or elsewhere or, if developed, that any market will be active or sustained. Accordingly, we cannot assure you of the liquidity of any such market, your ability to sell your shares of common stock or the prices that you may obtain for your shares of common stock. As a result, you could lose all or part of your investment.

**The trading price and volume of our common stock is likely to be volatile, and you might not be able to sell your shares at or above the initial public offering price.**

Even if an active trading market develops, the trading price of our common stock may be highly volatile and could be subject to wide fluctuations. In addition, the trading volume in our common stock may fluctuate and cause significant price variations to occur. If the trading price of our common stock declines significantly, you may be unable to resell your shares at or above your purchase price. We cannot assure you that the trading price of our common stock will not fluctuate or decline significantly in the future. Some of the factors that could negatively affect our share price or result in fluctuations in the price or trading volume of our common stock include:

- variations in our financial performance;
- announcements of technological innovations, new services and products, strategic alliances or significant agreements by us or by our competitors;
- recruitment or departure of key personnel;
- changes in the estimates of our operating results or changes in recommendations by any securities analysts that elect to follow our common stock;
- market conditions in our industry, the industries of our customers and the economy as a whole;
- adoption or modification of laws, regulations, policies, procedures or programs applicable to our business or announcements relating to these matters; and
- the expiration of contractual lock-up agreements.

In addition, if the market for technology stocks or the stock market in general experiences loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, financial condition or results of operations. The trading price of our common stock might also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us. Some companies that have had volatile market prices for their securities have had securities class actions filed against them. Such a suit filed against us, regardless of its merits or outcome, could cause us to incur substantial costs and could divert management's attention.

**If securities or industry analysts do not publish research or reports about our company, our stock price and trading volume could decline.**

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business. We do not currently have and may never obtain research coverage by securities and industry analysts. If no securities or industry analysts commence coverage of our company, the trading price for our stock may be negatively impacted. In the event we obtain securities or industry analyst coverage, if one or more of the analysts who cover us downgrade our stock or publish inaccurate or unfavorable research about our business, our stock price would likely decline. If one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, demand for our stock could decrease, which might cause our stock price and trading volume to decline.

**We will incur increased costs and demands upon management as a result of complying with federal securities laws and regulations applicable to public companies, which could adversely affect our financial performance and our ability to attract and retain directors.**

As a public company, we will be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, and the rules and regulations of . The Sarbanes-Oxley Act, as well as rules subsequently implemented by the SEC and impose additional requirements on public companies, including enhanced corporate governance practices. For example, the listing requirements require that listed companies satisfy certain corporate governance requirements relating to independent directors, audit committees, distribution of annual and interim reports, stockholder meetings, stockholder approvals, solicitation of proxies, conflicts of interest, stockholder voting rights and codes of business conduct. In addition, our management team has limited experience managing a publicly-traded company or complying with the increasingly complex laws pertaining to public companies. In addition, most of our current directors have limited experience serving on the boards of public companies and directors have recently joined our board of directors. In order to have an effective board, these new directors and any other directors that join our board after the consummation of this offering will need to integrate with our other directors and management and become familiar with our operations and growth strategies.

The requirements of these rules and regulations will increase our legal, accounting and financial compliance costs, will make some activities more difficult, time-consuming and costly and may also place undue strain on our personnel, systems and resources. Our management and other personnel will need to devote a substantial amount of time to these requirements. These rules and regulations will also make it more difficult and more expensive for us to maintain directors' and officers' liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to maintain coverage. If we are unable to maintain adequate directors' and officers' insurance, our ability to recruit and retain qualified directors, especially those directors who may be considered independent for purposes of rules, and officers may be significantly curtailed.

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus includes forward-looking statements that reflect our current views with respect to future events or our future financial performance, are based on information currently available to us, and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to differ materially from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. Words such as, but not limited to, “believes,” “can,” “expects,” “anticipates,” “estimates,” “intends,” “objective,” “plans,” “possibly,” “potential,” “predicts,” “targets,” “likely,” “may,” “might,” “would,” “should,” “could,” and similar expressions or phrases (including the negative of such expressions or phrases) may identify forward-looking statements. Forward-looking statements include, but are not limited to, statements about:

- our expected future financial performance;
- our expectations regarding our operating expenses;
- our ability to maintain or broaden relationships with existing customers and develop relationships with new customers;
- our success in anticipating market needs or developing new or enhanced services and products to meet those needs;
- our expectations regarding market acceptance of our services and products;
- our ability to recruit and retain qualified technical and other key personnel;
- our competitive position in our industry, as well as innovations by our competitors;
- our success in managing growth;
- our plans to expand into international markets;
- our success in identifying and managing potential acquisitions;
- our capacity to protect our confidential information and intellectual property rights;
- our need to obtain additional funding and our ability to obtain funding in the future on acceptable terms;
- our expectations regarding the use of proceeds from this offering; and
- anticipated trends and challenges in our business and the markets in which we operate.

Any forward-looking statements contained in this prospectus are based upon our historical performance and our current plans, estimates and expectations. The inclusion of this forward-looking information should not be regarded as a representation by us, the underwriters or any other person that the future plans, estimates or expectations contemplated by us will be achieved. All forward-looking statements involve risks, assumptions and uncertainties. Given these risks, assumptions and uncertainties, you should not place undue reliance on any forward-looking statements. The occurrence of the events described, and the achievement of the expected results, depend on many factors, some or all of which are not predictable or within our control. Actual results may differ materially from expected results. See “Risk Factors” and elsewhere in this prospectus for a more complete discussion of these risks, assumptions and uncertainties and for other risks, assumptions and uncertainties. These

risks, assumptions and uncertainties are not necessarily all of the important factors that could cause actual results to differ materially from those expressed in any of our forward-looking statements. Other unknown or unpredictable factors also could harm our results. In light of these risks, uncertainties and assumptions, the forward-looking events discussed in this prospectus might not occur, and we therefore qualify all of our forward-looking statements by these cautionary statements. Any forward-looking statement made by us in this prospectus speaks only as of the date on which it is made. Except as required by law, we undertake no obligation to update publicly or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

## USE OF PROCEEDS

We estimate that our net proceeds from the sale of the shares of common stock that we are offering will be approximately $ , assuming an initial public offering price of $ per share, which is the midpoint of the range of the initial public offering price listed on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. If the underwriters' option to purchase additional shares in this offering is exercised in full, we estimate that our net proceeds will increase by approximately $ .

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, and our offering expenses remain the same, and after deducting underwriting discounts and commissions. Similarly, each increase (decrease) of one million shares in the number of shares of common stock offered by us would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming the assumed initial public offering price and our offering expenses remain the same, and after deducting underwriting discounts and commissions.

The principal purposes of this offering are to obtain additional capital, to create a public market for our common stock, to facilitate our future access to the public equity markets and to increase our visibility in markets. We intend to use the net proceeds to us from this offering for working capital and other general corporate purposes. These purposes may include expansion of our sales and marketing activities through hiring additional personnel or funding new marketing initiatives. They may also include investments in research and development projects that our management and technical staff may wish to pursue in the future to enhance our product offerings. In addition, the net proceeds may be used to pursue other corporate opportunities that arise in the future.

We may also use a portion of the net proceeds to expand our current business through acquisitions of other companies, assets, products or technologies that enhance or add functionality to our solution, further solidify our market position or allow us to offer complementary services and products. However, we do not have agreements or commitments for any specific acquisitions at this time.

As of the date of this prospectus, we have not yet determined the specific uses of the net proceeds from this offering, and therefore we cannot specify with certainty the amounts to be used for each of the purposes discussed above. The amounts and timing of any expenditures will vary depending on the amount of cash generated by our operations, competitive and technological developments and the rate of growth of our business. As a result, we will have broad discretion in applying the net proceeds from this offering, and investors will be relying on our judgment regarding the application of these net proceeds.

Pending the use of the net proceeds from this offering, we intend to invest the net proceeds in short-term investment-grade, interest-bearing securities. The goal with respect to the investment of these net proceeds will be capital preservation and liquidity so that these funds are readily available to fund our operations.

## DIVIDEND POLICY

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all future earnings and cash resources for the future operation and development of our business and do not anticipate paying any cash dividends for the foreseeable future. Any future determination to declare cash dividends will be made at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, general business conditions and other factors that our board of directors may deem relevant.

## CAPITALIZATION

The following table sets forth our capitalization as of September 30, 2011:

- on an actual basis;
- on a pro forma basis to give effect to the automatic conversion of all outstanding shares of preferred stock into 34,790,277 shares of common stock, as if this had occurred as of September 30, 2011; and
- on a pro forma as adjusted basis to give effect to (i) the conversion of all outstanding shares of preferred stock into common stock as if this had occurred as of September 30, 2011, (ii) the receipt of the estimated net proceeds from the sale of shares of common stock offered by us in this offering at an assumed initial public offering price of $ , which is the midpoint of the range of the initial public offering price listed on the cover page of this prospectus, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us, and (iii) the filing of our amended and restated certificate of incorporation immediately prior to the closing of this offering.

You should read this table in conjunction with "Selected Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes included elsewhere in this prospectus.

| | As of September 30, 2011 | | |
|---|---|---|---|
| | Actual | Pro Forma | Pro Forma as Adjusted |
| | (in thousands, except share and per share data) | | |
| Cash and cash equivalents | $ 7,253 | $ 7,253 | $ |
| Bank financing and Capital lease obligations, including current portion | $ 3,043 | $ 3,043 | $ |
| Stockholders' equity: | | | |
| Common stock, $0.01 par value per share, 60,000,000 shares authorized, 5,839,102 shares issued and 5,200,102 outstanding, actual; 60,000,0000 shares authorized, 40,629,379 shares issued and 39,990,379 shares outstanding, pro forma; 100,000,000 shares authorized, shares issued and outstanding, pro forma as adjusted | 58 | 406 | |
| Mandatorily convertible shares of Series A, Series A-1, Series B and Series C preferred stock, $0.01 par value per share, 12,520,389 shares authorized, 11,596,759 shares issued and outstanding, actual; 12,520,389 shares authorized, no shares issued and outstanding pro forma; 10,000,000 shares authorized, no shares issued and outstanding, pro forma as adjusted | 28,432 | — | |
| Treasury stock—at cost 639,000 shares, actual; 639,000 shares, pro forma; shares, pro forma as adjusted | (569) | (569) | |
| Additional paid-in capital | 45,254 | 73,338 | |
| Accumulated deficit | (59,897) | (59,897) | |
| Total stockholders' equity | 13,278 | 13,278 | |
| Total capitalization | $ 16,321 | $ 16,321 | $ |

If the underwriters' option to purchase additional shares in the offering were exercised in full, pro forma as adjusted cash and cash equivalents, additional paid-in capital, total stockholders' equity (deficit), total capitalization and shares issued and outstanding as of September 30, 2011 would be $ , $ , $ , $ and shares, respectively.

This table excludes the following shares:

- 9,929,693 shares of common stock issuable upon exercise of options outstanding as of September 30, 2011 at a weighted average exercise price of $0.93 per share; and
- shares of common stock reserved for future issuance under our 2012 Equity Incentive Plan, which will become effective on the effective date of the registration statement of which this prospectus is a part.

See “Management—Equity Benefit Plans” for a description of our equity plans.

## DILUTION

If you invest in our common stock in this offering, your interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma net tangible book value per share of our common stock immediately after completion of this offering.

Our pro forma net tangible book value as of September 30, 2011 was $13.3 million, or approximately $0.33 per share, based upon 39,990,379 shares outstanding as of that date. Our pro forma net tangible book value per share represents the amount of our total tangible assets reduced by the amount of our total liabilities and divided by the number of shares of common stock outstanding as of September 30, 2011 after giving effect to the automatic conversion of all outstanding shares of preferred stock into shares of common stock as if the conversion occurred on September 30, 2011. Net tangible book value dilution per share to new investors represents the difference between the amount per share paid by purchasers of shares of common stock in this offering and the pro forma net tangible book value per share of common stock immediately after completion of this offering.

After giving effect to our sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the range of the initial public offering price listed on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses, our pro forma net tangible book value as of September 30, 2011 would have been $ million, or $ per share. This represents an immediate increase in pro forma net tangible book value of $ per share attributable to existing investors and an immediate dilution in pro forma net tangible book value of $ per share to purchasers of common stock in this offering, as illustrated in the following table:

| | |
|---|---|
| Assumed initial public offering price per share | $ |
| Pro forma net tangible book value per share as of September 30, 2011 | 0.33 |
| Increase in pro forma net tangible book value per share attributable to existing investors | |
| Pro forma net tangible book value per share after the offering | |
| Dilution per share to new investors | |

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

Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) our pro forma net tangible book value by $ million, or $ per share, increase (decrease) the pro forma net tangible book value attributable to existing investors by $ per share and increase (decrease) the dilution in pro forma net tangible book value per share to purchasers of common stock in this offering by $ per share, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting an assumed underwriting discount and estimated offering expenses we must pay.

The following table presents, on a pro forma basis as of September 30, 2011, after giving effect to the automatic conversion of all outstanding shares of preferred stock into common stock upon completion of this offering, the differences between the existing stockholders and the purchasers of shares in the offering with respect to the number of shares purchased from us, the total consideration paid and the average price paid per share:

| | Shares Purchased | | Total Consideration | | Average Price per |
|---|---|---|---|---|---|
| | Number | Percent | Amount | Percent | Share |
| | (in thousands except share and per share data) | | | | |
| Existing stockholders | | % | $ | % | $ |
| New stockholders | | | | | |
| Total | | 100.0% | $ | 100.0% | |

As of September 30, 2011, there were options outstanding to purchase a total of 9,929,693 shares of common stock at a weighted average exercise price of $0.93 per share. To the extent outstanding options are exercised, there will be further dilution to new investors. For a description of our equity plans, please see “Management—Equity Benefit Plans.”

## SELECTED FINANCIAL DATA

You should read the following selected historical financial data below in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements, related notes and other financial information included in this prospectus. The selected financial data in this section is not intended to replace the financial statements and is qualified in its entirety by the financial statements and related notes included in this prospectus.

We derived the selected financial data for the years ended December 31, 2008, 2009 and 2010 and as of December 31, 2009 and 2010 from our audited financial statements and related notes, which are included in this prospectus. We derived the selected consolidated financial data for the years ended December 31, 2006 and 2007 and as of December 31, 2006, 2007 and 2008 from our audited consolidated financial statements and related notes, which are not included in this prospectus. The selected financial data for the nine months ended September 30, 2010 and 2011, and the balance sheet data as of September 30, 2011 have been derived from our unaudited condensed financial statements appearing elsewhere in this prospectus. We have included, in our opinion, all adjustments, consisting only of normal recurring adjustments, that we consider necessary for a fair presentation of the financial information set forth in those statements. Our historical results are not necessarily indicative of the results to be expected in the future, and our interim results are not necessarily indicative of the results to be expected for the full fiscal year.

The pro forma basic and diluted net income (loss) per share attributable to common stockholders data for the year ended December 31, 2010 and for the nine months ended September 30, 2011 reflect the conversion of all of our outstanding shares of preferred stock into 34,790,277 shares of common stock in connection with this offering. See Note 1 of Notes to the Financial Statements and Note 1 of Notes to the Condensed Financial Statements—Unaudited for an explanation of the method used to determine the number of shares used in computing pro forma basic and diluted net income (loss) per share.

| | Year Ended December 31, | | | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|---|---|
| | 2006 | 2007 | 2008 | 2009 | 2010 | 2010 | 2011 |
| | (in thousands except share and per share data) | | | | | | |
| **Consolidated Statements of Operations Data:** | | | | | | | |
| Revenue | $ 26,327 | $ 39,896 | $ 52,571 | $ 60,798 | $ 66,232 | $ 48,041 | $ 62,115 |
| Costs and operating expenses: | | | | | | | |
| Cost of revenue (1) | 15,327 | 21,611 | 28,575 | 34,074 | 36,703 | 26,907 | 32,872 |
| Research and development (1)(2) | 4,546 | 7,947 | 12,783 | 13,627 | 18,494 | 13,710 | 14,270 |
| Sales and marketing (2) | 4,413 | 6,157 | 5,732 | 5,591 | 6,211 | 4,597 | 5,811 |
| General and administrative (1)(2) | 3,933 | 4,888 | 4,997 | 4,966 | 5,656 | 3,941 | 4,887 |
| Withdrawn initial public offering expenses | — | — | 3,405 | — | — | — | — |
| Depreciation | 465 | 1,272 | 1,574 | 2,005 | 2,506 | 1,884 | 1,950 |
| Other operating expenses | — | — | 1,121 | — | — | — | — |
| Total costs and operating expenses | 28,684 | 41,875 | 58,187 | 60,263 | 69,570 | 51,039 | 59,790 |
| Income (loss) from operations | (2,357) | (1,979) | (5,616) | 535 | (3,338) | (2,998) | 2,325 |
| Loss on extinguishment of debt | (32) | — | — | — | — | — | — |
| Other income (expense) | 279 | 626 | 156 | 69 | (2) | (17) | (18) |
| Interest expense | (132) | (189) | (294) | (285) | (240) | (189) | (64) |
| Income (loss) before income taxes | (2,242) | (1,542) | (5,754) | 319 | (3,580) | (3,204) | 2,243 |
| Provision for income taxes | 14 | 15 | 10 | 15 | 11 | 18 | 55 |
| Net income (loss) | $ (2,256) | $ (1,557) | $ (5,764) | $ 304 | $ (3,591) | $ (3,222) | $ 2,188 |
| Net income (loss) attributable to common stockholders | $ (2,256) | $ (1,557) | $ (5,764) | $ 25 | $ (3,591) | $ (3,222) | $ 285 |
| Net income (loss) per share attributable to common stockholders: | | | | | | | |
| Basic | $ (6.28) | $ (1.15) | $ (1.70) | $ 0.01 | $ (0.96) | $ (0.87) | $ 0.07 |
| Diluted | $ (6.28) | $ (1.15) | $ (1.70) | $ 0.01 | $ (0.96) | $ (0.87) | $ 0.05 |
| Weighted average shares used to compute net income (loss) per share attributable to common stockholders: | | | | | | | |
| Basic | 359,445 | 1,348,776 | 3,380,917 | 3,628,058 | 3,730,588 | 3,711,130 | 4,013,478 |
| Diluted | 359,445 | 1,348,776 | 3,380,917 | 44,586,142 | 3,730,588 | 3,711,130 | 44,866,723 |
| Pro forma net income (loss) per share attributable to common stockholders: | | | | | | | |
| Basic | | | | | $ (0.09) | | $ 0.06 |
| Diluted | | | | | $ (0.09) | | $ 0.05 |
| Pro forma weighted average shares used to compute net income (loss) per share attributable to common stockholders: | | | | | | | |
| Basic | | | | | 38,520,865 | | 38,803,755 |
| Diluted | | | | | 38,520,865 | | 44,866,723 |
| Other Financial Data: | | | | | | | |
| Adjusted EBITDA (3) | $ (1,886) | $ (313) | $ (3,374) | $ 3,441 | $ 36 | $ (509) | $ 4,915 |

(1) Exclusive of depreciation shown separately.

(2) Includes stock-based compensation as follows:

| | Year Ended December 31, | | | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|---|---|
| | 2006 | 2007 | 2008 | 2009 | 2010 | 2010 | 2011 |
| | (in thousands) | | | | | | |
| Research and development | $ — | $ 94 | $ 221 | $ 252 | $ 398 | $ 278 | $ 205 |
| Sales and marketing | — | 71 | 142 | 189 | 202 | 140 | 141 |
| General and administrative | 58 | 229 | 305 | 460 | 268 | 187 | 294 |
| | $ 58 | $ 394 | $ 668 | $ 901 | $ 868 | $ 605 | $ 640 |

(3) We define adjusted EBITDA as net income (loss), plus: provision for income taxes, interest expense, other (income) expense, depreciation, and stock-based compensation. Please see "Adjusted EBITDA" below for more information and for a reconciliation of adjusted EBITDA to net income (loss), the most directly comparable financial measure calculated and presented in accordance with GAAP.

| | As of December 31, | | | | | As of September 30, |
|---|---|---|---|---|---|---|
| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
| | (in thousands) | | | | | |
| **Consolidated Balance Sheet Data:** | | | | | | |
| Cash and cash equivalents | $ 15,293 | $ 11,072 | $ 8,830 | $ 10,462 | $ 5,412 | $ 7,253 |
| Trade receivables, net | 4,102 | 6,134 | 7,162 | 7,773 | 9,654 | 12,004 |
| Property and equipment, net | 4,315 | 5,743 | 7,707 | 6,631 | 7,110 | 7,377 |
| Total assets | 24,212 | 28,629 | 25,945 | 26,004 | 24,327 | 28,801 |
| Long-term bank financing and capital lease obligations | 1,297 | 1,710 | 2,914 | 1,247 | 1,203 | 1,501 |
| Total stockholders' equity | 17,608 | 17,175 | 12,211 | 13,053 | 10,156 | 13,278 |

**Adjusted EBITDA**

To provide investors with additional information regarding our financial results, we have disclosed within this prospectus adjusted EBITDA, a non-GAAP financial measure. We have provided a reconciliation below of adjusted EBITDA to net income (loss), the most directly comparable GAAP financial measure.

We have included adjusted EBITDA in this prospectus because it is a key measure used by our management and board of directors to understand and evaluate our core operating performance and trends, to prepare and approve our annual budget and to develop short- and long-term operational plans. In particular, the exclusion of certain expenses in calculating adjusted EBITDA can provide a useful measure for period-to-period comparisons of our core business. Additionally, adjusted EBITDA is a key financial measure used by the compensation committee of our board of directors in connection with the payment of bonuses to our executive officers. Accordingly, we believe that adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors.

Our use of adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- although depreciation is a non-cash charge, the assets being depreciated may have to be replaced in the future, and adjusted EBITDA does not reflect capital expenditure requirements for such replacements or for new capital expenditure requirements;
- adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- adjusted EBITDA does not consider the potentially dilutive impact of equity-based compensation;

- adjusted EBITDA does not reflect tax payments that may represent a reduction in cash available to us; and
- other companies, including companies in our industry, may calculate adjusted EBITDA differently, which reduces its usefulness as a comparative measure.

Because of these limitations, you should consider adjusted EBITDA alongside other financial performance measures, including various cash flow metrics, net income (loss) and our other GAAP results. The following table presents a reconciliation of adjusted EBITDA to net income (loss) for each of the periods indicated:

| | Year Ended December 31, | | | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|---|---|
| | 2006 | 2007 | 2008 | 2009 | 2010 | 2010 | 2011 |
| | (in thousands) | | | | | | |
| **Reconciliation of Adjusted EBITDA:** | | | | | | | |
| Net income (loss) | $ (2,256) | $ (1,557) | $ (5,764) | $ 304 | $ (3,591) | $ (3,222) | $ 2,188 |
| Provision for income taxes | 14 | 15 | 10 | 15 | 11 | 18 | 55 |
| Interest expense | 132 | 189 | 294 | 285 | 240 | 189 | 64 |
| Other (income) expense(1) | (279) | (626) | (156) | (69) | 2 | 17 | 18 |
| Depreciation | 465 | 1,272 | 1,574 | 2,005 | 2,506 | 1,884 | 1,950 |
| Stock-based compensation | 58 | 394 | 668 | 901 | 868 | 605 | 640 |
| Adjusted EBITDA | $ (1,866) | $ (313) | $ (3,374) | $ 3,441 | $ 36 | $ (509) | $ 4,915 |

(1) Other (income) expense consists primarily of interest income earned and foreign exchange gains and losses.

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

*The following discussion of our results of operations and financial condition should be read in conjunction with the information set forth in "Selected Financial Data" and our financial statements and the notes thereto included in this prospectus. This discussion contains forward-looking statements based upon our current expectations, estimates and projections that involve risks and uncertainties. Actual results could differ materially from those anticipated in these forward-looking statements due to, among other considerations, the matters discussed under "Risk Factors" and "Special Note Regarding Forward-Looking Statements."*

### Overview

We are a leading provider of authentication and aggregation solutions for delivery of online content and services. We deliver our solutions as a set of services through our hosted and managed platform, enabling cable and telecom service providers and consumer electronics manufacturers to provide the online content and services that their consumers increasingly demand. Our platform allows our customers to package a wide array of online content and services with their high-speed Internet, communications, television and other offerings. Our customers offer our services under their own brands on Internet-enabled devices such as PCs, tablets, smartphones and connected TVs. As of September 30, 2011, our high-speed Internet service provider customers used our platform to offer an engaging Internet experience to over 25% of the estimated 79 million United States high-speed Internet households.

We generate revenue from search and display advertising and by charging subscriber-based fees for services and products delivered through our platform. Our results are driven primarily by our customer mix, the product and service mix preferences of those customers and the pricing of those products and services. We generate the majority of our revenue from search and display advertising on our customers' branded websites, which comprise consumer-facing components of our platform. Adding new customers with large consumer bases and expansion of our relationships with existing customers have resulted in an increasing shift in our revenue mix towards search and display advertising revenue. In addition, as new customers adopt our platform, and as their respective consumers' use of our platform ramps up as described below, our growth is increasingly driven by search and display advertising revenue. These increases are largely driven by our model of sharing a portion of this search and advertising revenue with our customers. As we expand our value added services offerings, we expect our customer base to generate increased subscriber-based revenue.

Growth in search and display advertising revenue is driven largely by increasing consumer use of our platform. As more consumers use our customers' websites and as consumers spend more time on these websites, we have a greater number of opportunities to deliver advertisements. During the nine months ended September 30, 2011, search and display advertising revenue was $48.0 million, a growth of 50% over $32.1 million for the nine months ended September 30, 2010. Over the same period, our unique visitors increased by 55%, our search queries increased by 54% and our advertising impressions increased by 41%. We expect consumer engagement on our customers' websites to continue to grow in the future as our customers deliver more services through their websites.

Our subscriber-based revenue consists of fees charged for the use of our proprietary technology platform and for the use of, or access to, services, such as e-mail, security, online games, music and other value added services and paid content. During the nine months ended September 30, 2011, subscriber-based revenue was $14.1 million, a decline of 12% from $16.0 million during the nine months ended September 30, 2010. While subscriber-based revenue decreased in amount and as a percentage of our total revenue, we believe there are opportunities to generate new sources of subscriber-based revenue, such as fees for TV Everywhere authentication and the introduction of new value added services. We believe that the variety of value added services and the introduction of new value added services will also drive increased search and display advertising revenue.

As new customers introduce their branded websites to their consumers, usage of our platform and our revenue from our customers' websites tends to increase over time. There are a variety of reasons for this ramp-up period. For example, a new customer may migrate its consumers from its existing platform to our platform over a period of time. Moreover, a new customer may initially launch a selection of our services and products, rather than our entire suite of offerings, and subsequently broaden their service and product offerings over time. When a customer launches a new service or product, marketing and promotional activities may be required to generate awareness and interest among consumers. Search and display advertising revenue typically grows significantly during the first two to three years after a customer launch, although there can be notable variances from customer to customer. Thereafter, changes in revenue tend to mirror changes in the consumer base of the applicable customer.

For the nine months ended September 30, 2011, we derived revenue from over 45 customers, with revenue attributable to three customers, CenturyLink (including revenue attributable to Qwest), Charter and Toshiba, together accounting for approximately 63% of our revenue for the nine months ended September 30, 2011. Two of these customers each accounted for 20% or more of revenue in such period, and revenue attributable to the third customer accounted for more than 10% in such period. As we gain additional customers and as recently-added customers ramp up as described above, we anticipate that our revenue will be more broadly spread across our customer base.

We have experienced, and expect to continue to experience, growth in our business as we acquire new customers, as our existing customers acquire new consumers, as we rollout new products and services and as we expand our presence into international markets. We expect to continue to make capital expenditures in 2012 related to both the customer supporting activities and our internal information technology infrastructure. We also expect that our research and development headcount and associated expenses will increase in 2012 as we continue to develop our technology platform, deliver new products and services, and make those and existing products and services available across different devices.

**Trends Affecting Our Business**

Our customers, who are predominantly high-speed Internet service providers that also offer television services, are facing increasing competition from companies that deliver video content over the Internet, more commonly referred to as "over-the-top," or OTT. These new competitors include a number of large and growing companies, such as Google, Netflix, Inc., or Netflix, Hulu, LLC, or Hulu, and Amazon.com Inc., or Amazon. With the increased availability of high-speed Internet access and over-the-top programming, consumers' video content consumption preferences may shift away from current viewing habits. As a result, many of our customers and potential customers are compelled to find new ways to deliver services and content to their consumers via the Internet. We expect this pressure to become even greater as more video content becomes available online. We expect to continue to benefit from this trend as customers adopt our platform to package and deliver video programming and other related authentication services on their own branded websites.

Another trend affecting our customers and our business is the proliferation of Internet-connected devices, especially mobile devices. Smartphones, tablets and connected TVs have made it more convenient for consumers to access services and content online, including television programming. To remain competitive, our customers and potential customers must have the capability to deliver their services and products to consumers on these new devices. Our platform enables them to extend their presence beyond traditional personal computers, and we expect that a significant portion of our revenue growth will come from traffic on these devices.

**Key Initiatives**

We are focused on several key initiatives to drive our business:

- increase the content and services we provide to our customers and their consumers, enhance our direct advertising sales effort to increase the cost-per-thousand impressions (referred to as cost per mille, or CPM) derived from advertising and increase the number of customers using our TV Everywhere authentication platform;
- add new customers from the high-speed Internet service provider and consumer electronics industries to expand our consumer reach;
- extend the availability of our existing and new products and services to additional devices including tablets and smartphones; and
- expand our presence into international markets.

**Key Business Metrics**

***Unique Visitors***

We define unique visitors as consumers who have visited one of our customers' websites at least once during a particular time period. We rely on comScore to provide this data.

***Search Queries***

We define search queries as the number of instances in which a consumer entered a query into a search bar on our platform during a particular time period. We rely on reports from our search partner, Google, to measure the number of such instances.

***Advertising Impressions***

We define advertising impressions as graphical, textual or video paid advertisements displayed to consumers on our platform during a particular time period. We rely on reports from technology and advertising partners, including DoubleClick (a division of Google), to measure the number of advertising impressions delivered on our platform.

## Components of our Results of Operations

### *Revenue*

We derive our revenue from two categories: revenue generated from search and display advertising activities and subscriber-based revenue, each of which is described below. We record our search and display advertising revenue on a gross basis, which includes the net amount received from Google under our agreement with them. The following table shows the revenue in each category, both in amount and as a percentage of revenue, for 2008, 2009 and 2010 and the nine months ended September 30, 2010 and 2011.

| | Year Ended December 31, | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | 2010 | 2011 |
| | | | (in thousands) | | |
| Revenue: | | | | | |
| Search and display advertising | $ 32,212 | $ 39,268 | $ 45,859 | $ 32,089 | $ 48,040 |
| Subscriber-based | 20,359 | 21,530 | 20,373 | 15,952 | 14,075 |
| Total revenue | $ 52,571 | $ 60,798 | $ 66,232 | $ 48,041 | $ 62,115 |
| Percentage of revenue: | | | | | |
| Search and display advertising | 61% | 65% | 69% | 67% | 77% |
| Subscriber-based | 39 | 35 | 31 | 33 | 23 |
| Total revenue | 100% | 100% | 100% | 100% | 100% |

*Search and Display Advertising Revenue*

We use Internet search and display advertising to generate revenue from the traffic on our customers' websites.

- In the case of search advertising, we have a revenue-sharing relationship with Google, pursuant to which we include a Google-branded search tool on our customers' websites. When a consumer makes a search query using this tool, we deliver the query to Google and they return search results to consumers that include advertiser-sponsored links. If the consumer clicks on a sponsored link, Google receives payment from the sponsor of that link and shares a portion of that payment with us, which we in turn share with the applicable customer. The net payment we receive from Google is recognized as revenue.

- We generate display advertising revenue when consumers view or click on a text, graphic or video advertisement that was delivered on a Synacor-operated website. We fill our advertising inventory with advertisements sourced by our direct salesforce, independent advertising sales representatives and advertising network partners. Revenue may be calculated differently depending on our agreements with our advertisers or the agreements between our advertising network partners and their advertisers. It may be calculated on a cost per impression basis, which means the advertiser pays based on the number of times its advertisements appear, or a cost per action basis, which means that an advertiser pays when a consumer performs an action after engaging one of its advertisements. Historically only a small percentage of our display advertising revenue has been calculated on a cost per action basis.

*Subscriber-Based Revenue*

We define subscriber-based revenue as subscription fees and other fees that we receive from our customers for the use of our proprietary technology platform and the use of, or access to, e-mail, security, games

and other services, including value added services and paid content. Monthly subscriber levels typically form the basis for calculating and generating subscriber-based revenue. They are generally determined by multiplying a per-subscriber per-month fee by the number of subscribers using the particular services being offered or consumed. In other cases, the fee is fixed. We recognize revenue from our customers as the service is delivered.

***Costs and Expenses***

*Cost of Revenue*

Cost of revenue consists of revenue sharing, content acquisition costs and co-location facility costs. Revenue sharing consists of amounts accrued and paid to our customers for the traffic on their websites resulting in the generation of search and display advertising revenue. The revenue sharing agreements with our customers are primarily variable payments based on a percentage of the search and display advertising revenue. Content acquisition agreements may be based on a fixed payment schedule, on the number of subscribers per month, or a combination of both. Fixed-payment agreements are expensed over the term defined in the agreement. Agreements based on the number of subscribers are expensed on a monthly basis. Co-location facility costs consist of rent and operating costs for our data center facilities.

*Research and Development*

Research and development expenses consist primarily of compensation-related expenses incurred for the development of, enhancements to, and maintenance and operation of our technology platform and related infrastructure.

*Sales and Marketing*

Sales and marketing expenses consist primarily of compensation-related expenses to our direct sales and marketing personnel, as well as costs related to advertising, industry conferences, promotional materials, and other sales and marketing programs. Advertising cost is expensed as incurred.

*General and Administrative*

General and administrative expenses consist primarily of compensation related expenses for executive management, finance, accounting, human resources and other administrative functions.

*Depreciation*

Depreciation includes depreciation of our computer hardware and software, furniture and fixtures, leasehold improvements, and other property, and depreciation on capital leased assets.

*Other Income (Expense)*

Other income (expense) consists primarily of interest income earned and foreign exchange gains and losses.

*Interest Expense*

Interest income (expense) primarily consists of expenses associated with our long-term debt, capital leases, and amortization of debt issuance costs.

*Provision for Income Taxes*

Income tax expense consists of federal and state income taxes in the United States and taxes in certain foreign jurisdictions.

***Critical Accounting Policies***

The preparation of financial statements in conformity with GAAP requires estimates and assumptions that affect the reported amounts and classifications of assets and liabilities, revenue and expenses, and the related disclosures of contingent liabilities in the financial statements and accompanying notes. The SEC has defined a company's critical accounting policies as the ones that are most important to the portrayal of the company's financial condition and results of operations, and which require the company to make its most difficult and subjective judgments, often as a result of the need to make estimates of matters that are inherently uncertain. Based on this definition, we have identified the following critical accounting policies and estimates addressed below. We also have other key accounting policies, which involve the use of estimates, judgments, and assumptions that are significant to understanding our results. See Note 1, *The Company and Summary of Significant Accounting Policies* , of Notes to the Financial Statements and Notes to the Condensed Financial Statements—Unaudited for further information. Although we believe that our estimates, assumptions, and judgments are reasonable, they are based upon information available at the time. Actual results may differ significantly from these estimates under different assumptions, judgments, or conditions.

*Revenue Recognition*

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

The terms of our arrangements with our customers, Google and our advertising network partners are specified in written agreements. These written agreements constitute the persuasive evidence of the arrangements with our customers that are a pre-condition to the recognition of revenue. The evidence used to document that delivery or performance has occurred generally consists of communication of either numbers of subscribers or the revenue generated in a reporting period from customers, advertising partners, vendors and our own internally-generated reports. Occasionally, a customer will notify us of subsequent adjustments to previously reported subscriber data. These adjustments, once accepted by us, will result in adjustments to revenue and cost of revenue. The historical occurrences of such adjustments, and the amounts involved, have not been significant.

Although prices used in our revenue recognition formulas are generally fixed pursuant to the written arrangements with our customers, Google and our advertising network partners, the number of subscribers or the amount of search and display advertising revenue that are subject to our pricing arrangements are not known until the reporting period has ended. Although this data is, in most cases, available prior to the completion of our periodic financial statements, this data may need to be estimated. When made, these estimates are based upon our historical experience with the relevant party. Adjustments to these estimates have historically not been significant. The receipt of this volume data also serves to verify that we have appropriately satisfied our obligation to our customers for that reporting period. Adjustments are recorded in the period in which the data is received.

Pursuant to the terms of our customer contracts, we recognize revenue in each period for our services once the contract has been signed, its terms reviewed and understood, the service, content or both have been made available to the customer and reliable active subscriber information is made available to us.

We undertake an evaluation of the credit-worthiness of both new and, on a periodic basis, existing customers. Based on these reviews we determine whether collection of our prospective revenue is probable.

*Revenue Sharing*

We pay our customers a portion of the revenue generated from search and display advertising. The portion paid to our customers depends on, among other things, the consumer base of the customer and their expected ability to drive consumer traffic to our platform. This revenue consists of the consideration we receive from Google and our display advertising partners in connection with traffic supplied by the applicable customer.

*Gross Versus Net Presentation of Revenue for Revenue Sharing*

We evaluate our relationship between our search and display advertising partners and our customers in accordance with Financial Accounting Standards Board, or FASB, Accounting Standards Codification, or ASC, 605-45, *Principal Agent Considerations* . We have determined that the revenue derived from traffic supplied by our customers is reported on a gross basis because we are the primary obligor (we are responsible to our customers for fulfilling search and display advertising services and value added and other services), are involved in the service specifications, perform part of the service, have discretion in supplier selection, have latitude in establishing price and bear credit risk.

*Stock-Based Compensation*

In accordance with FASB ASC 718, *Compensation—Stock Compensation* , we measure stock-based compensation cost at fair value, net of estimated forfeitures, and generally recognize the corresponding compensation expense on a straight-line basis over the service period during which awards are expected to vest. We include stock-based compensation expense in research and development, sales and marketing and general and administrative expenses in our statement of operations, and determining the fair value of stock-based awards at the grant date requires judgment.

*Fair Value of Stock Options.* We use the Black-Scholes-Merton option-pricing model to determine the fair value of stock options. The determination of the grant date fair value of options using an option-pricing model is affected by our estimated common stock fair value as well as assumptions regarding a number of other complex and subjective variables. These variables include the fair value of our common stock, our expected stock price volatility over the expected term of the options, stock option exercise and cancellation behaviors, risk-free interest rates, and expected dividends, which are estimated as follows:

- *Fair Value of Our Common Stock.* Because our stock has not been publicly traded, we must estimate the fair value of common stock, as discussed below.

- *Expected Term.* The expected term represents the period of time the stock options are expected to be outstanding and is based on the “simplified method” allowed under SEC guidance. We used the “simplified method” due to the lack of sufficient historical exercise data to provide a reasonable basis upon which to otherwise estimate the expected life of the stock options.

- *Volatility.* Since we do not have a trading history for our common stock, the expected stock price volatility was estimated by taking the average historic price volatility for publicly-traded options of comparable industry peers similar in size, stage of life cycle and financial leverage, based on daily price observations over a period equivalent to the expected term of the stock option grants. We did not rely on implied volatilities of traded options in our industry peers’ common stock because the volume of activity was relatively low. We intend to continue to consistently apply this process using the same or similar public companies until a sufficient amount of historical information regarding the volatility of our own common stock share price becomes available, or unless circumstances change such that the identified companies are no longer similar to us, in which case more suitable companies whose share prices are publicly available would be utilized in the calculation.

- *Risk-free Interest Rate.* The risk-free interest rate is based on the yields of United States Treasury securities with maturities similar to the expected term of the options for each option group.

- *Dividend Yield.* We have never declared or paid any cash dividend on our common stock. We intend to retain any future earnings and do not expect to pay any dividends in the foreseeable future.

If any of the assumptions used in the Black-Scholes-Merton model changes significantly, stock-based compensation for future awards may differ materially compared with the awards granted previously.

The following table presents the weighted-average assumptions used to estimate the fair value of options granted during the years ended December 31, 2008, 2009, and 2010 and the nine months ended September 30, 2011:

| | Year Ended December 31, | | | Nine Months Ended September 30, |
|---|---|---|---|---|
| | 2008 | 2009 | 2010 | 2011 |
| Dividend yield | — | — | — | — |
| Risk-free interest rate | 3.10% | 3.40% | 2.38% | 1.63% |
| Expected term (in years) | 6.25 | 6.25 | 6.25 | 6.25 |
| Expected volatility | 54% | 52% | 53% | 51% |

Since May 2006, in accordance with Section 409A of the Internal Revenue Code and related regulations issued by the Internal Revenue Service, our board of directors has received valuations of our common stock from an independent valuation specialist, Anvil Advisors, LLC, or Anvil Advisors, and used the values determined in their reports to set the exercise price of stock options. We also considered these valuations when determining the fair value of our common stock for purposes of calculating stock-based compensation expense in connection with stock options. Anvil Advisors, an unrelated valuation specialist as defined under the American Institute of Certified Public Accountants Practice Guide, *Valuation of Privately-Held Company Equity Securities Issued as Compensation* , or the Practice Guide, appraised the value of our common stock in accordance with the guidelines outlined in the Practice Guide. The assumptions it used in its valuation models were based on future expectations combined with management judgments.

In its valuations through June 2009, Anvil Advisors estimated the enterprise value of our company on the applicable valuation date using the discounted future cash flow method and the guideline company method and then computing a weighted average of the two based on the likelihood of an initial public offering. As an initial public offering became more likely, the guideline company method was given greater weight. Then Anvil Advisors used the company security valuation method to allocate the enterprise value of our company among its various classes of equity to derive a fully marketable value per share for the common stock. Anvil Advisors applied an appropriate discount for lack of marketability to this fully marketable value to arrive at the fair value per share of common stock.

In its valuations after June 2009, Anvil Advisors continued to use the guideline company method, but replaced the discounted future cash flow method with the comparable transaction method. This method determines a value based on prices paid by strategic and financial buyers of comparable companies in the Internet software and services sector. Anvil Advisors replaced the discounted cash flow method because our internal forecasting, on which it relied in its analysis, became more short-term focused following the departure of our former chief financial officer in December 2008.

The difference between the exercise price of the options and our estimate of the fair value has been factored into the stock-based compensation expense. Our estimates of the fair value used to compute the stock-based compensation expense for financial reporting purposes may not be reflective of the fair value that would result from the application of other valuation methods, including accepted valuation methods for tax purposes.

Along with these valuations, we considered other objective and subjective factors to determine the fair value of our common stock as of the date of each option grant, including the following factors:

- the prices, rights, preferences and privileges of our preferred stock relative to the common stock;
- our operating and financial performance;
- current business conditions and projections;
- the hiring of key personnel;
- the history of our company and the introduction of new products and services;
- our stage of development;
- the likelihood of achieving a liquidity event for the shares of common stock underlying these stock options, such as an initial public offering or sale of our company, given prevailing market conditions;
- any adjustment necessary to recognize a lack of marketability for our common stock;
- the market performance of comparable publicly-traded companies; and
- the United States and global capital market conditions.

We granted stock options with the following weighted average exercise price each quarter since the beginning of 2008 through September 30, 2011.

| Three Months Ended | Shares Underlying Options | Weighted Average Exercise Price ($) |
|---|---|---|
| March 31, 2008 (1)(2) | 414,000 | 2.00 |
| June 30, 2008 (1)(2) | 1,179,000 | 2.00 |
| September 30, 2008 (1)(2) | 318,500 | 1.99 |
| December 31, 2008 | 148,250 | 1.29 |
| March 31, 2009 | 84,000 | 1.29 |
| June 30, 2009 | 563,000 | 1.26 |
| September 30, 2009 | 442,000 | 1.25 |
| December 31, 2009 | 56,000 | 1.20 |
| March 31, 2010 | 265,750 | 1.20 |
| June 30, 2010 | 269,966 | 1.34 |
| September 30, 2010 | 504,250 | 1.34 |
| December 31, 2010 | 1,004,000 | 1.44 |
| March 31, 2011 | 145,750 | 1.44 |
| June 30, 2011 | 121,000 | 1.66 |
| September 30, 2011 | 2,354,600 | 1.66 |

(1) The Board amended the exercise price of these options to $1.26 in June 2009. Please see the section below titled “Stock Option Re-pricing.”
(2) Reflects a 3-for-1 forward stock split of our common stock that became effective July 31, 2008.

Summarized below are the significant factors we considered in determining the fair value of the common stock underlying our stock options.

For options granted through September 2008, we based our estimate of the fair value of our common stock on a report from our independent valuation specialist, which concluded that our common stock had a value of $5.71 per share as of March 31, 2008 (or $1.90 per share following a 3-for-1 forward split of our common stock that became effective on July 31, 2008). In this report, the specialist used a discount rate of 25% in its discounted future cash flow analysis. Based on a sample of comparable publicly-traded companies, company-specific volatility was determined to be 55%, and the lack-of marketability discount was 10%. In light of our plans to pursue an initial public offering at the time, management determined that the probability of an initial public offering was greater than a sale of the company, and thus the guideline company method was weighted 80% and the discounted future cash flow method was weighted 20%.

For options granted in December 2008 through March 2009, we based our estimate of the fair value of our common stock in part on a report from our independent valuation specialist, which concluded that our common stock had a value of $1.29 per share as of October 14, 2008. We also considered that, as a result of the severe downturn in the United States economy and financial market conditions in the fall of 2008, the stock prices of publicly traded comparable companies declined significantly. Moreover, we withdrew our registration statement for an initial public offering in October 2008, thereby reducing the likelihood of a liquidity event for our stockholders. In connection with the withdrawal of our initial public offering, we recorded expenses of $3.4 million, which had a material negative impact on our results of operations. Finally, in December 2008 our former chief financial officer, whom we had hired in anticipation of a proposed initial public offering, ended his employment with us.

For options we granted from June 2009 through July 2009, we based our estimate of the fair value of our common stock in part on a report from our independent valuation specialist, which concluded that our common stock had a value of $1.26 per share as of March 31, 2009. In this report, the specialist continued to use a discount rate of 25% in its discounted future cash flow analysis. Based on a sample of comparable publicly-traded companies, company-specific volatility was determined to be 80%, and the lack-of marketability discount was 20%. Because we had abandoned our plans for an initial public offering in 2008, the weighting of the guideline company method was lowered to 67% and the discounted future cash flow method was weighted 33%. We also observed that the United States economy and financial market conditions continued to be unfavorable during 2009, and the likelihood of a successful liquidity event remained low. Our operating and financial performance was hampered by poor economic conditions, and we signed no new significant customer contracts during this period.

For options we granted from September 2009 through February 2010, we based our estimate of the fair value of our common stock in part on a report from our independent valuation specialist, which concluded that our common stock had a value of $1.20 per share as of June 30, 2009. We also considered a transaction in August 2009 in which our chief executive officer sold 200,000 shares of his common stock back to us for $1.00 per share. Our operating and financial performance continued to be affected by poor economic conditions, and we did not sign any new significant customer contracts through the end of 2009.

For options we granted from May 2010 through September 2010, we based our estimate of the fair value of our common stock in part on a report from our independent valuation specialist, which concluded that our common stock had a value of $1.34 per share as of March 31, 2010. The guideline company method and the comparable transaction method were weighted equally. Based on a sample of comparable publicly-traded companies, company-specific volatility was determined to be 70%, and the lack-of marketability discount was 20%. We also considered improvements in the United States economy and financial market conditions.

For options we granted from November 2010 through March 2011, we based our estimate of the fair value of our common stock in part on a report from our independent valuation specialist, which concluded that our common stock had a value of $1.44 per share as of September 30, 2010. The specialist continued to weigh the guideline company method and the comparable transaction method equally. Since the specialist’s last report as of March 31, 2010, we had renewed contracts with two of our largest customers, and we signed contracts with

two significant new customers. In October 2010, Scott A. Bailey joined our executive team as chief operating officer. Finally, we considered continued improvement in the United States economy and financial market conditions and a transaction in September 2010 in which our chief executive officer sold 150,000 shares of his common stock back to us for $1.34 per share.

For options we granted from May 2011 through August 2011, we based our estimate of the fair value of our common stock in part on a report from our independent valuation specialist, which concluded that our common stock had a value of $1.66 per share as of March 31, 2011. We also considered the fact that the United States economy and financial market conditions improved in the first and second quarters of 2011 and our business continued to grow.

*Stock Option Re-pricing.* In June 2009, the Company's Board of Directors determined that the fair value of the Company's common stock had declined to $1.26 per share based on an independent valuation performed for the company and the other factors described above. In connection with this decline, stock options for a total of 2,217,694 shares of common stock, which were granted during from July 31, 2007 through September 16, 2008 with an exercise price above $1.99, were amended to have an exercise price of $1.26. The number of shares, the vesting commencement date and the length of the vesting period for each of these grants were not altered.

We treated the re-pricing as a modification of the original awards and calculated additional compensation costs for the difference between the fair value of the modified award and the fair value of the original award on the modification date. The re-pricing was estimated to result in incremental stock-based compensation expense of $0.3 million. The cost related to vested shares was expensed on the re-pricing date and the cost related to unvested shares will be amortized over the remaining vesting period of such stock options. The assumptions used to estimate the fair value of the original awards immediately before the modification and the fair value of the modified awards required significant judgment.

*Recent Stock Option Grants* . For the 198,000 options we granted in November 2011, we based our estimate of the fair value of our common stock in part on a report from our independent valuation specialist, which concluded that our common stock had a value of $1.85 per share as of September 30, 2011. We also considered the fact that while the United States economy and financial market conditions were difficult in the third quarter of 2011, our business continued to grow. In the third quarter of 2011, our operating and financial performance also benefited from a contract we signed with a significant new customer, and William J. Stuart, our current chief financial officer, joined our executive team.

***Results of Operations***

The following tables set forth our results of operations for the periods presented in amount and as a percentage of revenue for those periods. The period to period comparison of financial results is not necessarily indicative of future results.

| | Year Ended December 31, | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | 2010 | 2011 |
| | | | (in thousands) | | |
| Revenue | $ 52,571 | $ 60,798 | $ 66,232 | $ 48,041 | $ 62,115 |
| Costs and operating expenses: | | | | | |
| Cost of revenue (1) | 28,575 | 34,074 | 36,703 | 26,907 | 32,872 |
| Research and development (1)(2) | 12,783 | 13,627 | 18,494 | 13,710 | 14,270 |
| Sales and marketing (2) | 5,732 | 5,591 | 6,211 | 4,597 | 5,811 |
| General and administrative (1)(2) | 4,997 | 4,966 | 5,656 | 3,941 | 4,887 |
| Withdrawn initial public offering expenses | 3,405 | — | — | — | — |
| Depreciation | 1,574 | 2,005 | 2,506 | 1,884 | 1,950 |
| Other operating expenses | 1,121 | — | — | — | — |
| Total costs and operating expenses | 58,187 | 60,263 | 69,570 | 51,039 | 59,790 |
| Income (loss) from operations | (5,616) | 535 | (3,338) | (2,998) | 2,325 |
| Other income (expense) | 156 | 69 | (2) | (17) | (18) |
| Interest expense | 294 | 285 | 240 | 189 | 64 |
| Income (loss) before income taxes | (5,754) | 319 | (3,580) | (3,204) | 2,243 |
| Provision for income taxes | 10 | 15 | 11 | 18 | 55 |
| Net income (loss) | $ (5,764) | $ 304 | $ (3,591) | $ (3,222) | $ 2,188 |

(1) Exclusive of depreciation shown separately.
(2) Includes stock-based compensation as follows:

| | Year Ended December 31, | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | 2010 | 2011 |
| | | | (in thousands) | | |
| Research and development | $ 221 | $ 252 | $ 398 | $ 278 | $ 205 |
| Sales and marketing | 142 | 189 | 202 | 140 | 141 |
| General and administrative | 305 | 460 | 268 | 187 | 294 |
| | $ 668 | $ 901 | $ 868 | $ 605 | $ 640 |

| | Year Ended December 31, | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | 2010 | 2011 |
| Revenue | 100% | 100% | 100% | 100% | 100% |
| Costs and operating expenses: | | | | | |
| Cost of revenue (1) | 54 | 56 | 55 | 56 | 53 |
| Research and development (1) | 24 | 22 | 28 | 29 | 23 |
| Sales and marketing | 11 | 9 | 9 | 10 | 9 |
| General and administrative (1) | 10 | 8 | 9 | 8 | 8 |
| Withdrawn initial public offering expenses | 6 | 0 | 0 | 0 | 0 |
| Depreciation | 3 | 3 | 4 | 4 | 3 |
| Other operating expenses | 2 | 0 | 0 | 0 | 0 |
| Total costs and operating expenses | 110 | 99 | 105 | 107 | 96 |
| Income (loss) from operations | (11) | 1 | (5) | (6) | 4 |
| Other income (expense) | 0 | 0 | 0 | 0 | 0 |
| Interest expense | 1 | 0 | 0 | 0 | 0 |
| Income (loss) before income taxes | (11) | 1 | (5) | (7) | 4 |
| Provision for income taxes | 0 | 0 | 0 | 0 | 0 |
| Net income (loss) | (11)% | 1% | (5)% | (7)% | 4% |

(1) Exclusive of depreciation shown separately.

*Comparison of Nine Months Ended September 30, 2010 and 2011*

*Revenue*

| | Nine Months Ended September 30, | | |
|---|---|---|---|
| | 2010 | 2011 | % Change |
| | (in thousands) | | |
| Revenue: | | | |
| Search and display advertising | $ 32,089 | $ 48,040 | 50% |
| Subscriber-based | 15,952 | 14,075 | (12)% |
| Total revenue | $ 48,041 | $ 62,115 | 29% |
| Percentage of revenue: | | | |
| Search and display advertising | 67% | 77% | |
| Subscriber-based | 33 | 23 | |
| Total revenue | 100% | 100% | |

Our revenue increased by approximately $14.1 million, or 29%, to approximately $62.1 million for the nine months ended September 30, 2011 from approximately $48.0 million for the same period in 2010. Search and display advertising revenue increased by approximately $15.9 million, or 50%, to approximately $48.0 million for the nine months ended September 30, 2011 from approximately $32.1 million for the same period in 2010. This increase was a result of increased search queries and advertising impressions on our platform, driven in part by the launch of a significant new customer on our platform in September 2010. The total number of search queries increased by 54% in the nine months ended September 30, 2011, and the total number of advertising impressions increased by 41% in the nine months ended September 30, 2011, in each case as compared to the nine months ended September 30, 2010. The increase in search queries contributed to approximately 72% of the increase in search and display advertising revenue, while the increase in advertising impressions contributed to approximately 28%.

The increase in search and display advertising revenue was partially offset by a decline in subscriber-based revenue, which fell by approximately $1.9 million, or 12%, to approximately $14.1 million in the nine months ended September 30, 2011 from approximately $16.0 million for the same period in 2010. The decline was the result of adjustments in the subscriber-based fees we charge in order to participate in greater search and display advertising revenue resulting from the increases in search queries and advertising impressions.

*Cost of Revenue*

| | Nine Months Ended September 30, | | |
|---|---|---|---|
| | 2010 | 2011 | % Change |
| | (in thousands) | | |
| Cost of revenue | $26,907 | $32,872 | 22% |
| Percentage of revenue | 56% | 53% | |

Our cost of revenue increased by approximately $6.0 million, or 22%, to approximately $32.9 million for the nine months ended September 30, 2011 from approximately $26.9 million for the same period in 2010. The increase in our cost of revenue was driven by additional revenue-sharing costs from increased search and display advertising. Cost of revenue as a percentage of revenue declined to 53% of revenue in the nine months ended September 30, 2011 from 56% of revenue in the nine months ended September 30, 2010 because of changes in search and display advertising revenue attributable to the mix of customers with revenue sharing arrangements.

*Research and Development Expenses*

| | Nine Months Ended September 30, | | |
|---|---|---|---|
| | 2010 | 2011 | % Change |
| | (in thousands) | | |
| Research and development | $13,710 | $14,270 | 4% |
| Percentage of revenue | 29% | 23% | |

Research and development expenses increased by approximately $0.6 million, or 4%, to approximately $14.3 million for the nine months ended September 30, 2011 from approximately $13.7 million for the same period in 2010. The increase was primarily due to a $0.9 million increase in employee-related costs as a result of the increase in headcount to support new product initiatives and customer deployments. In addition, there was a $0.3 million increase in expenses for contractors. These increases were partially offset by a $0.5 million decrease in spending on supplies and travel related expenses. The increase in spending reflects our increased hiring in 2010 in contemplation of new customer deployments in 2010 and 2011.

*Sales and Marketing Expenses*

| | Nine Months Ended September 30, | | |
|---|---|---|---|
| | 2010 | 2011 | % Change |
| | (in thousands) | | |
| Sales and marketing | $4,597 | $5,811 | 26% |
| Percentage of revenue | 10% | 9% | |

Sales and marketing expenses increased by approximately $1.2 million, or 26%, to approximately $5.8 million for the nine months ended September 30, 2011 from approximately $4.6 million for the same period

in 2010. The increase was primarily due to a $0.5 million increase in employee-related costs as a result of the increase in headcount as we hired salespeople in our advertising department. The remaining increases include a $0.4 million increase for sales commissions and a $0.1 million increase for reporting services.

*General and Administrative Expenses*

| | Nine Months Ended September 30, | | |
|---|---|---|---|
| | 2010 | 2011 | % Change |
| | (in thousands) | | |
| General and administrative | $3,941 | $4,887 | 24% |
| Percentage of revenue | 8% | 8% | |

General and administrative expenses increased by approximately $1.0 million, or 24%, to approximately $4.9 million for the nine months ended September 30, 2011 from approximately $3.9 million for the same period in 2010. The increase was primarily due to a $0.5 million increase in employee-related costs as a result of hiring in our executive management and finance departments. The remainder of the increase includes $0.4 million for independent contractors to support our growth.

*Depreciation*

| | Nine Months Ended September 30, | | |
|---|---|---|---|
| | 2010 | 2011 | % Change |
| | (in thousands) | | |
| Depreciation | $1,884 | $1,950 | 4% |
| Percentage of revenue | 4% | 3% | |

Depreciation remained consistent at approximately $1.9 million for the nine months ended September 30, 2010 and 2011.

*Other Income (expense)*

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2010 | 2011 |
| | (in thousands) | |
| Other income (expense) | $ (17) | $ (18) |

For each of the nine month periods ended September 30, 2010 and 2011 foreign currency transactions related to our operations in the United Kingdom accounted for nearly all other income (expense).

*Interest Expense*

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2010 | 2011 |
| | (in thousands) | |
| Interest expense | $ 189 | $ 64 |

Interest expense decreased for the nine months ended September 30, 2011 compared to the same period in 2010 as a result of lower average capital lease and bank financing balances. The interest rates applied to those balances remained substantially the same period-over-period.

*Provision for Income Taxes*

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2010 | 2011 |
| | (in thousands) | |
| Provision for income taxes | $ 18 | $ 55 |

We have incurred operating losses which are available to offset income and, consequently, did not incur any material federal or state income taxes for the nine months ended September 30, 2011 and 2010. We do not anticipate recording significant tax benefits or provisions in the near future.

*Comparison of Years Ended December 31, 2008, 2009 and 2010*

*Revenue*

| | Year Ended December 31, | | | 2008 to 2009% Change | 2009 to 2010% Change |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | | |
| | (in thousands) | | | | |
| Revenue: | | | | | |
| Search and display advertising | $ 32,212 | $ 39,268 | $ 45,859 | 22% | 17% |
| Subscriber-based | 20,359 | 21,530 | 20,373 | 6% | (5)% |
| Total revenue | $ 52,571 | $ 60,798 | $ 66,232 | 16% | 9% |
| Percentage of revenue: | | | | | |
| Search and display advertising | 61% | 65% | 69% | | |
| Subscriber-based | 39 | 35 | 31 | | |
| Total revenue | 100% | 100% | 100% | | |

In 2010 our revenue increased by $5.4 million, or 9%, to $66.2 million from $60.8 million in 2009. Search and display advertising revenue increased by $6.6 million, or 17%, to $45.9 million in 2010 from $39.3 million in 2009 as a result of increased search queries and advertising impressions on existing customers' websites, as well as the launch of a significant new customer in September 2010. The total number of search queries increased by 18% in 2010, and the total number of advertising impressions increased by 14% in 2010 as compared with 2009. The increase in search queries accounted for approximately 75% of the increase in search and display advertising revenue in 2010, while the increase in advertising impressions accounted for approximately 25%. Subscriber-based revenue decreased $1.2 million, or 5%, to $20.4 million in 2010 from $21.5 million in 2009. The decrease was a result of reduced revenue of $2.0 million from existing products partially offset by increased revenue of $0.8 million from new value added services introduced after the beginning of 2009 to existing customers.

In 2009 our revenue increased by $8.2 million, or 16%, to $60.8 million from $52.6 million in 2008. Search and display advertising revenue increased by $7.1 million, or 22%, to $39.3 million in 2009 from $32.2 million in 2008 as a result of increased search queries and advertising impressions on existing customers' websites. The total number of search queries increased by 22% in 2009, and the total number of advertising impressions increased by 75% in 2009. The increase in search queries accounted for approximately 38% of the increase in search and display advertising revenue, while the increase in advertising impressions accounted for approximately 62%. Subscriber-based revenue increased by $1.1 million, or 6%, to $21.5 million in 2009 from $20.4 million in 2008. Approximately $0.6 million of the increase resulted from the launch of new customer websites, and approximately $0.5 million resulted from the launch of new products with existing customers.

*Cost of Revenue*

| | Year Ended December 31, | | | 2008 to 2009% Change | 2009 to 2010% Change |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | | |
| | | (in thousands) | | | |
| Cost of revenue | $ 28,575 | $ 34,074 | $ 36,703 | 19% | 8% |
| Percentage of revenue | 54% | 56% | 55% | | |

Our cost of revenue increased by $2.6 million, or 8%, to $36.7 million in 2010 from $34.1 million in 2009, in part because greater search and display advertising on our platform led to additional revenue-sharing costs, which grew by $3.8 million in 2010. This was partially offset by a decline in our content acquisition costs of $1.4 million. Cost of revenue as a percentage of revenue declined to 55% of revenue in 2010 from 56% of revenue in 2009. This reduction in cost of revenue as a percentage of revenue was the result of a change in customer mix.

Our cost of revenue increased by $5.5 million, or 19%, to $34.1 million in 2009 from $28.6 million in 2008, in part because greater search and display advertising on our platform led to additional revenue-sharing costs, which grew by $5.6 million in 2009. In addition, our content acquisition costs increased $0.5 million in 2009. Cost of revenue in 2008 included $0.6 million of one-time expenses related to the move of a data center from Buffalo, New York to Atlanta, Georgia. The increase in cost of revenue as a percent of revenue was the result of changes in search and display advertising revenue attributable to the mix of customers with revenue sharing arrangements partially offset by relocation of a data center.

*Research and Development Expenses*

| | Year Ended December 31, | | | 2008 to 2009% Change | 2009 to 2010% Change |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | | |
| | | (in thousands) | | | |
| Research and development | $ 12,783 | $ 13,627 | $ 18,494 | 7% | 36% |
| Percentage of revenue | 24% | 22% | 28% | | |

Research and development expenses increased by $4.9 million, or 36%, to $18.5 million in 2010 from $13.6 million in 2009. The increase was primarily due to a $3.6 million increase in employee-related costs as a result of the increase in headcount as we added personnel to support new product initiatives and anticipated customer deployments in 2010 and 2011. The remaining increase includes $0.5 million for contractors, $0.4 million for supplies and $0.3 million for travel related costs.

Research and development expenses increased by $0.8 million, or 7%, to $13.6 million in 2009 from $12.8 million in 2008. The increase was due to a $0.8 million increase in employee-related costs as a result of additions to headcount to support new product initiatives and anticipated customer deployments.

*Sales and Marketing Expenses*

| | Year Ended December 31, | | | 2008 to 2009% Change | 2009 to 2010% Change |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | | |
| | | (in thousands) | | | |
| Sales and marketing | $ 5,732 | $ 5,591 | $ 6,211 | (2)% | 11% |
| Percentage of revenue | 11% | 9% | 9% | | |

Sales and marketing expenses increased by $0.6 million, or 11%, to $6.2 million in 2010 from $5.6 million in 2009. The increase included $0.3 million of additional sales commissions and additional payments to contractors and $0.1 million of additional travel related expense.

Sales and marketing expenses decreased by $0.1 million, or 2%, to $5.6 million in 2009 from $5.7 million in 2008. The decrease included a $0.2 million decline in payments to contractors, a $0.2 million decline in public relation services and a $0.1 million decline in trade show attendance costs. These decreases were partially offset by $0.4 million increase in employee related costs as a result of the increase in headcount.

*General and Administrative Expenses*

| | Year Ended December 31, | | | 2008 to 2009% Change | 2009 to 2010% Change |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | | |
| | | (in thousands) | | | |
| General and administrative | $ 4,997 | $ 4,966 | $ 5,656 | (1)% | 14% |
| Percentage of revenue | 10% | 8% | 9% | | |

General and administrative expenses increased by $0.7 million, or 14%, to $5.7 million in 2010 from $5.0 million in 2009. This increase was largely driven by an increase in contractor costs of $0.3 million and an increase in employee-related costs of $0.6 million as a result of additional headcount and related relocation costs, all to support our growth. These increases were partially offset by reduced legal and other expenses of $0.2 million.

General and administrative expenses remained constant at $5.0 million in 2009 and 2008.

*Withdrawn Initial Public Offering Expenses*

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2008 | 2009 | 2010 |
| | | (in thousands) | |
| Withdrawn initial public offering expenses | $ 3,405 | $ — | $ — |

During 2007 and the first quarter of 2008, we were preparing for a potential initial public offering, for which we had filed a registration statement with the SEC. During this process we incurred and capitalized approximately $3.4 million of professional services fees for legal, valuation and auditing services. As a result of severe adverse conditions of the United States economy and financial markets, we withdrew our registration statement in October 2008 and recorded these professional services fees of $3.4 million as an operating expense in the fourth quarter of 2008.

*Depreciation*

| | Year Ended December 31, | | | 2008 to 2009% Change | 2009 to 2010% Change |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | | |
| | | (in thousands) | | | |
| Depreciation | $ 1,574 | $ 2,005 | $ 2,506 | 27% | 25% |
| Percentage of revenue | 3% | 3% | 4% | | |

Depreciation increased by approximately $0.5 million, or 25%, to approximately $2.5 million in 2010 from approximately $2.0 million in 2009. This increase was driven by the purchase of assets to support the addition of new customers.

Depreciation increased by approximately $0.4 million, or 27%, to approximately $2.0 million in 2009 from approximately $1.6 million in 2008. This increase was driven by the purchase of assets to support the addition of new customers.

*Other Operating Expenses*

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2008 | 2009 | 2010 |
| | | (in thousands) | |
| Other operating expenses | $ 1,121 | $ — | $ — |

In 2008 we relocated a data center from Buffalo, New York to Atlanta, Georgia. We incurred approximately $1.1 million of other operating expenses which included moving costs, consulting fees, and accelerated depreciation on retired data center assets.

*Other Income (Expense)*

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2008 | 2009 | 2010 |
| | | (in thousands) | |
| Other income (expense) | $ 156 | $ 69 | $ (2) |

For each of 2008, 2009 and 2010, other income (expense) consisted primarily of interest income coupled with foreign currency transaction losses related to our operations in the United Kingdom.

*Interest Expense*

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2008 | 2009 | 2010 |
| | | (in thousands) | |
| Interest expense | $ 294 | $ 285 | $ 240 |

Interest expense declined in 2010 as the average capital lease balances at a higher interest rate declined and the average bank loan balances at a lower interest rate increased. Interest expense remained essentially unchanged in 2008 and 2009 as our average combined outstanding capital lease and bank financings balances remained consistent and the interest rates on these balances also remained relatively consistent.

*Provision for Income Taxes*

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2008 | 2009 | 2010 |
| | | (in thousands) | |
| Provision for income taxes | $ 10 | $ 15 | $ 11 |

We have incurred operating losses which are available to offset income and, consequently, did not incur any material federal or state income taxes in 2008, 2009 and 2010. We do not anticipate recording significant tax benefits or provisions in the near future.

***Liquidity and Capital Resources***

Our primary liquidity and capital resource requirements are for financing working capital, investing in capital expenditures such as computer hardware and software, supporting research and development efforts, introducing new technology, enhancing existing technology, and marketing our services and products to new and existing customers. To the extent that existing cash and cash equivalents, cash from operations, cash from short-term borrowings and the net proceeds from this offering are insufficient to fund our future activities, we may need to raise additional funds through public or private equity offerings or debt financings.

Since our inception, we have funded our operations and met our capital expenditure requirements primarily with venture capital funding. In four separate issuances of preferred stock, from Series A in November

2002 to Series C in October 2006 and November 2006, we have raised approximately $28.4 million from institutional investors. The proceeds from all of these issuances have been used for general business purposes, with the exception of the Series C preferred stock offering, a portion of which was used to repay approximately $0.7 million of notes payable. Each share of preferred stock is convertible into common stock at the respective conversion ratio for each series of preferred stock at any time, subject to adjustment triggered by changes in our capitalization such as a stock split. Conversion is automatic in the event of a public offering of common stock at a price per share representing a post-offering valuation (on a fully diluted basis) of at least $150.0 million with gross proceeds of at least $25.0 million. This conversion of all our outstanding series of preferred stock is expected to take place upon consummation of this offering.

In July 2011 we entered into an amended and restated loan and security agreement with a commercial bank, pursuant to which we can refinance an outstanding term loan from that bank with a new term loan in the principal amount of up to $3.0 million at any time before January 2012. As of September 30, 2011, the outstanding principal amount of the existing term loan was $0.4 million. We are in the process of repaying the principal amount of the existing term loan in 24 equal monthly installments, with the last such installment due in June 2012. Interest on the existing term loan is payable monthly at a per annum rate equal to the greater of 4.0% or the bank's prime rate plus 0.5%. If we elect to refinance the existing term loan, we will be required to make monthly interest payments on the new term loan through January 2012. Thereafter, the principal amount of the new term loan will be payable in 30 equal monthly installments ending in July 2014. Interest will accrue on the new term loan at a per annum rate equal to the bank's prime rate plus 0.5%, subject to a minimum rate per annum of 4.0%.

The amended and restated loan and security agreement also provides us with a revolving credit line of $6.0 million, which we can draw on at any time before July 2013, subject to a borrowing base calculation. Borrowings under the revolving credit line accrue interest at a per annum rate equal to the bank's prime rate plus 0.25%, subject to a minimum rate of 4.0% per annum, and must be repaid by July 2013. As of September 30, 2011, $6.0 million was fully available under the revolving credit line, with no outstanding borrowings.

The amended and restated loan and security agreement contains provisions that allow the bank to accelerate repayment of both the existing term loan, the new term loan, if any, and the revolving credit line upon a material adverse change, as defined in the agreement, as well as other events of default. Our obligations under the agreement are secured by a blanket lien on all of our assets in favor of the bank. The agreement contains certain financial performance and reporting covenants. As of September 30, 2011, we were in compliance with the covenants.

As of September 30, 2011, we had approximately $7.3 million of cash and cash equivalents and money market funds. We did not have any short-term or long-term investments. We believe that our existing cash and cash equivalents, along with cash flows from operations and availability under our term loan and revolving credit line, will be sufficient to meet our anticipated working capital and capital expenditure requirements for at least the next 12 months.

**Cash Flows**

| | Year Ended December 31, | | | Nine Months Ended September 30, | |
|---|---|---|---|---|---|
| | 2008 | 2009 | 2010 | 2010 | 2011 |
| | | | (in thousands) | | |
| **Consolidated Statements of Cash Flows Data:** | | | | | |
| Cash flows provided by (used in) operating activities | $ (123) | $ 4,489 | $ (1,333) | $ (2,298) | $ 4,011 |
| Cash flows used in investing activities | (667) | (828) | (1,558) | (1,279) | (1,478) |
| Cash flows used in financing activities | (1,452) | (2,029) | (2,159) | (1,211) | (692) |

*Cash Provided by (Used in) Operating Activities*

From January 1, 2008 through September 30, 2011 we have generated $7.0 million in positive cash flows from operating activities. Our largest source of cash flows from operating activities is cash collections from customers and search and display advertising partners, including Google. Our primary uses of cash from operating activities are for revenue sharing and content acquisition costs, personnel related expenditures, and facilities expenses to support our growth.

Net cash provided by operating activities was approximately $4.0 million for the nine months ended September 30, 2011. This consisted of net income of $2.2 million and $2.6 million for adjustments for non-cash items partially offset by $0.8 million used for working capital. Adjustments for non-cash items primarily consisted of depreciation and stock based compensation.

Net cash used in operating activities was approximately $2.3 million for the nine months ended September 30, 2010. This consisted of a net loss of $3.2 million and cash used for working capital and other activities of $1.6 million partially offset by $2.5 million of adjustments for non-cash items. Adjustments for non-cash items primarily consisted of depreciation and stock based compensation.

Net cash used in operating activities was approximately $1.3 million for the year ended December 31, 2010. This consisted of a net loss of $3.6 million and cash used for working capital and other activities of $1.1 million partially offset by $3.4 million of adjustments for non-cash items. Adjustments for non-cash items primarily consisted of depreciation and stock based compensation.

Net cash provided by operating activities was approximately $4.5 million for the year ended December 31, 2009. This consisted of a net income of $0.3 million, cash provided by working capital and other activities of $0.9 million and $3.3 million of adjustments for non-cash items. Adjustments for non-cash items primarily consisted of depreciation, stock based compensation, bad debt write-off and loss on disposal of equipment.

Net cash used in operating activities was approximately $0.1 million for the year ended December 31, 2008. This consisted of a net loss of $5.8 million and cash used for working capital and other activities of $0.6 million partially offset by $6.3 million of adjustments for non-cash items. Adjustments for non-cash items primarily consisted of depreciation, stock based compensation and write-off of capitalized initial public offering costs.

*Cash Used in Investing Activities*

Our investing activities have consisted of purchases of property, equipment and software to build out our data centers. For the nine months ended September 30, 2011, net cash used in investing activities was $1.5 million. For the nine months ended September 30, 2010, net cash used in investing activities was $1.3 million. Net cash used in investing activities for the years ended December 31, 2010, 2009 and 2008 were $1.6 million, $0.8 million, and $0.7 million, respectively. Purchases of property, equipment and software may vary from period to period due to the timing of the expansion of our operations. We expect to continue to invest in property, equipment and software for the remainder of 2011 and into the foreseeable future.

*Cash Used in Financing Activities*

For the nine months ended September 30, 2011, net cash used in financing activities was approximately $0.7 million primarily for repayments of $1.8 million on our capital lease obligations and bank financing partially offset by proceeds of $0.8 million from a sale lease back of equipment transaction and $0.3 million of proceeds from the exercise of common stock options.

For the nine months ended September 30, 2010, net cash used in financing activities was approximately $1.2 million primarily for repayments of $1.8 million on our capital lease obligations and bank financing partially offset by proceeds of $0.6 million from borrowings on bank financing.

For the year ended December 31, 2010, net cash used in financing activities was approximately $2.2 million primarily for repayments of $2.6 million on our capital lease obligations and bank financing and $0.2 million used for the repurchase of our common stock from our chief executive officer partially offset by proceeds of $0.6 million from borrowings on bank financing.

For the year ended December 31, 2009, net cash used in financing activities was approximately $2.0 million primarily for repayments of $2.0 million on our capital lease obligations and $0.4 million used for the repurchase of our common stock from certain stockholders partially offset by proceeds of $0.4 million from borrowings on bank financing.

For the year ended December 31, 2008, net cash used in financing activities was approximately $1.5 million primarily for repayments of our capital lease obligations.

***Quantitative and Qualitative Disclosures about Market Risk***

We have operations both within the United States and internationally, and we are exposed to market risks in the ordinary course of our business. These primarily include interest rate and inflation risk.

*Interest Rate Risk*

Our cash and cash equivalents primarily consist of cash and money market funds. We currently have no investments of any type. Our exposure to market risk for changes in interest rates is limited because nearly all of our cash and cash equivalents have a short-term maturity and are used primarily for working capital purposes.

*Inflation Risk*

We do not believe that inflation has had a material effect on our business, financial condition or results of operations. If our costs were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition and results of operations.

***Recently Issued and Adopted Accounting Pronouncements***

*Fair Value Measurements*

In October 2009, the FASB amended the accounting standard for multiple deliverable revenue arrangements, which provided updated guidance on whether multiple deliverables exist, how deliverables in an arrangement should be separated and how consideration should be allocated. This standard eliminates the use of the residual method and requires arrangement consideration to be allocated based on the relative selling price for each deliverable. We elected to early adopt this accounting standard on January 1, 2010 on a prospective basis for applicable transactions originating or materially modified after December 31, 2009. The adoption of this standard did not have a material impact on our financial statements.

Effective January 1, 2010, we adopted new authoritative guidance on fair value measurements and disclosures. The new guidance requires additional disclosures regarding fair value measurements, amends disclosures about post-retirement benefit plan assets, and provides clarification regarding the level of disaggregation of fair value disclosures by investment class. This guidance is effective for interim and annual reporting periods beginning after December 15, 2009, except for certain Level 3 activity disclosure requirements that will be effective for reporting periods beginning after December 15, 2010. Accordingly, we adopted this new guidance beginning January 1, 2010, except for the additional Level 3 requirements, which were adopted in 2011. Level 3 assets and liabilities are those whose fair value inputs are unobservable and reflect management’s best estimate of what market participants would use in pricing the asset or liability at the measurement date. The adoption of this guidance did not have a material impact on our financial statements.

In May 2011, the FASB issued guidance that establishes a global standard for applying fair value measurement. In addition to a few updates to the measurement guidance it includes enhanced disclosure requirements. The most significant change for companies reporting under GAAP is an expansion of the disclosures required for Level 3 measurements; that is, measurements based on unobservable inputs, such as a company's own data. This update is effective for us beginning in fiscal year 2012. The adoption of this guidance is not expected to have a material impact on our financial statements.

***Off-Balance Sheet Arrangements***

As of September 30, 2011, we did not have any off-balance sheet arrangements.

***Contractual Obligations***

We lease office space and data center space under operating lease agreements and certain equipment under capital lease agreements. We are also obligated to make payments under various contracts with vendors and customers, principally for revenue share and content arrangements.

The following table sets forth our future contractual obligations as of December 31, 2010:

| | Payments due by period | | | | | | |
|---|---|---|---|---|---|---|---|
| | Total | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
| | | | | (in thousands) | | | |
| Bank financing | $ 750 | $ 500 | $ 250 | $ — | $ — | $ — | $ — |
| Capital lease obligations | 2,558 | 1,563 | 665 | 330 | — | — | — |
| Operating lease obligations | 3,710 | 1,095 | 959 | 594 | 472 | 472 | 118 |
| Contract commitments | 12,423 | 5,422 | 3,451 | 3,275 | 275 | — | — |
| Total | $19,441 | $8,580 | $5,325 | $4,199 | $ 747 | $ 472 | $ 118 |

The contract commitments shown in the foregoing table represent fixed payment obligations to some of our customers and content providers. Agreements with certain customers and certain content providers require us to make fixed payments to them.

# BUSINESS

## Our Business

We are a leading provider of authentication and aggregation solutions for delivery of online content and services. We deliver our solutions as a set of services through our hosted and managed platform, enabling cable and telecom service providers and consumer electronics manufacturers to provide the online content and services their consumers increasingly demand. Our platform allows our customers to package a wide array of online content and services with their high-speed Internet, communications, television and other offerings. Our customers offer our services under their own brands on Internet-enabled devices such as PCs, tablets, smartphones and connected TVs. As of September 30, 2011, our high-speed Internet service provider customers used our platform to offer an engaging Internet experience to over 25% of the estimated 79 million United States high-speed Internet households.

Our hosted and managed platform allows our customers to enhance their consumers' online experience. With the increase in Internet access speeds, improved search functionality and availability of content online, individuals are spending more time consuming online content at home and on the go. As a result, it has become increasingly important for our customers to provide consumers with choice, a personalized experience and seamless, single sign-on, access to online content and services. Our platform allows high-speed Internet service providers to compete with new market entrants who are delivering online video and entertainment directly to consumers, often over the very networks that those providers operate. We believe the increased functionality we offer through our platform results in a compelling user experience for consumers, broadened relationships between our customers and their consumers, and increased overall monetization.

Our platform provides single sign-on capability, enabling consumers to seamlessly sign in and consume packaged online content and services from numerous programmers and content providers. These services include e-mail, security, online games, music and authentication of TV Everywhere, a technology enabling consumers with applicable rights to access on-demand television online via multiple devices including PCs, tablets, smartphones and connected TVs. We offer consumers access to these services on demand through a user-friendly, customer-branded online solution and, increasingly, across multiple devices. We enable our customers to up-sell a menu of content and services to their consumers either on a pay-per-view basis or as a new service tier added to their existing subscription relationship.

Our platform offers our customers a comprehensive solution by providing consumers access to a broad range of online products and services. Following initial integration with our platform, our customers gain access to a wide range of programmers and content and service providers with whom we have licensing and distribution agreements. In addition, we may integrate into our platform content and services that form part of our customers' existing offerings. Our platform's flexible architecture integrates with our customers' billing and subscriber management systems, as well as with third-party content and services.

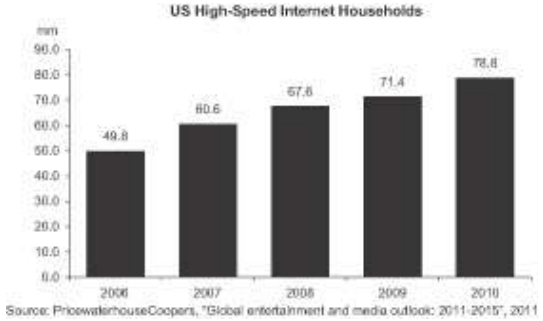
Our customers direct consumers to their branded websites, which comprise the consumer-facing components of our platform, where consumers have access to the online content and services available to them at their respective subscription levels. This enhanced Internet experience helps connect us and our customers to their large and engaged consumer base. We monetize the online traffic generated by these consumers through search and display advertising. We also charge fees for value added services delivered through our platform. Search queries, advertising impressions and use of our services have grown as we have added new customers and as our existing customers continue to further adopt our service offerings. Our business model creates deep customer relationships: as we monetize our customers' online traffic, we share a portion of this revenue with our customers, resulting in a mutually beneficial partnership.

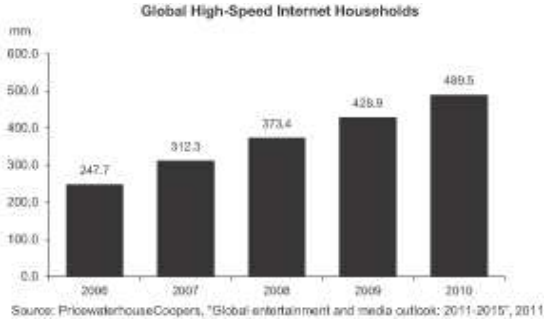
We have historically experienced growth in the number of consumers whose online traffic can generate search and display advertising revenues through our platform. The number of these consumers who are subscribers through our high-speed Internet customers has increased from 5.2 million in December 2006 to 9.5 million in December 2009 to 21.1 million in September 2011. These subscribers, along with other consumers, such as those attributable to our consumer electronics manufacturer customer, have driven a 71% increase in average monthly unique visitors to our customers' websites, an 81% increase in average monthly search queries by consumers on our platform and a 64% increase in average monthly advertising impressions, each on a comparative quarterly basis since the first quarter of 2010.

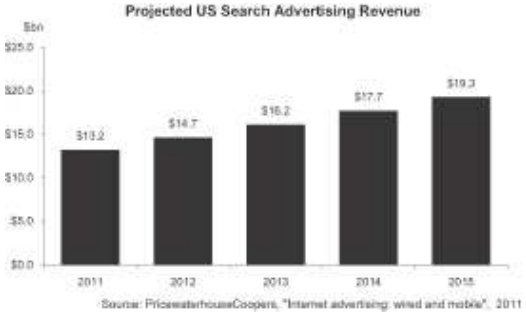

In turn, the increased usage of our platform over this period has driven the growth in our revenue and adjusted EBITDA. For the nine months ended September 30, 2011, our revenue was $62.1 million, which represented a 29.3% increase over $48.0 million in the same period in 2010. For the nine months ended September 30, 2011, adjusted EBITDA was $4.9 million compared to ($0.5) million over the same period in 2010. For a reconciliation of adjusted EBITDA to net income, the most closely comparable financial measure calculated in accordance with GAAP, for each of these periods, see "Selected Financial Data."

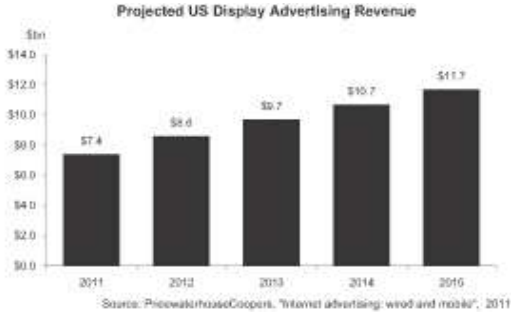
**Market Overview**

According to PwC, from 2006 through 2010, high-speed Internet penetration (measured on a household basis) has increased substantially both within the United States and globally, from 45% and 19% to 68% and 35%, respectively. This represents an increase from 50 million households with high-speed Internet to 79 million households in the United States, and from 248 million households to 490 million households globally. Individuals are spending more time online driven by a growing selection of online services, higher bandwidth speeds, the increased amount of content available online and the societal shift towards virtual socialization. According to Capital IQ Solutions, in 2010, Americans consumed 36% of their media on the Internet compared with only 19% in 2005 (as measured in minutes). This growth in Internet usage has driven advertisers to expand their reach and market to these consumers who are increasingly spending their time online. According to PwC, Internet advertising is expected to continue to grow rapidly, with United States search advertising revenue growing at a rate of approximately 10% per annum from 2011 to 2015, and United States display advertising revenue growing at a rate of approximately 12% per annum over the same period. Taken together, the market for search and display advertising in the United States is expected to grow from $21 billion in 2011 to $31 billion in 2015.

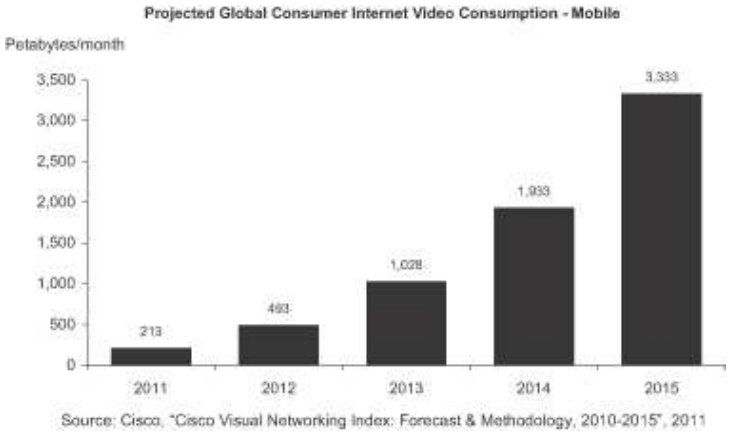



High-speed Internet service providers have continuously upgraded their networks in recent years, providing users with significantly faster connection speeds and enabling online access through multiple types of devices, thus reinforcing and enabling the growth in Internet usage. These higher speeds and increased number of platforms have resulted in an increased number of services available online. Most significantly, this has led to an increase in consumer spending on Internet content, with $13 billion spent in 2010 projected to grow to over $30 billion in 2015 according to VSS. In addition, the proliferation of new types of connected mobile devices, such as smartphones and tablets, has enabled consumers to increase the amount and type of content they consume online. According to Cisco, mobile video traffic is expected to grow at a compound annual growth rate of 99% between 2011 and 2015, from 213 petabytes per month to over 3,300 petabytes per month, and by 2015 it is expected that more than half of the world's mobile data traffic will be video. Consumers have become device-agnostic and expect to access their content across multiple devices. Rapid innovations in technology have made it possible for users to easily transition between smartphones, tablets, laptops and desktops, thereby significantly increasing the total amount of time spent online and the quality of the viewing experience.



The rapid growth of online content offerings across a multitude of websites and apps, while embraced by consumers, has also created a new challenge, as consumers sometimes find it difficult to ascertain which online content they already have rights to access. Furthermore, the disaggregation of content forces consumers to sign on across multiple online platforms, making it cumbersome for them to access authorized content. Consumers want a simplified solution that allows them to sign on once and view all of their content in a seamless manner.

Increasingly available Internet connectivity, increases in high-speed Internet penetration and speed, and the expansion of online video content services, have driven explosive growth in consumption of video content delivered over the Internet to televisions, computers, tablets and smartphones, more commonly referred to as “over-the-top” (OTT). OTT content can either be downloaded or streamed and is monetized via pay-per-view video on demand, in-video advertisements or subscription payment models. The emergence of OTT services has driven a substantial increase in consumption of online media, fueled by the many ways consumers are able to view content online, the user-friendliness of platforms and website designs. Nevertheless, the OTT landscape remains highly fragmented, making specific content often difficult to find or consume. Over the last few years, video providers such as Google, Hulu, Netflix and Amazon have created or acquired services and mobile apps to capitalize on the OTT adoption trend. At the same time, content providers, such as ESPN, Inc., HBO (a division of Time Warner, Inc.) and Turner Broadcasting System, Inc., or Turner Broadcasting, are increasingly distributing their content online across a multitude of platforms. As a result, we believe high-speed Internet providers that also provide television services face a growing threat of disintermediation from these OTT providers, and are increasingly seeking compelling solutions to help them compete.

**The Synacor Solution**

Our customers face a number of challenges, including responding to changing consumer preferences, maintaining relevance in the face of increasing competitive pressure, addressing OTT and finding new ways to increase their average revenue per subscriber. We tailored our platform to provide solutions to these challenges and to enable our customers to:

- *Deliver a compelling consumer experience* . Our platform simplifies the consumer Internet experience by packaging online content and services with the goal of providing consumers easy access to the content they are entitled to receive – anytime, anywhere, on any device. We believe the enhanced online experience delivered by our platform drives increased use of our services as consumers spend more time on our customers’ websites.

- *Broaden relationships with consumers* . We provide our customers with a platform that enables multiple touch points with consumers and increases engagement through an extensive offering of online content and services across multiple devices. We enable high-speed Internet service providers to capitalize on consumers’ growing interest in OTT services by providing our customers the tools to offer authenticated video content online. In addition, we enable consumer electronics manufacturers to maintain an ongoing relationship with consumers past the point of sale, generating new recurring revenue streams from advertising and consumption of additional services. We offer our services as a white-label solution to support our customers’ online branding and marketing efforts.

- *Increase monetization* . We enable our customers to generate additional revenue by monetizing their consumer Internet traffic and packaging value added services which we partner with them to provide. We designed the functionality of our platform to increase the amount of time consumers spend using our services, which we believe leads to higher advertising viewership, more targeted advertising capabilities, higher click-through rates and higher CPMs. In addition, our customers may also generate additional revenue and increase consumer loyalty by offering their consumers

our subscriber services such as e-mail, TV Everywhere, security and other value added services. Taken together, we provide our customers the opportunity to effectively leverage our platform to increase their average revenue per subscriber.

**Our Strengths**

- *Robust platform at scale* . We benefit from scalable technology, our customers' large subscriber base and extensive relationships with content providers. By applying our proprietary platform and investment in research and development, we are able to offer our services to new and existing customers on what we believe are highly competitive terms. As a result, we believe our customers benefit from the decrease in capital expenditures and ongoing maintenance expense required to implement and operate their own platform. In addition, we believe that our scale enables us to obtain more favorable terms from third parties (such as search and display advertising partners) than our customers could obtain on their own. Finally, our customers' large subscriber base draws many programmers and content providers with whom we have content licensing agreements, enabling us to offer consumers access to an extensive range of online content. We believe that our economies of scale make it difficult for our customers to cost-effectively develop comparable solutions in-house or for a competitor to replicate our comprehensive suite of solutions.

- *Flexible and easily integrated solution* . Our flexible platform allows our customers to package content that meets the specific requirements of their consumers. We designed our platform to fully integrate with our customers' billing and subscriber management systems, enabling consumers to access content and services that they are authorized to receive across multiple devices. Our integration also provides our customers with an opportunity to package, cross-sell and up-sell premium content and additional tiers of service to their consumers. These characteristics allow us to offer highly customized solutions to a broad range of customers.

- *Large and engaged consumer base* . Over the three months ended September 30, 2011, we had an average of 14.1 million unique visitors per month, as measured by comScore. These unique visitor levels represent a large and engaged consumer base that has developed as we have attracted new customers and added more content and services to our platform. We have the ability to target specific consumer segments, enabling us to attract advertisers seeking to target specific local and national audiences. Our access to broad content and our extensive customer relationships enable us to effectively monetize new products, services and advertisements by launching them to a large and engaged consumer base.

- *Established customer base with predictable search and display advertising revenue* . We have long-term relationships with many of our customers which, together with what we believe is a high cost of switching (from our platform to another solution), have resulted in very low levels of customer turnover over time. The majority of our revenue attributable to these customers is generated through search and display advertising. Given the relatively predictable consumer search and page view behavior patterns on our platform, we have experienced historically predictable search and display advertising revenue.

- *Well-positioned in large and growing market* . The market for Internet-delivered content has grown rapidly over the past several years. We have been delivering online solutions to customers since 2000 and, as of September 30, 2011, had over 45 customers, including some of the nation's major high speed Internet service providers and one major consumer electronics manufacturer. We continue to make ongoing investments in our platform to expand its functionality. We believe we are one of the only companies that has a platform solution with the scale and functionality to allow the largest high-speed Internet service providers and consumer electronics manufacturers to develop or expand their online video or other online and content offerings. As a result, we believe that we are well-positioned to gain share as the market for these services continues to grow.

**Our Strategy**

We intend to:

- *Increase penetration and monetization of existing customers* . We believe there is an opportunity to capitalize on the growth in Internet usage by our customers' consumers and their increased demand for online content and services. For example, we intend to grow subscriber penetration and monetization by increasing the adoption of new packages of content and tiers of service. We also intend to sell more of our advertising directly through our display salesforce. Given the higher CPMs associated with direct advertising, we expect that this shift will increase our average CPM yields. Finally, we intend to increase the number of customers using our TV Everywhere authentication platform.

- *Acquire new customers* . We intend to aggressively pursue new high-speed Internet service provider customers. We also plan to further develop our new distribution channels, such as sales to consumer electronics manufacturers. The development of new products and services, such as TV Everywhere, is a tool to attract new customers seeking to cater to the needs of their subscribers. Acquiring new customers will help strengthen our position as a leading provider of online content aggregation, authentication and delivery solutions.

- *Continue to invest in platform enhancements and technology solutions* . We plan to continue developing new features and services for our platform, including continuing expansion of our platform's offerings to tablets and smartphones. Through our close relationships with our customers, we gain early insight into how to address their needs and those of their consumers. We also design new products and services to anticipate these needs and, at times, dedicate separate development teams for these initiatives, as is the case for TV Everywhere. Our revenue-sharing business model enables us and our customers to monetize these service offerings. We expect that developing enhancements and solutions ahead of customers' deployment requirements will continue to result in increased customer loyalty, satisfaction and profitability.

- *Expand internationally* . We believe that our business model is scalable and readily adaptable to select markets outside the United States. We will focus on markets that have similar dynamics to the United States, where high-speed Internet service providers and consumer electronics manufacturers are striving to offer a differentiated product to their subscribers and consumers are seeking a single platform that packages and aggregates content. We are in the initial stages of international expansion and intend to increase our international presence in select markets with meaningful growth opportunities.

**Services and Products**

We provide a proprietary technology platform that enables our customers to drive consumer engagement and generate new revenue streams through an array of online content and services such as video, search, advertising and value added services. Our customers use our platform to develop personalized websites that serve as their consumers' respective online hubs for communication services, entertainment offerings and support services.

Our platform enables our customers to combine entertainment, such as television shows, multi-player games and streaming music based on a subscriber's access rights and preferences with communications offerings such as voicemail, e-mail, and third party messaging services like Yahoo Mail, Google Gmail, AOL Mail, Facebook, and Twitter. Our platform further allows our customers to deliver appropriate account tools, support, bill pay services and up-sell promotions to their consumers, all without leaving the applicable customer's website.

We generate revenue from consumer traffic on our platform through search and display advertising revenue, which we collect from our search partner, Google, our advertising network providers and directly from advertisers. We typically share a portion of this search and display advertising revenue with our customers. We also generate recurring revenues in the form of subscriber-based fees for the use of our platform, value added services and paid content, which we collect from our customers.

*Our Platform*

We believe the key features of our platform help our customers by substantially improving the subscriber experience. This increases revenues, promotes subscriber retention, strengthens our customers' online presence and reinforces their brands.

- *Website Design and Development* . Using our technology platform, we create, design and develop branded websites for our customers. Our websites are designed to be the initial online destination for our customers' consumers and typically aggregate a broad array of resources, including free-to-subscriber content and service offerings, value added services, online content and search, all in one location.

- *Unified Registration and Login (Single Sign-On)* . Our platform gives subscribers access to all of the value added services and paid content, including subscription television programming they have the right to consume, using a single user ID and password, which are typically the same credentials that they use for e-mail. Single sign-on for subscribers is accomplished by integrating with both our customers and our content and value added service partners. Because our single sign-on technology was built to accommodate many authentication mechanisms, we are able to integrate with a wide range of partners.

- *Billing Integration* . Our platform allows our customers to integrate billing for value added services and paid content purchases with other services and products provided to their subscribers, including television and telephony service. A customer may collect transaction fees via credit card or on the subscriber's service provider bill, and it may bill transactions each time they occur or on a monthly basis using monthly summary totals. Our system enables on-line bill review, providing subscribers with access to a detailed transaction account.

- *Personalization* . Our platform enables the consumer to personalize his or her online experience through customization and localization. Consumers may add, delete, move, and otherwise customize the content displayed on our customers' branded websites, such as by setting preferred television stations in our TV-at-a-glance module. Localization allows consumers to set a website to a "favorite" zip code to gain access to radio stations, weather, movies, and events, all in the local area. Among other things, our platform allows consumers to comment on online articles and to create shortcuts to their favorite content using an online "personal assistant" on the personalized website. Consumers are able to manage access to services and products available to each member of the household, define a budget limit for purchases for each member of the household and set the payment method (service provider bill vs. credit card) for access to paid offerings.

- *Video Delivery Capability* . Our video delivery capability includes two primary components: a video player and a video discovery and delivery system. The video player contains video controls such as play, pause, fast forward and rewind and full-screen viewing and can be configured to play within or on top of a page. Our video discovery and delivery system is database-driven, supports multiple video hosting methods and enables transcoding from a number of video formats to formats that are playable on a variety of devices. The system contains a number of access control mechanisms, including the ability to restrict access based on IP address location, consumer type or household management settings. The system also permits consumers to search videos and browse by channel, genre or content type.

- *Content Management System* . Our proprietary content management system enables our customers and us to create dynamic, customizable online experiences containing content from various sources. Content is distributed via web services in an architecture that is easily portable to multiple devices and platforms. Our system is comprised of administrative interfaces, a scalable content storage system and a system to distribute content to the platform. The interface is easy to use and displays a preview of page or component designs prior to approval and publishing. Our system can also automatically publish content from outside sources or assign publishing rights, by site section, to outside vendors.

- *Household Management* . Our household management system puts parents in control of the content their children are allowed to purchase or consume through our platform. Among other things, this system allows the head of household to specify the range of products their "child accounts" may access and utilize and to establish pre-set spending limits for content purchases such as music.

- *Toolbar* . We offer our customers the ability to create branded toolbars that can be personalized by their consumers. The toolbar can be updated automatically as new features become available and may be configured with search, weather, television and movie listings as well as value added services and paid content packages, enabling consumers to access their favorite features on our platform even when they leave our customers' websites. The toolbars can also integrate internal services such as instant messaging, customer support and e-mail.

- *Television Listings* . Our platform provides television listings and corresponding television channels, which enables consumers to search and browse local television programming.

***Search and Display Advertising***

We use search and display advertising to generate revenue from consumer online traffic generated on our platform.

*Search Advertising.* We have a revenue-sharing relationship with Google, pursuant to which we include a Google-branded search tool on our customers' websites. When a consumer makes a search query using this tool, we deliver it to Google, and Google returns search results that include advertiser-sponsored links to us, which we pass on to the consumer. If the consumer clicks on a sponsored link, Google receives payment from the sponsor of that link and shares a portion of that payment with us, which we in turn share with the applicable customer.

*Display Advertising.* We generate advertising revenue when consumers view or click on a text, graphic or video advertisement that is delivered on a Synacor-operated website. We sell some of our advertising inventory directly to advertisers using our team of direct advertising sales employees and independent advertising sales representatives. As of September 30, 2011, we had a total of ten in-house salespeople and independent advertising sales representatives, and we intend to hire additional salespeople and retain additional independent sales representatives. Our advertisers pay us a fee when a subscriber views or clicks the advertisement we place on their behalf on our customer's website. In addition, we have entered into arrangements with several advertising networks, including DoubleClick (a division of Google) and advertising.com (a division of AOL), among others. Advertisers pay these networks a fee to place their advertisements on various websites. When the networks place an advertisement on one of our customers' websites, the network will pay us a portion of that fee. We typically share a portion of the payments from advertisers or advertising networks with the applicable customer.

Search and display advertising revenue contributed approximately 61%, 65% and 69% of our revenue for 2008, 2009 and 2010, respectively, and approximately 77% of our revenue for the nine months ended September 30, 2011. Revenue attributable specifically to our arrangement with Google contributed 48%, 45%

and 49% of our revenue for 2008, 2009 and 2010, respectively, and approximately 55% of our revenue for the nine months ended September 30, 2011.

***Subscriber-Based Services***

Using our proprietary technology platform, we provide our customers a flexible solution, enabling them to deliver a wide range of online content and value added services from multiple sources in a single, customizable online location. Our customers use our platform to provide their subscribers with access to free-to-subscriber content and service offerings, including television programming, news, sports, entertainment and weather, as well as paid content and other value added services, all from one location and with one login. Our platform employs a scalable and flexible architecture that allows us, and our customers, to add or change features and applications regularly, enabling subscribers to access them across a wide range of Internet-enabled devices, such as PCs, tablets, smartphones and connected TVs.

We offer both free-to-subscriber content and service offerings and paid content and value added services, which are paid for by our customers or their subscribers, individually or in bundled packages. The packages are accessed via our single sign-on capability according to access rules established by our customers and the content or service providers. These are available at our customers' websites as well as the websites of the content and service providers. The following are illustrative examples of some of these packages, which we allow our customers to modify if they desire:

- *E-mail and Calendar* . We provide e-mail and calendar solutions to our customers using a suite of messaging products provided by a third party. We integrate these products into our technology platform to deliver e-mail and family calendars to subscribers from their websites. The system enables us to highlight customer-related and community events on subscribers' calendars and insert advertising into e-mail interfaces. Additionally, we have developed voicemail and VOIP functionality for e-mail that allows subscribers to access voicemail from their e-mail.

- *Security* . Our security offering typically includes anti-virus, firewall and intrusion detection, pop-up blocker, parental controls and automatic updates all powered by security suites, such as F-Secure.

- *TV Everywhere* . Our platform enables subscribers to watch free television online or utilize our authentication functionality to authorize them to watch premium television online, on-demand using an approved Internet-connected device. We have developed a combined television/video solution with an information architecture that improves usability and serves as a destination point for all platforms, including linear, video on demand, or VOD, and other online content. We process various metadata on over 200,000 video assets (e.g., movies or television programs), from over 300 providers of video content.

- *Variety Package* . Our variety package combines content from several Internet subscription and entertainment products into a single package. These packages may include any combination of games (such as AtomShockwave), greeting card services (such as American Greetings), weather services (such as weather.com), educational elements (such as Encyclopedia Britannica or Clever Island) and sports elements (such as MLB.com, NASCAR.com Trackpass, NHL.com or Fox Sports).

- *Sports Plus Package* . The sports plus package combines access to multiple sports-related content providers that would otherwise require separate subscriptions into a single package. The package includes access to MLB.com, NASCAR.com Trackpass, NHL.com and Fox Sports.

- *Portable and Non-Portable Music* . Our music offering includes download-to-own, download-to-rent, and streaming music from our content providers' libraries of nearly 11 million

songs. Non-portable subscriptions allow subscribers to play music on their PCs, while portable subscriptions allow the subscribers to listen to music on a mobile device. Our music services are provided through contractual relationships with MediaNet and Rdio, Inc.

- *GamesSomnia ™* . Our GamesSomnia package includes subscriptions to popular online gaming services and gaming-related news sources, which may include offerings from Classic Atari, LEGO PC Games, Yummy Arcade, Shockwave and IGN Insider.

- *Learning Edge ™* . Our Learning Edge package combines a number of educational products that appeal to families with young children, which may include offerings from Nick Jr. Boost, Boston Test Prep, Clever Island, Encyclopedia Britannica and IKnowThat.com.

Revenue from fees we charge for the use of our technology platform, e-mail, security and other value added services and paid content, which we refer to as subscriber-based revenue, contributed approximately 39%, 35% and 31% of our revenue for 2008, 2009 and 2010, respectively, and approximately 23% of our revenue for the nine months ended September 30, 2011.

**Technology and Operations**

***Technology Platform Architecture***

Our technology platform has been designed and built to support reliability and scalability. To route traffic through our network in the most efficient manner, we use load balancing products, which spread work among multiple servers, and link controllers, which monitor availability and performance of multiple connections to our platform. Our technology platform is fault tolerant and scalable through the addition of more servers as usage grows.

***Data Center Facilities***

We currently operate and maintain four data centers in regionally diverse locations and have a network operations center which is staffed 24 hours a day, 7 days a week. Our three primary data centers are located in shared facilities in Atlanta, Georgia; Denver, Colorado and Amsterdam, The Netherlands. We also maintain a secondary data center in a shared facility in Buffalo, New York. All systems are fully monitored for reporting continuity and fault isolation. The Atlanta, Buffalo, Denver and Amsterdam data centers are each in a physically secure facility using monitoring, environmental alarms, closed circuit television and redundant power sources. Our network operations center is located in a secure facility.

**Customers**

Our customers principally consist of high-speed Internet service providers, such as Charter and CenturyLink, as well as a consumer electronics manufacturer, Toshiba. Our customer contracts typically have an initial term of two to three years from the deployment of the customer's website and frequently provide for subsequent renewal terms. Our customer contracts typically contain service level agreements which call for specific system "up times" and 24 hours per day, seven days per week support. As of September 30, 2011, we had agreements with over 45 customers. Revenue attributable to two customers, Charter and CenturyLink (including revenue attributable to Qwest, which merged with CenturyLink in April 2011), together accounted for approximately 65%, 62% and 60% of our revenue for the years ended December 31, 2008, 2009 and 2010, with each of these customers accounting for 20% or more in such period. In addition, revenue attributable to Charter, CenturyLink (including revenue attributable to Qwest) and Toshiba accounted for approximately 63% of our revenue for the nine months ended September 30, 2011, with revenue attributable to two of these customers each accounting for 20% or more in such period and revenue attributable to the third customer accounting for more than 10% in such period. Revenue attributable to these customers includes the subscriber-based revenue earned

directly from them, as well as the search and display advertising revenue earned from third parties, such as Google, based on traffic generated by their consumers on our platform. We believe we have strong and collaborative relationships with our customers, which is critical to our success.

**Content Providers**

We license the content which we provide to our customers, including free and paid content offerings and value added services, from numerous third-party content and service providers. Our content and service partners provide a variety of content, including news and information, entertainment, sports, music, video, games, shopping, travel, autos, careers and finance. To obtain this content, we enter into a variety of licensing arrangements with our content providers. These arrangements are typically one to three years in duration with payment terms that may be based on traffic, advertising revenue share, number of subscribers, flat fee payments over time, or some combination thereof. We use licensed content to populate our customers' websites, as well as to provide value added services and paid content that subscribers may purchase for additional fees. As of September 30, 2011, we had arrangements with over 75 content providers such as MLB Advanced Media, L.P., or MLB Advanced Media, CNN, The Associated Press, FOX News Network, LLC, NASCAR, MusicNet, Inc., AG.com, Inc., or American Greetings, and Encyclopedia Britannica, Inc.

**Sales and Marketing**

Our sales and marketing efforts focus on four primary areas: sales, client services, account management and marketing. Our sales team consists of direct sales personnel who call upon prospective customers, typically large and mid-sized high-speed Internet service providers and consumer electronics manufacturers. A significant amount of time and effort is devoted to researching and analyzing the requirements and objectives of each prospective customer. Each bid is specifically customized for the prospective customer, and often requires many months of interaction and negotiation before an agreement is reached.

Once an agreement is reached, our client services team, working closely with the sales team, assumes responsibility for managing the customer relationship during the time of the initial deployment and integration period, which is usually three to six months. During this period, the customer's technology platform is assessed and, if required, modifications are proposed to make it compatible with our technology platform. The client services team is responsible for the quality of the client deployment, customer relationship management during the time of deployment and integration and project management associated with upgrades and enhancements.

After deployment, our account management team takes over management of the customer relationship, analyzing the ways in which a customer could further benefit from increased use of our products and services. The account management team is responsible for on-going customer relationship management, upgrades and enhancements to the available products and services, as well as tracking the financial elements and performance of the customer relationship.

Finally, our marketing team works closely with our account management team to deliver marketing programs that support our customers' sales efforts as well as their consumers' interaction with these products and services. We assist our customers in developing marketing materials, advertising and cross-channel commercials that can be accessed by consumers through different media outlets, including the Internet, print, television, and radio. We also assist our customers in training their customer service representatives to introduce and sell value added services and our paid content offerings to new and existing customers.

**Government Regulation**

We generally are not regulated other than under international, federal, state and local laws applicable to the Internet or e-commerce or to businesses in general. Some regulatory authorities have enacted or proposed specific laws and regulations governing the Internet and online entertainment. These laws and regulations cover

issues such as taxation, pricing, content, distribution, quality and delivery of services and products, electronic contracts, intellectual property rights, user privacy and information security.

Federal laws regarding the Internet that could have an impact on our business include the following: the Digital Millennium Copyright Act of 1998, which is intended to reduce the liability of online service providers of third-party content, including content that may infringe copyrights or rights of others; the Children's Online Privacy Protection Act, which imposes additional restrictions on the ability of online services to collect user information from minors; and the Protection of Children from Sexual Predators Act, which requires online service providers to report evidence of violations of federal child pornography laws under certain circumstances.

Laws and regulations regarding user privacy and information security impact our business because we collect and use personal information regarding our customers' websites. We use this information to deliver more relevant content and services and provide consumers with a personalized online experience. We share this information on an aggregate basis with our customers and content providers and, subject to confidentiality agreements, to prospective customers and content providers. Laws such as the CAN-SPAM Act of 2003 or other user privacy or security laws could restrict our and our customers' ability to market products to their consumers, create uncertainty in Internet usage and reduce the demand for our services and products or require us to redesign our customers' websites.

**Intellectual Property**

We believe that the protection of our intellectual property is critical to our success. We rely on copyright and service mark enforcement, contractual restrictions and trade secret laws to protect our proprietary rights. We have entered into confidentiality and invention assignment agreements with our employees and contractors, and nondisclosure agreements with certain parties with whom we conduct business in order to limit access to and disclosure of our proprietary information. Our registered service mark in the United States is Synacor ®.

We endeavor to protect our internally developed systems and maintain our trademarks and service marks. We generally control access to and use of our proprietary software and other confidential information through the use of internal and external controls, including contractual protections with employees, contractors, customers and partners, and our software is protected by United States and international copyright laws.

In addition to legal protections, we believe that factors such as the technological and creative skills of our personnel, new product developments, frequent product enhancements and reliable product support and services are essential to establishing and maintaining a technology leadership position.

**Competition**

The market for Internet-based services and products in which we operate is highly competitive and involves rapidly-changing technologies and customer and consumer requirements, as well as evolving industry standards and frequent product introductions. While we believe that our platform offers considerable value and flexibility to our customers by helping them to extend their consumer relationships to a wide variety of Internet-based services, we face competition at three levels:

- When one of our prospective or existing customers considers another supplier, including one of our partners, for elements of the services or products which we provide.
- When consumers choose to rely on other vendors for similar products and services.
- When content and service providers prefer to establish direct relationships with one or more of our customers.

Our technology platform, value added services and paid content offerings compete primarily with high-speed Internet service providers that have internal information technology staff capable of developing similar solutions in-house. In addition, we compete with companies such as Facebook, Inc., Yahoo!, Google, AOL and MSN, which have destination websites of their own or are capable of delivering competing platforms with content and service offerings similar to ours.

We also compete with providers of paid content and services over the Internet, especially companies with the capability of bundling paid content and value added services in much the same manner that we do. These companies include ESPN3, F-Secure Corporation or F-Secure, Exent Technologies Ltd. or Exent, Zynga Inc., MLB Advanced Media, Symantec Corporation, McAfee, Inc., Activision Blizzard, Inc. and Electronic Arts Inc. In some cases we have performed software integrations with these companies on behalf of our customers or, as in the case of F-Secure and Exent, we have partnered with them in order to offer their service more broadly across our full customer base.

We believe the principal competitive factors in our markets include a company's ability to:

- reinforce the brand of the high-speed Internet service provider;
- produce products that are flexible and easy to use;
- offer competitive fees for website development and operation;
- generate additional revenue for high-speed Internet service providers;
- enable high-speed Internet service providers to be involved in designing the "look and feel" of their online presence;
- offer services and products that meet the changing needs of high-speed Internet service providers and their subscribers, including emerging technologies and standards;
- provide high-quality product support to assist the customer's service representatives; and
- aggregate content to deliver more compelling bundled packages of paid content.

We believe that we distinguish ourselves from potential competitors in three principal ways. First, we provide a white-label solution that, unlike the co-branded approach of most of our competitors, creates a consumer experience that reinforces our customers' and partners' brands. Second, we give customers control over the sign-on process and billing function for a wide range of Internet services and content by integrating with their internal systems (where applicable) thereby allowing our customers to "own the consumer." Finally, our solution is flexible, meaning that we allow each customer to fashion websites that are specifically tailored to their desired "look and feel."

**Employees**

As of September 30, 2011, we had 253 employees in the United States and 1 employee in the United Kingdom. None of our employees is represented by a labor union, and we consider current employee relations to be good.

**Facilities**

Our corporate headquarters are located at 40 LaRiviere Drive, Buffalo, New York 14202. We lease approximately 31,000 square feet of office space at this address pursuant to a sublease agreement that expires in March 2016. We may, at our option, elect to terminate the sublease as of November 30, 2011 upon payment of a cancellation fee and all past-due amounts then outstanding under the lease. The sublease agreement grants us a right of first offer over approximately 63,000 additional square feet in the same building.

We also maintain administrative offices in New York, New York and have data centers in Atlanta, Georgia; Buffalo, New York; Denver, Colorado and Amsterdam, The Netherlands.

We believe that our facilities are adequate to meet our current needs and that suitable additional or substitute space will be available as needed.

**Legal Proceedings**

From time to time, we may become involved in legal proceedings arising in the ordinary course of our business. We are not presently involved in any legal proceedings, the outcome of which, if determined adversely to us, would have a material adverse effect on our business, results of operations or financial condition.

## MANAGEMENT

### Executive Officers, Key Employees and Directors

Our executive officers, key employees and directors, and their ages and positions as of September 30, 2011, are set forth below. Our executive officers are Messrs. Frankel, Bailey, Chamoun and Stuart.

| Name | Age | Position |
|---|---|---|
| Ronald N. Frankel | 55 | President, Chief Executive Officer and Director |
| William J. Stuart | 60 | Chief Financial Officer |
| Scott A. Bailey | 43 | Chief Operating Officer |
| George G. Chamoun | 37 | Executive Vice President of Sales and Marketing |
| Ross Winston | 39 | Chief Architect |
| Theodore May | 56 | Senior Vice President of Strategy and Business Affairs |
| Julia Culkin | 37 | Vice President of Human Resources |
| Andrew Kau | 49 | Director |
| Jordan Levy | 56 | Director |
| Mark Morrissette | 40 | Director |
| Thomas W. Keaveney | 65 | Director |
| Joseph Tzeng | 56 | Director |

*Ronald N. Frankel* has served as a member of our board of directors and as our President and Chief Executive Officer since April 2001. Prior to joining us, Mr. Frankel served as Chief Executive Officer of Perks.com, Inc. from 1998 to 2001. From 1994 to 1998 Mr. Frankel served as President of MGM Interactive, the interactive division of Metro-Goldwyn-Mayer Studios Inc. From 1993 to 1994, Mr. Frankel served as Senior Vice President of Marketing and Sales at Kenfil Distribution. From 1988 to 1991, Mr. Frankel served in several executive positions at Softview, Inc., lastly as Senior Vice President of Marketing and Sales. Mr. Frankel attended the University of California at Berkeley and received a J.D. from the University of Southern California Law Center.

*William J. Stuart* has served as our Chief Financial Officer since August 2011. From 2006 to 2011, Mr. Stuart served as Senior Vice President of Finance, Chief Financial Officer, Treasurer and Secretary for Avici Systems, Inc. (now Soapstone Networks, Inc.), or Soapstone, a publicly-held company. He also served as Soapstone's President and on Soapstone's board of directors from 2009 to 2011. From 2001 to 2006, Mr. Stuart was a partner at Still River Fund, a Boston-based venture capital firm. He has previously served as chief financial officer of the publicly-held Telco Systems (acquired by World Access, Inc.) as well as three privately-held technology companies. Mr. Stuart has a B.A. from Boston College and an M.B.A. from Northeastern University.

*Scott A. Bailey* has served as our Chief Operating Officer since October 2010. From 2007 to 2010, Mr. Bailey served as Senior Vice President and General Manager at Comcast.net, a division of Comcast Corporation, or Comcast. Prior to Comcast, from 2001 to 2007, Mr. Bailey served as Vice President and General Manager at Turner Sports Interactive, a division of Turner Broadcasting, where he managed a portfolio of web properties including NASCAR.com, PGATOUR.com and PGA.com. Mr. Bailey attended Bowling Green State University.

*George G. Chamoun* has served as our Executive Vice President of Sales and Marketing since June 2009. From our acquisition of MyPersonal in December 2000 to June 2009, Mr. Chamoun served as our Senior Vice President of Client Services. Mr. Chamoun was co-founder of Chek and served as its President from January 1998 until such acquisition. Mr. Chamoun holds a B.A. in Political Science from the State University of New York at Buffalo.

*Ross Winston* has served as our Chief Architect since January 2011. Prior to that period, he served as our Vice President of Engineering from June 1999 to August 2006 and our Chief Technology Officer from August 2006 to January 2011. From June 1996 to June 1999, Mr. Winston served as Campuswide Information Systems Coordinator for the State University of New York at Buffalo, where he managed the university's Internet portals and related applications. Previously, Mr. Winston was an independent consultant and served as the lead developer for two software and web development companies. Mr. Winston holds B.S. and M.S. degrees in Computer Science from the State University of New York at Buffalo.

*Theodore May* has served as our Senior Vice President of Strategy and Business Affairs since October 2009. Prior to that, he served as our Vice President of Content and Value Added Services since July 2005. From July 1997 to February 2005, Mr. May held various positions, including Vice President of Broadband, at America Online Inc. From 1987 to 1996, Mr. May served as Director of Strategic Planning and Vice President of New Media at Cablevision Systems Corp. From 1986 to 1987, Mr. May served as a Vice President in the Controller's Division at Drexel Burnham Lambert Inc. From 1984 to 1986, Mr. May served as Associate Director of Business Planning and Development at CBS Broadcasting Inc. Mr. May holds a B.F.A. from The Julliard School and an M.B.A. from New York University.

*Julia Culkin* has served as our Vice President of Human Resources since August 2006. Prior to that period, she served as our Director of Human Resources from July 2005 to July 2006 and as our Manager of Human Resources from December 2004 to July 2005. From March 2002 to November 2004, Ms. Culkin served as an independent consultant, primarily for Towers Perrin, where she worked on various human resource-related projects, focusing on executive compensation. From May 2000 to December 2001, Ms. Culkin served as a Senior Compensation Analyst at Pitney Bowes Inc. From June 1998 to May 2000, Ms. Culkin served as a consultant for Towers Perrin where she worked with Fortune 1000 companies on various human resource-related projects, including executive compensation analyses, change management practices and human resource practices competitive research. Ms. Culkin holds a B.S. in Business Administration from the State University of New York at Buffalo.

*Andrew Kau* has been a member of our board of directors since Chek acquired MyPersonal in December 2000. Prior to that period, Mr. Kau served as a director of MyPersonal from September 1999 until such acquisition. Mr. Kau has been a managing director at Walden International since 1994. From 1992 to 1994, Mr. Kau was President of Chemical Technologies Ventures. Mr. Kau was a management consultant at Strategic Planning Associates, LLC from 1991 to 1992 and at Booz, Allen and Hamilton Inc. from 1985 to 1987. From 1983 to 1985, Mr. Kau was a research scientist at Systems Planning Corporation. Mr. Kau holds a Sc.B. in Electrical Engineering from Brown University and an M.B.A. from the University of Virginia.

*Jordan Levy* has been a member of our board of directors since October 2001. Mr. Levy has been a general partner at Softbank Capital since June 2005. In October 1999, Mr. Levy co-founded Seed Capital Partners LLC and was a managing partner there until May 2005. In July 2007, he was appointed Chairman of the Erie Canal Harbor Development Corporation. From 2004 through 2009 Mr. Levy served on the board of directors of Lorex Technology Inc., a publicly held company. Mr. Levy holds a B.A. in Political Science from the State University of New York at Buffalo.

*Mark Morrissette* has been a member of our board of directors since October 2006. Mr. Morrissette has been a Managing Director at North Atlantic Capital since July 2000. From March 1995 to December 1998, Mr. Morrissette was a senior associate at Advent International Corporation. From August 1993 to March 1995, Mr. Morrissette was an analyst at CSC Index. Mr. Morrissette holds a B.A. in Economics from Dartmouth College and an M.B.A. from Harvard Business School.

*Thomas W. Keaveney* has been a member of our board of directors since June 2009. Mr. Keaveney serves as a Board Member and Senior Advisor for Advantage Capital. Mr. Keaveney previously served as an investment banker with Credit Suisse First Boston, or CSFB, where he was Chairman of the Private Finance

Department, and a member of both the Investment and Investment Banking committees. Prior to CSFB, Mr. Keaveney worked in the private finance department of Salomon Brothers and at the Teachers Insurance and Annuity Association. Mr. Keaveney holds a B.A. in Economics from Fordham University and an M.A. in Economics from the Fordham Graduate School of Arts and Sciences.

*Joseph Tzeng* has been a member of our board of directors since Chek acquired MyPersonal in December 2000. Prior to that, Mr. Tzeng served as a director of MyPersonal from September 1999 until such acquisition. Mr. Tzeng has been a managing director of Crystal Internet Ventures since November 1996. Mr. Tzeng holds an undergraduate degree in Computer Engineering and Information Science from National Chiao-Tung University, Taiwan and an M.S. in Computer Engineering and Information Sciences from Case Western Reserve University.

**Board Composition**

***Independent Directors***

Our board of directors is currently composed of six members. Prior to the consummation of this offering, we expect Messrs. Keaveney, Morrissette and Tzeng to resign from our board of directors, and we expect to appoint at least additional directors in their places, one of whom will serve as the chairman of the audit committee and be the "audit committee financial expert" as defined in Item 407(d) of Regulation S-K. Messrs. Kau, Keaveney, Levy, Morrissette and Tzeng qualify as independent directors in accordance with the published listing requirements of . The independence definition includes a series of objective tests, such as that the director is not, and has not been for at least three years, one of our employees and that neither the director, nor any of his family members has engaged in various types of business dealings with us. In addition, as further required by the rules, our board of directors has made a subjective determination as to each independent director that no relationships exist which, in the opinion of our board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In making these determinations, our board of directors reviewed and discussed information provided by the directors and us with regard to each director's business and personal activities and relationships as they may relate to us and our management. See "Transactions with Related Persons, Promoters and Certain Control Persons."

***Selection Arrangements***

Our current directors were elected pursuant to a voting agreement that we entered into with certain holders of our common and preferred stock. This voting agreement will terminate upon the closing of this offering and there will be no further contractual obligations regarding the election of our directors. Our directors hold office until their successors have been elected and qualified or their earlier death, resignation or removal.

**Classified Board**

Our amended and restated certificate of incorporation and our amended and restated bylaws that will become effective immediately prior to the closing of this offering will provide for a classified board of directors consisting of three classes of directors, each serving a staggered three-year term. As a result, only one class of our board of directors will be elected each year from and after the closing. Our amended and restated certificate of incorporation and amended and restated bylaws that will become effective immediately prior to the closing of this offering will provide that the number of authorized directors may be changed only by resolution of a number of directors that is more than half of the number of directors then authorized (including any vacancies), and that, except as otherwise required by law or by resolution of the board, any vacancies or new directorships on the board may be filled only by vote of the directors and not by stockholders. The classification of the board of directors may have the effect of delaying or preventing changes in control of our company.

**Board Committees**

We currently have a compensation committee, a corporate governance and nominating committee, and an audit committee. Our board of directors and its committees set schedules to meet throughout the year and also can hold special meetings and act by written consent under certain circumstances. The independent members of our board of directors also periodically hold separate executive session meetings at which only independent directors are present. Our board of directors delegates various responsibilities and authority to its committees as generally described below. The committees regularly report on their activities and actions to the full board of directors. Each member of each committee of our board of directors qualifies as an independent director in accordance with the standards described above. Each committee of our board of directors has adopted a written charter. Upon the effectiveness of the registration statement of which this prospectus forms a part, copies of each charter will be posted on our website at *www.synacor.com* under the Investor Relations section. The inclusion of our website address in this prospectus does not include or incorporate by reference the information on our website into this prospectus.

***Audit Committee***

The current members of our audit committee are Messrs. Keaveney, Levy and Morrissette, each of whom is “independent” under the rules and regulations of the SEC and the listing standards of . Mr. Morrissette chairs the audit committee. The audit committee of our board of directors oversees our accounting practices, system of internal controls, audit processes and financial reporting processes. Among other things, our audit committee is responsible for reviewing our disclosure controls and processes and the adequacy and effectiveness of our internal controls. It also discusses the scope and results of the audit with our independent auditors, reviews with our management and our independent auditors our year-end operating results and, as appropriate, initiates inquiries into aspects of our financial affairs. Our audit committee has oversight for our code of business conduct and is responsible for establishing procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls, auditing matters, federal securities laws (including any rules or regulations thereunder), the disclosures we are required to make to our stockholders as a public company and any other securities matters related to our code of business conduct, and for the confidential, anonymous submission by our employees of concerns regarding questionable accounting, auditing or securities laws matters. In addition, our audit committee has sole and direct responsibility for the appointment, retention, compensation and oversight of the work of our independent auditors, including approving services and fee arrangements. Our audit committee also is responsible for reviewing and approving all related party transactions in accordance with our related party transactions approval policy.

***Compensation Committee***

The current members of our compensation committee are Messrs. Kau, Levy and Tzeng, each of whom is “independent” under the rules and regulations of the SEC and the listing standards of . Mr. Kau chairs the compensation committee. The purpose of our compensation committee is to oversee the responsibilities of our board of directors relating to executive compensation policies and programs. Among other things, specific responsibilities of our compensation committee include evaluating the performance of our chief executive officer and determining our chief executive officer’s compensation. In consultation with our chief executive officer, it also determines the compensation of our other executive officers. In addition, our compensation committee administers our equity compensation plans and has the authority to grant equity awards and approve modifications of such awards under our equity compensation plans, subject to the terms and conditions of any equity award policy adopted by our board of directors. Our compensation committee also reviews and approves various other compensation policies and matters.

***Corporate Governance and Nominating Committee***

The current members of our corporate governance and nominating committee are Messrs. Kau, Levy and Tzeng, each of whom is "independent" under the rules and regulations of the SEC and the listing standards of . Mr. Kau chairs the corporate governance and nominating committee. The corporate governance and nominating committee of our board of directors oversees the nomination of directors, including, among other things, identifying, evaluating and making recommendations of nominees to our board of directors, and evaluates the performance of our board of directors and individual directors. Our corporate governance and nominating committee also is responsible for reviewing developments in corporate governance practices, evaluating the adequacy of our corporate governance practices and making recommendations to our board of directors concerning corporate governance matters.

**Code of Business Conduct**

Our code of business conduct applies to all of our employees, officers and directors. Upon the effectiveness of the registration statement of which this prospectus forms a part, the full text of our code of business conduct will be posted on our website at *www.synacor.com* under the Investor Relations section. We intend to disclose future amendments to certain provisions of our code of business conduct, or waivers of such provisions, at the same location on our website identified above and also in public filings. The inclusion of our website address in this prospectus does not include or incorporate by reference the information on our website into this prospectus.

**Compensation Committee Interlocks and Insider Participation**

Compensation decisions during the year ended December 31, 2010 pertaining to executive officer compensation were made by our board of directors.

During 2010, Messrs. Kau, Levy and Tzeng served on the compensation committee of our board of directors. None of these committee members is currently or has been at any time one of our officers or employees. None of our executive officers has ever served or will serve as a member of the board of directors or compensation committee (or committee serving a similar function) of any other entity that has or has had one or more executive officers serving as a member of our board of directors or our compensation committee.

**Limitation of Liability and Indemnification**

Prior to the consummation of this offering, we will enter into indemnification agreements with each of our directors and executive officers and certain other key employees. The form of agreement provides that we will indemnify each of our directors, executive officers and such key employees against any and all expenses incurred by that director, executive officer or key employee because of his or her status as one of our directors, executive officers or key employees, to the fullest extent permitted by Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws (except in a proceeding initiated by such person without board approval). In addition, the form agreement provides that, to the fullest extent permitted by Delaware law, we will advance all expenses incurred by our directors, executive officers and such key employees in connection with a legal proceeding in which they may be entitled to indemnification.

Our amended and restated certificate of incorporation and amended and restated bylaws will contain provisions relating to the limitation of liability and indemnification of directors and officers. The amended and restated certificate of incorporation will provide that our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duty as a director, except for liability:

- for any breach of the director's duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

- in respect of unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- for any transaction from which the director derives any improper personal benefit.

Our amended and restated certificate of incorporation also will provide that if Delaware law is amended after the approval by our stockholders of the certificate of incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of our directors will be automatically eliminated or limited to the fullest extent permitted by Delaware law.

Our amended and restated bylaws will provide that we will indemnify our directors and officers to the fullest extent permitted by Delaware law, as it now exists or may in the future be amended, against all expenses and liabilities reasonably incurred in connection with their service for or on our behalf. Our amended and restated bylaws will provide that we shall advance the expenses incurred by a director or officer in advance of the final disposition of an action or proceeding. Our amended and restated bylaws also will authorize us to indemnify any of our employees or agents and permit us to secure insurance on behalf of any officer, director, employee or agent for any liability arising out of his or her action in that capacity, whether or not Delaware law would otherwise permit indemnification.

**Compensation Discussion and Analysis**

This Compensation Discussion and Analysis discusses our executive compensation philosophy, objectives and design, our compensation-setting process, our executive compensation components and the decisions with respect to our named executive officers' compensation for fiscal year 2010 as well as certain other compensation-related actions taken after the end of 2010. The compensation provided to our named executive officers for 2010 is set forth in detail in the 2010 Summary Compensation Table and other tables and accompanying footnotes and narrative that follow this section.

Our executive officers whose compensation is discussed in this section and included in the compensation tables that follow this section, whom we refer to as our "named executive officers," are:

Ronald N. Frankel, our President and Chief Executive Officer

Scott A. Bailey, our Chief Operating Officer

George G. Chamoun, our Executive Vice President of Sales and Marketing

Tim Peterman, our former Chief Operating Officer

We note that Mr. Peterman was our principal financial officer until his departure in April 2010. Following Mr. Peterman's departure, Mr. Frankel fulfilled this function for the company until we hired William J. Stuart as our new chief financial officer in August 2011. Mr. Stuart will be a named executive officer for fiscal year 2011.

***General Overview***

To date, our executive compensation programs have emphasized variable compensation, which comprises two primary components of our programs: annual cash incentive bonuses and equity compensation in the form of stock options. As with other privately-held companies in our industry, our board of directors has generally held base salaries to a low level relative to market comparables as discussed below, reviewing them and generally providing for modest annual increases based upon merit, internal pay equity, performance and market conditions. Our board's practice has been to grant additional equity awards to executive officers only as

their prior equity awards become fully vested rather than to do annual “refresher” grants. Because our executives’ base salaries have remained relatively low and because our board of directors has made grants of additional equity awards relatively infrequently, our board focuses careful attention on our annual cash incentive bonus program, tying its objectives to our annual operating plan.

As described in more detail below, early in fiscal year 2010, two of our three named executive officers who were in their positions at the beginning of the year received base salary increases. Bonus targets did not change in 2010 for these three named executive officers compared with 2009 levels, nor did any of them receive new equity grants during 2010. Our annual cash incentive bonus program paid below target for 2010, as our board of directors determined that we had not made sufficient progress on our international expansion efforts and we had fallen short of our adjusted EBITDA objective. In October 2010, we hired a new chief operating officer, Mr. Bailey.

Early in fiscal year 2011, as part of its annual compensation review, and because many of our executive officers were by then almost fully vested in all their equity awards, our board of directors approved base salary increases and its compensation committee in August 2011 approved new equity awards for our chief executive officer, Mr. Frankel, and our executive vice president of sales and marketing, Mr. Chamoun. In addition, during the third quarter of 2011 our board approved a one-time bonus to Mr. Chamoun to reward him for completing certain significant business transactions in the first half of the year. In August 2011 in anticipation of this offering, we hired a new chief financial officer, Mr. Stuart.

We anticipate that prior to completion of this offering, our board of directors or its compensation committee, after completing a comprehensive review of our officer compensation programs, may make certain adjustments to the compensation arrangements for our named executive officers, although we do not expect any such adjustments to be effective until the first quarter of fiscal year 2012 at the earliest.

***Compensation Philosophy and Objectives***

Because we compete in a new and rapidly evolving market, which is growing significantly and is highly competitive, we continually refine our business model with the goals of fostering the growth of our clients’ subscribers base, increasing the level of engagement of their consumers, developing new products on alternate platforms and expanding our international operations. Our ability to compete and succeed in this market is directly tied to our ability to recruit, reward and retain a highly-talented team of sales, marketing, technical, financial and operational professionals.

Our compensation philosophy is therefore designed to attract high-caliber talent with the skills, judgment and dedication to help us achieve our business goals and reward those who continue to perform at or above our expectations and contribute to our long-term success. The various elements of our compensation program permit us to recognize and reward individual achievements within the framework of the Company’s financial and business goals.

Our executive compensation program is designed to achieve three key objectives:

- attracting, rewarding, motivating and retaining talented and experienced individuals whose knowledge, skills and abilities are critical to our success and long-term value creation,
- focusing our executive team on achievement of long-term and short-term financial and business goals, thereby aligning their interests with those of our stockholders, and
- allowing the level of compensation received by our named executive officers to reflect individual contribution and performance.

As mentioned above, our compensation programs to date have emphasized variable rather than fixed compensation. Because we have been in operation more than ten years, our long-term named executive officers have become fully vested over time in their equity compensation awards, which has two consequences for us. First, it requires that our board of directors consider from time to time whether to grant them additional equity awards to ensure we have effective retention arrangements in place. For example, Mr. Frankel and Mr. Chamoun both received stock option grants in 2007, which will be fully vested in the first quarter of 2012, prompting the compensation committee of our board of directors to approve the grant to them of additional stock option awards in the third quarter of 2011. Second, our board of directors ties our annual cash incentive bonus program closely to our annual operating plan, which results in annual bonus payments that it believes reflect our achievements over the relevant fiscal year. This emphasis on variable compensation has been chosen because our board of directors believed it to be the most effective way to motivate, focus and reward our executive officers on achieving both our short- and long-term objectives. We believe that our compensation levels reflect consideration of our stockholders' interest in paying what is appropriate to achieve our corporate goals while conserving cash and managing stockholder dilution. The individual components of our programs, as well as the mix and relative weighting of these components, have not been determined on the basis of a specific formula. Similarly we have not had any policy or guidelines for allocating compensation between cash and non-cash components, or among different forms of non-cash compensation. Rather, our board of directors has considered in making compensation decisions some or all of the following factors (in no particular order):

- Internal equity and consistency
- Cash resources
- Stockholder dilution
- Individual performance
- Individual potential
- Market information
- Corporate performance
- Financial performance

This multi-factor approach allows us to review and structure each named executive officer's compensation package to attract and retain that individual. Increasingly, we are required to attract talent from larger, including publicly-traded, companies and across ever-expanding geographies. In order to succeed, we believe it is becoming increasingly necessary to offer a greater amount and proportion of base salary as well as competitive target cash bonus levels. At the same time, as a technology company, it is an important feature of our culture and history to foster an ownership mentality and so we continue to emphasize equity compensation. As we transition from a privately-held to a publicly-traded company, we will continue to evaluate our philosophy, objectives and design as circumstances require. At a minimum, we expect to review our executive compensation program annually to consider whether it is consistent with the philosophy described above and whether it is meeting our business needs.

***Compensation-Setting Processes***

*Role of our Board of Directors* . Prior to this offering, our board of directors has retained authority to approve compensation paid to our executive officers and has generally approved, after considering its compensation committee's and Mr. Frankel's recommendations, compensation decisions for our named executive officers. In this capacity, our board of directors has determined the overall annual budget including

targeted compensation for our executive officers, reviewed corporate and individual performance against goals established at the beginning of each fiscal year, and approved annual, hiring process and other compensation actions taken with respect to our named executive officers.

While its role to date has largely been one of making recommendations on specific compensation decisions to the board for its consideration and approval, the compensation committee has taken an active role in the compensation-setting process, undertaking on behalf of the board the responsibilities of reviewing corporate and individual achievement in the context of the compensation-setting process, reviewing and evaluating compensation market data, proposing the structure of and reviewing achievement under our annual incentive cash bonus program, and making recommendations regarding changes in base salary and additional equity grants to our named executive officers. After having been delegated authority to do so by our board, the compensation committee approved in the third quarter of 2011 stock option grants to certain of our named executive officers

Our chief executive officer, as the manager of the executive team, assesses each executive officer's contributions on a corporate, departmental and individual level and makes recommendations to the board of directors with respect to merit increases in salary and annual bonus award amounts to be made to the other executive officers. The board of directors evaluates, discusses and modifies or approves those recommendations and conducts a similar evaluation of the chief executive officer's own contributions to the corporate goals.

With respect to compensation decisions for fiscal year 2010, including in connection with structuring and negotiating the compensation package offered to Mr. Bailey at the time he was hired in October 2010, the compensation committee obtained and reviewed competitive market data (described below), reviewed current executive officer compensation packages, and considered both internal equity among the executive officer team and the recommendations made by our chief executive officer. Our board of directors approved the committee's recommendation with regard to Mr. Bailey's compensation package.

After completion of this offering, we expect the board's compensation committee to take primary responsibility for executive officer compensation decisions. See "Management—Board Committees—Compensation Committee" above.

*Role of Management* . Our chief executive officer and vice president of human resources have supported our board of directors in its work by providing information relating to our financial plans, performance assessments of our executive officers and other personnel-related data. Our finance department works with our chief executive officer and vice president of human resources to gather financial and operational data that the chief executive officer reviews in making his recommendations. As described above, the chief executive officer made recommendations to the board's compensation committee with respect to the compensation of other executive officers but did not participate in the determination of his own compensation.

We expect that the chief executive officer, vice president of human resources and other appropriate company personnel will support the board's compensation committee in a similar manner in the future.

*Role of Compensation Consultant* . From time to time since 2007, our board of directors has worked with the compensation consulting firm of Frederic W. Cook. Although neither the board nor its compensation committee worked with this firm with respect to fiscal year 2010 or 2011 compensation, they have currently engaged Frederic W. Cook to assist with our 2012 executive compensation review. Except for the consulting services provided to the compensation committee, Frederic W. Cook did not perform any other services for the Company or its management. In connection with this review, which began during the third quarter of 2011, Frederic W. Cook prepared an executive compensation assessment analyzing current cash and equity compensation for our senior management team and developed a peer group of comparable companies. This information was used by the compensation committee in connection with its approval of additional equity grants to Mr. Frankel and Mr. Chamoun in August 2011 and will be used as a point of comparison against which our compensation programs can be compared for purposes of setting fiscal year 2012 compensation. The peer group is discussed below.

The compensation committee has the authority under its charter to engage and pay for the services of outside advisors and experts, including compensation consultants and counsel.

*Peer Group and Market Data* . Our board of directors has from time to time considered market data on compensation practices of similar companies in its annual review of our executive compensation programs.

In 2009, our board of directors and its compensation committee reviewed and considered, on an informal basis, among other things, such market data in connection with setting fiscal year 2010 compensation. Specifically, they reviewed two composite compensation surveys in connection with setting 2010 executive officer salary levels: the 2009 Towers Perrin Executive Compensation Survey and the 2009 CompStudy US Technology Survey. The participating companies whose information is included in these surveys were not selected by our board or on behalf of our company, and we do not focus on any particular company covered by these surveys. The 2010 Towers Perrin Executive Compensation Survey includes publicly-traded companies in the technology industry, while the participants in the 2009 CompStudy US Technology Survey, whose identities are not disclosed, are venture capital-backed, privately-held companies in the information technology industry. In relative terms as it applied to fiscal year 2010 compensation decisions, our board of directors believed that the market information included in the CompStudy US Technology Survey was generally more relevant to our circumstances than the information reflected in the Towers Perrin survey. While both surveys were used as reference tools, the data was not the primary factor that drove decisions made for 2010. Rather, in making final compensation decisions for 2010, the board was also informed by a variety of other factors including corporate and individual performance, competitive factors in the market for talent, dynamics within our company and industry, and internal pay equity.

As mentioned above, Frederic W. Cook has created at our board's request a group of peer companies for use in evaluating compensation decisions in fiscal year 2012 and beyond. Although the board has not yet received final data related to the peer group companies and, except with respect to the option grants to two named executive officers in the third quarter of 2011, no compensation decisions have been made after review of this market data, we expect that our board of directors and its compensation committee will consider this data in its decisions for 2012 compensation. This peer group, which includes public companies in the application software, software systems and digital media/broadcasting sectors that have annual revenue less than $650 million, consists of the following companies:

| | |
|---|---|
| ANSYS, Inc. | RealD Inc. |
| Ariba, Inc. | Realpage, Inc. |
| Aspen Technology, Inc. | Rovi Corporation |
| Brightcove, Inc. | SeaChange International |
| Commvault Systems, Inc. | Solarwinds Worldwide, LLC |
| Concur Technologies, Inc. | Successfactors, Inc. |
| Fortinet, Inc. | Synchronoss Technologies, Inc. |
| Netsuite Inc. | Taleo Corporation |
| Pandora Media, Inc. | Tivo Inc. |
| Qlik Technologies, Inc. | Ultimate Software Group, Inc. |

We believe that this list, which we will review and may adjust from year to year as market circumstances change, is representative of, but does not include the entire set of, companies against which we regularly compete when hiring and retaining executives.

Except as described below with respect to base salaries, neither our board of directors nor its compensation committee have established specific targets based upon the peer group data for any other individual component of or total compensation for our executive officers.

***Principal Elements of Executive Compensation***

Our executive compensation program consists of four components:

- Base salary
- Annual cash incentive bonuses
- Equity compensation in the form of stock options
- Certain employment termination- and change of control-related benefits

Because of our efforts to preserve cash, it has not always been possible to provide an officer with a base salary at the level that our board of directors considers competitive. Accordingly, our board has from time to time instead approved an increase in target bonus, a one-time bonus or additional equity awards as a result of such shortfall in targeted base salary. Except in this respect, a determination by our board with regard to one component of compensation has generally not affected its determinations with regard to the other components.

*Base Salaries* . Our board of directors has established base salaries for our chief executive officer and other named executive officers based upon historical company compensation practices, the officer's position, the scope of the officer's responsibilities within the position, and general survey information about the market compensation for that position as described above. Base salaries are reviewed annually and adjusted as and when the board determines appropriate. Salary adjustments have been and we expect will continue to be determined by the board or the compensation committee in its discretion, based on competitive conditions, individual performance, our overall financial and business performance, changes in job duties and responsibilities, and our overall budget for base salary increases.

For fiscal years 2010 and 2011, our board of directors believes that to remain competitive in our hiring within the senior management ranks, our officer base salaries should approach the 50th percentile of the market data as drawn for each position for which data is available from the Towers Perrin and CompStudy surveys described above. In the fall of 2009, the compensation committee and our board of directors informally analyzed the base salary of each named executive officer and observed that the market data indicated that Messrs. Frankel and Chamoun both received base salaries significantly below this 50 th percentile level. We believe this occurred with respect to our long-term executive officers because their base salaries had generally been established during the first few years of our operation, when our revenue was lower. While our board of directors believes that over time our officer base salaries should approach the 50 th percentile level, it has not believed it appropriate to immediately increase salaries to this level. Rather, it prefers to gradually move toward this goal.

Following this review, our board in February 2010 increased Mr. Frankel's annual base salary from $280,000 to $295,000 and Mr. Chamoun's annual base salary from $175,000 to $225,000. With respect to Mr. Frankel, our board concluded that it would reconsider providing him a salary increase of the magnitude necessary to take his base salary to the 50 th percentile at a later date and provided him instead with an ordinary annual merit increase. The increase in early 2010 left his base salary below the 25 th percentile of the market data. On the other hand, with regard to Mr. Chamoun, the increase took his salary approximately to the 25 th percentile, an increase which our board concluded was necessary to retain him. In connection with his joining us in October 2010, Mr. Bailey's annual base salary was set at $325,000, which is slightly below the 50 th percentile of the survey data for his position and necessary in our board's judgment to hire and relocate him to the Buffalo area. Mr. Peterman's annual base salary for 2010 was unchanged at $275,000.

In February 2011, our board approved additional increases to the annual base salaries for Mr. Frankel and Mr. Chamoun, increasing Mr. Frankel's salary to $325,000 and Mr. Chamoun's to $240,000. The market data indicated that the base salary amounts of Messrs. Frankel and Chamoun were below the level necessary to achieve our compensation objectives, based on companies in our geographic region, technology companies throughout the United States, and the compensation packages we have paid to our new hire executive officers. In each case the increase put the officer's salary at or slightly below the 25 th percentile for the applicable position.

In connection with his commencing employment with us in August 2011, our board of directors approved a base salary for Mr. Stuart, our new chief financial officer, of $250,000, which was negotiated with him and is substantially below the 25 th percentile for his position based upon the survey data. Pursuant to his offer letter with us, his base salary will increase to $290,000 effective upon this offering, which represents slightly less than the 25 th percentile for his position.

*Annual Incentive Compensation* . Our annual cash incentive bonus program for executive officers, originally adopted in 2007, is designed to drive toward achievement of our annual objectives and reward individual performance in connection with achievement of those objectives. Each year, our board upon the recommendation of its compensation committee establishes certain financial and corporate performance objectives which it later evaluates in light of full-year performance in determining the amount of bonus payments for our executive officers. Each named executive officer has a target bonus opportunity expressed as a percentage of his base salary as in effect at the end of the fiscal year. For fiscal year 2010, the bonus targets for our named executive officers were as follows: Mr. Frankel, 70%, and Messrs. Chamoun and Bailey, 50%. The bonus program provides an opportunity for greater-than-target payout upon overachievement, as determined by the board in its discretion, up to a maximum of two times the officer's target bonus amount.

The board retains discretion to increase or decrease bonus payments based on a variety of factors, such as accomplishing a specific business objective not included in the goals for the year (if it had a material impact on our financial results or business operations), assuming responsibility beyond the scope of the executive officer's position, or accomplishing goals in a way that contributed materially to exceeding the financial targets for the year or generating revenue in future years.

For fiscal year 2010, 75% of the target bonus for each named executive officers was based upon two financial objectives having equal weight: a revenue objective and an adjusted EBITDA objective. The remaining 25% of the target bonus was tied to achievement of certain corporate objectives identified below. The board has not established a specific weighting with respect to these corporate objectives; rather, it reviews achievement of all such objectives and exercises its judgment to assign an achievement percentage with respect to this 25% portion of our annual cash incentive bonus.

With regard to 2010 objectives achievement and bonus payments, our board had established for the year a revenue goal of $67 million (actual achievement was $66 million **)** and an adjusted EBITDA goal of $3 million (actual achievement was $(0.5) million). Our board determined that the revenue achieved constituted performance substantially at target level for purposes of our 2010 annual cash bonus and therefore concluded that the financial objectives portion of the bonus program would pay out at the 37.5% level (50% of total for this 75% portion of the bonus). No bonus was awarded for the EBITDA component of the bonus program. The corporate objectives established for the year related to the business achievements identified below, which also indicates the achievement level assessment determined by our board for each objective:

| | |
|---|---|
| Strengthen domestic distribution with solid renewals and expand distribution by 10% | Achieved: Secured renewals and expanded distribution in excess of 10% |
| Implement international expansion plan | Not achieved: Due to changing business priorities it was determined that we should delay international expansion |
| Implement a plan to increase consumer usage of our portal product | Achieved: Launched a new generation of portal on several of our clients' websites |
| Launch a new Synacor "Advertising Network" to clients | Achieved: Hired a VP of Advertising and replaced several direct response ads with broader branded advertising, significantly improving the quality of advertising |

As a result of partial achievement of the corporate objectives, our board determined in its judgment to pay out at the 20% level (80% of total) with respect to this (25%) portion of our bonus program. This resulted in a payout level of approximately 57% for Messrs. Frankel and Chamoun for 2010. Mr. Peterman did not receive a bonus payment for 2010, as he left before year-end. Mr. Bailey, who joined us in October 2010, was paid a pro-rated amount of his target bonus for the portion of the year that he worked with the Company. The total amounts actually paid to each named executive officer are reflected in the 2010 Summary Compensation Table under “Management—Executive Compensation” below.

The structure of the 2011 annual cash incentive bonus is essentially the same as the 2010 bonus program. Seventy-five percent of the target bonus ties to revenue and adjusted EBITDA goals, and 25% ties to corporate objectives. Performance achievement and bonus amount payments will be determined in the first quarter of 2012 with respect to our 2011 bonus program. Target bonus opportunities for Messrs. Frankel, Chamoun and Bailey remained unchanged from 2010, while Mr. Stuart was assigned a target bonus of 40% of his salary at the time he commenced employment with us in August 2011. Mr. Stuart is eligible to earn a pro-rated amount of his 2011 bonus.

*Long-Term Incentive Compensation* . Our long-term equity incentive compensation is typically awarded in the form of options to acquire shares of our common stock, because we believe that stock options are the best retention device, offer our employees the opportunity to earn a more significant portion of equity than would other equity award instruments and, therefore, provide the greatest incentive for our management to drive toward increasing the value of our business. Our equity incentive plans were established to provide our employees, including our executive officers, with incentives to support our long-term success and growth. Prior to the date of this offering, stock option grants have generally been approved by our board of directors. Following this offering, our compensation committee will approve stock option and other equity award grants to executive officers and other employees, unless it decides to delegate authority to our chief executive officer to make routine grants to employees below the officer level at some point in the future. We expect that our chief executive officer will continue to make recommendations with regard to equity awards to be made to executive officers other than himself.

An executive officer typically receives a significant stock option grant in the year he or she commences employment. Thereafter, option grants may be made at varying times and in varying amounts at the discretion of our compensation committee or our board of directors. We do not have any program or obligation that requires us to grant equity compensation to any executive officer on specified dates, nor do we have any policy or practice with regard to granting options or equity awards in relation to the release of corporate information. Stock options are typically granted on the first board meeting following a new employee’s date of hire. For options granted to newly hired employees, the vesting commencement date applicable to their options is typically the first day of the month following the month in which they commence employment, whereas for options granted to current employees, the vesting commencement date is typically the first day of the month during which the grant is made. We anticipate that following this offering our compensation committee will review and update or change these procedures as it determines to be appropriate.

Prior to this offering, the size of each option grant was generally set at a level that our board of directors deemed appropriate to create a meaningful opportunity for stock ownership while reflecting the individual’s position with us and the individual’s potential for future responsibility. Prior to this offering since 2006, the exercise price of options has been determined by our board of directors on the basis of a report obtained from an independent valuation firm. We expect that the exercise price for options we grant following this offering will be the closing price of our common stock on the grant date.

Stock options granted under our 2006 Stock Plan generally vest subject to continued service as to 25% of the shares on the anniversary date of the first day of the month following the date of hire for the initial grant to an employee and the first day of the month following the date of grant for subsequent grants, and then as to 1/48th of the shares each month thereafter. These vesting schedules are designed to provide a meaningful

incentive to remain in our employ over a long period of time and to reflect the prevailing practice among comparable companies.

To date, we have not granted additional options to employees on an annual basis, although we evaluate employee performance on an annual basis. Instead, additional options have been granted from time to time to employees if our board of directors determined that an additional grant was necessary on the basis of our retention or incentive needs, corporate and individual performance, the individual's existing equity holdings, and internal pay equity. When additional grants have been made, the amount of such grants was determined in the discretion of the board of directors, who also considered any recommendation made by our chief executive officer.

Our board of directors has twice re-priced outstanding stock options held by our employees, including executive officers. In February 2008, our board, after determining that the fair value of the Company's common stock had declined to $2.00 per share based on an independent valuation of the Company's common stock, approved an offer to re-price outstanding options that had exercise prices above $2.00. All executive-level employees, including Messrs. Frankel, Chamoun and Peterman, chose to re-price the options they had received in 2007 with exercise prices above $2.00 per share. As a condition of these officers participating in the re-pricing, they were required to reset their vesting commencement date to the effective date of the re-pricing. Except for the vesting schedule and the exercise price, all other terms of these options remained unchanged. As a result of the global economic conditions that occurred in late 2008 and early 2009, our board again decided to re-price outstanding stock options in June 2009, after determining that the fair value of the Company's common stock had declined to $1.26 per share based on an independent valuation of the Company's common stock. In connection with this second re-pricing, in which Messrs. Frankel, Chamoun and Peterman participated, no changes were made to the number of shares subject to the options, the vesting commencement date and the length of the vesting period.

During fiscal year 2010, the only option grant made to a named executive officer was the one made to Mr. Bailey in connection with his commencing employment. Our board of directors approved for Mr. Bailey an option to purchase 800,000 shares, with a per-share exercise price of $1.44. This option vests on our standard vesting schedule for new hire awards. The size of Mr. Bailey's option grant was determined on the basis of the negotiations that occurred with respect to his offer letter. This grant is shown in the 2010 Grants of Plan-Based Awards Table below.

In connection with his commencing employment with us in August 2011, our new chief financial officer Mr. Stuart was granted an option to purchase 500,000 shares. This amount was determined based upon negotiations with Mr. Stuart in advance of his accepting the Company's employment offer. At this same time, Frederic W. Cook completed an executive compensation study in preparation for the 2012 annual compensation review. Its report indicated that Mr. Frankel and Mr. Chamoun were at the 25th percentile for total compensation, based on a comparison with the peer group identified above, as set forth in the third paragraph under "Management—Compensation Philosophy and Objectives." In an effort to address retention concerns, including in light of the fact that Messrs. Frankel and Chamoun would be fully vested in their outstanding options in the first quarter of 2012, our compensation committee with the support of our board of directors approved in August 2011 the grant of options to purchase 350,000 shares of our common stock to Mr. Frankel and an option to purchase 200,000 shares of our common stock to Mr. Chamoun. The compensation committee determined the number of shares subject to these awards based upon a number of factors, including such as providing the officer with a meaningful amount of unvested equity as we headed into fiscal year 2012 and achieving internal equity within the senior management team. All options granted in August 2011 had exercise prices equal to the then fair market value of our common stock of $1.66 per share, which valuation was based on a written report prepared by an independent valuation firm.

We currently do not require our directors or executive officers to own a particular amount of our common stock. Our board of directors is satisfied that stock and option holdings among our directors and

executive officers are sufficient at this time to provide motivation and to align this group's interests with those of our stockholders.

*Employment Agreements* . We have entered into letter agreements with each of our named executive officers that provide severance benefits in certain circumstances, including in connection with a change of control. The terms of these agreements are described below in "Management—Employment Agreements and Offer Letters" and "Management—Potential Payments upon Termination or Change of Control." Our board of directors believes that it is appropriate to provide such benefits to our named executive officers in order to keep them focused on achieving corporate objectives in the context of at-will employment and the possibility of significant corporate events that could disrupt our employment relationships with our executive officers.

Other than the offer letters the company entered into with Mr. Bailey at the time of his hire in 2010 and Mr. Stuart at the time of his hire in 2011, we did not approve any new employment or similar agreements with our named executive officers during fiscal year 2010 or 2011.

***Perquisites***

Our executive officers participate in the same group insurance and employee benefit plans as our other salaried employees. At this time, we do not generally offer special benefits plans or programs in which only executive officers may participate. However, because their offer letters tend to be negotiated, we have from time to time provided certain benefits to officers in connection with their commencing employment with us. During 2010, as negotiated with him prior to his accepting our employment offer, we provided Mr. Bailey with a relocation package in an amount of up to $150,000.

***Clawback Policy***

Our board of directors has not adopted a policy as to whether or not we will make retroactive adjustments to or require recovery of any cash or equity-based incentive compensation paid to the named executive officers (or others) where the payment was predicated upon the achievement of financial results that were subsequently the subject of a restatement. We will comply with applicable laws and regulations requiring any such adjustments to or recovery of incentive compensation in connection with a financial restatement.

***Tax and Accounting Treatment of Compensation***

Section 162(m) of the Internal Revenue Code places a limit of $1 million per person on the amount of compensation that we may deduct in any one year with respect to each of our named executive officers other than the chief financial officer. There is an exemption from the $1 million limitation for performance-based compensation that meets certain requirements. We expect all grants of options made under our 2006 Stock Plan and 2012 Equity Incentive Plan to qualify for the exemption. See "Management—Equity Benefit Plans" for more details. Grants of restricted shares or stock units under our equity award plans may qualify for the exemption if vesting is contingent on the attainment of objectives based on the performance criteria set forth in the plan and if certain other requirements are satisfied. Grants of restricted shares or stock units that vest solely on the basis of service cannot qualify for the exemption. Our current cash incentive plan is not designed to qualify for the exemption. To maintain flexibility in compensating officers in a manner designed to promote varying corporate goals, our compensation committee has not adopted a policy requiring all compensation to be deductible. Although tax deductions for some amounts that we pay to our named executive officers as compensation may in the future be limited by section 162(m), we would not expect this limitation would result in the payment of increased federal income taxes by us immediately following this offering due to our net operating loss carry-forward position. Our compensation committee may approve compensation or changes to plans, programs or awards that may cause the compensation or awards to exceed the limitation under section 162(m) if it determines that such action is appropriate and in our best interests.

Under current accounting rules governing the manner in which equity compensation paid to our employees including executive officers is to be accounted for, we estimate and record an expense for each equity award over the applicable service period. Accounting rules also require us to record cash compensation as an expense at the time the obligation is accrued. We have not tailored our executive compensation program to achieve particular accounting results.

**2010 Summary Compensation Table**

The following table provides information concerning the compensation paid to our named executive officers for our 2010 fiscal year.

| Name and Principal Position | Year | Salary ($) | Bonus ($) | Option Awards (4) ($) | Non-Equity Incentive Plan Compensation ($) (5) | All Other Compensation ($) | Total ($) |
|---|---|---|---|---|---|---|---|
| Ronald N. Frankel *President & Chief Executive Officer* | 2010 | 293,750 | — | — | 118,738 | 17,386(6) | 429,874 |
| Scott A. Bailey (1) *Chief Operating Officer* | 2010 | 81,250(3) | 40,625 | 606,000 | — | 107,061(7) | 836,936 |
| George G. Chamoun *Executive Vice President of Sales and Marketing* | 2010 | 220,833 | — | — | 64,400 | — | 285,233 |
| Tim Peterman *Former Chief Operating Officer* (2) | 2010 | 91,667 | — | — | — | 48,609(8) | 140,276 |

(1) Mr. Bailey commenced employment with us on October 1, 2010.
(2) Mr. Peterman resigned as our chief operating officer effective as of April 30, 2010.
(3) Amount reflects prorated compensation for 2010.
(4) The amounts in this column represent the aggregate grant date fair value of option awards granted to the officer in the applicable fiscal year computed in accordance with FASB ASC Topic 718. See Note 9 of the Notes to the Financial Statements included elsewhere in this prospectus for a discussion of the assumptions made by the Company in determining the grant date fair value of its equity awards.
(5) Reflects amounts paid pursuant to our Management Cash Incentive Plan for our 2010 fiscal year. The amounts indicated above were paid by us on February 15, 2011.
(6) Represents medical benefits paid to or on behalf of Mr. Frankel.
(7) Pursuant to Mr. Bailey's offer letter, we agreed to reimburse Mr. Bailey up to $150,000 in connection with his relocation, by December 31, 2010, from Philadelphia, Pennsylvania, to the Buffalo, New York, area, with any unused portion of such amount payable to Mr. Bailey as a relocation bonus. If Mr. Bailey resigns before completing 12 months of continuous service, he is required to immediately refund to us all such payments and reimbursements made by us. In addition, in connection with relocation to Buffalo, Mr. Bailey was entitled to reasonable executive-style housing through December 31, 2010 and to reasonable rental housing from the date his family relocated to Buffalo through June 30, 2011. Mr. Bailey was also entitled to reimbursement for reasonable travel expenses incurred by him or his spouse for travel to Buffalo from Philadelphia through December 31, 2010. The amount shown includes $6,693 as reimbursement for moving expenses and $100,368 as an additional relocation payment. The remaining $42,939 was paid to Mr. Bailey in 2011 as a bonus.
(8) Represents $45,833 paid to Mr. Peterman as severance and an additional $2,776 paid with respect to accrued vacation time.

"Salary," "bonus" and "non-equity incentive plan compensation" accounted for the following percentages of the "total compensation" of our named executive officers in our 2010 fiscal year:

| Name | Salary | Bonus | Non-Equity Incentive Plan Compensation |
|---|---|---|---|
| Ronald N. Frankel | 68% | 0% | 28% |
| Scott A. Bailey | 10% | 5% | 0% |
| George G. Chamoun | 77% | 0% | 23% |
| Tim Peterman | 65% | 0% | 0% |

**2010 Grants of Plan-Based Awards**

The following table provides information concerning each plan-based award granted to our named executive officers during our 2010 fiscal year. The amounts shown in the "Estimated Possible Payouts Under Non-Equity Incentive Plan Awards" reflect each officer's participation in our Management Cash Incentive Plan.

| Name | Grant Date | Estimated Possible Payouts Under Non-Equity Incentive Plan Awards (1) | | | All Other Option Awards: Number of Securities Underlying Options (#) | Exercise or Base Price of Option Awards ($/Sh) | Grant Date Fair Value of Stock and Option Awards (3) ($) |
|---|---|---|---|---|---|---|---|
| | | Threshold ($) | Target ($) | Maximum ($) | | | |
| Ronald N. Frankel | N/A | 0 | 206,500 | 413,000 | | | |
| Scott A. Bailey | 11/18/10 | | | | 800,000(2) | 1.44 | 606,000 |
| George G. Chamoun | N/A | 0 | 112,500 | 225,000 | | | — |

(1) Represents awards granted under our Management Cash Incentive Plan, which were based on achievement of certain levels of performance in our 2010 fiscal year. These columns show the awards that were possible at the threshold, target and maximum levels of performance (with the maximum payout under the plan being 200% of the target amount). The column titled "Non-Equity Incentive Plan Compensation" in the Summary Compensation Table shows the actual awards earned in our 2010 fiscal year by our named executive officers under the plan, which were paid in fiscal year 2011. For more information about our Management Cash Incentive Plan, please see the section titled "Compensation Discussion and Analysis" above.

(2) Shares underlying the option vest over 4 years of service, with 25% vesting upon completion of 12 months of service and the remainder vesting in 36 equal monthly installments thereafter.

(3) The amount in this column represents the aggregate grant date fair value of the option computed in accordance with FASB ASC Topic 718. See Note 9 of the Notes to the Financial Statements included elsewhere in this prospectus for a discussion of the assumptions made by us in determining the grant date fair value of our equity awards.

**Outstanding Equity Awards at 2010 Fiscal Year-End**

The following table provides information concerning each unexercised option held by our named executive officers as of December 31, 2010. The number of option shares and the exercise prices that appear below reflect all adjustments as a result of our capitalization adjustments.

Except as indicated in the footnotes below, options granted to our named executive officers are generally immediately exercisable with respect to all of the option shares (whether vested or unvested), subject to our repurchase right in the event that the executive's service terminates before vesting in such shares. For information regarding the vesting acceleration provisions applicable to the options held by our named executive

officers, please see the section titled “Management—Potential Payments upon Termination or Change in Control” below.

| | Option Awards | | | | | |
|---|---|---|---|---|---|---|
| Name | Grant Date | Vesting Commencement Date | Number of Securities Underlying Unexercised Options (#) Vested | Number of Securities Underlying Unexercised Options (#) Unvested | Option Exercise Price ($) | Option Expiration Date |
| Ronald N. Frankel | 8/21/01 | 2/1/01 | 8,052(1) | — | 50.00 | 2/1/11 |
| Ronald N. Frankel | 8/21/01 | 4/1/01 | 8,502(2) | — | 50.00 | 3/31/11 |
| Ronald N. Frankel | 3/13/03 | 3/13/02 | 1,864,410(3) | — | 0.02 | 3/13/13 |
| Ronald N. Frankel | 11/18/04 | 10/1/04 | 720,027(4) | — | 0.10 | 11/17/14 |
| Ronald N. Frankel | 4/3/07 | 4/3/07 | 316,662(4) | 28,788 | 0.463333 | 4/2/17 |
| Ronald N. Frankel | 9/14/07 | 2/1/08 | 153,125(4)(5) | 56,875 | 1.26 | 9/13/17 |
| Scott A. Bailey | 11/18/10 | 11/1/10 | — (4)(6) | 800,000 | 1.44 | 11/17/20 |
| George G. Chamoun | 3/13/03 | 11/18/02 | 574,326(3) | — | 0.02 | 3/13/13 |
| George G. Chamoun | 11/18/04 | 10/1/04 | 216,009(4) | — | 0.10 | 11/17/14 |
| George G. Chamoun | 9/14/07 | 2/1/08 | 109,375(4) | 40,625 | 1.26 | 9/13/17 |

(1) Shares underlying the option vested four years of service after the Vesting Commencement Date, with approximately 20% vesting upon completion of 12 months of service and in 36 monthly installments thereafter.
(2) Shares underlying the option vested four years of service after the Vesting Commencement Date, with approximately 24% vesting upon completion of 12 months of service and in 39 monthly installments thereafter.
(3) 2.083% of the shares underlying the option vested following the completion of each month of service after the Vesting Commencement Date.
(4) Shares underlying the option vest over 4 years of service after the Vesting Commencement Date, with 25% upon completion of 12 months of service and in 36 equal monthly installments thereafter.
(5) 169,461 of the option shares are immediately exercisable, with the remaining 40,539 of the option shares becoming exercisable at any time after December 31, 2010.
(6) 522,224 of the option shares are immediately exercisable, with an additional 69,444 of the option shares becoming exercisable at any time after each of December 31, 2010, December 31, 2011, December 31, 2012, and December 31, 2013.

**2010 Option Exercises and Stock Vested**

None of our named executive officers exercised stock options or held any stock awards that vested during our 2010 fiscal year.

**Pension Benefits & Nonqualified Deferred Compensation**

The Company does not provide a pension plan for its employees and none of our named executive officers participated in a nonqualified deferred compensation plan during our 2010 fiscal year.

**Employment Agreements and Offer Letters**

*Ronald N. Frankel.* We entered into a letter agreement with Mr. Frankel in July 2007 (which remains subject to our policy applicable to severance benefits), which clarified the severance benefit and vesting acceleration that were initially offered to Mr. Frankel when he commenced employment with us in 2001. In addition, we entered into a change of control severance agreement that will become effective as of the effective

date of this offering. See “Management—Potential Payments upon Termination or Change in Control” for a description of the severance benefits and vesting benefits provided by these agreements.

*Scott A. Bailey* . We entered into a letter agreement with Mr. Bailey in September 2010, which sets forth his base salary of $325,000 per year and his eligibility for a bonus of up to 50% of such base salary. Pursuant to such letter agreement, Mr. Bailey is eligible to receive up to $150,000 in connection with his relocation to the Buffalo, New York, area, subject to repayment by Mr. Bailey if he resigns before completing 12 months of continuous service with us. In addition, we agreed to provide reasonable executive-style temporary housing to Mr. Bailey until no later than December 31, 2010, and, to facilitate the permanent relocation of his family to the Buffalo area, to provide him with reasonable rental housing from the date his family moves through June 30, 2011. We also agreed to provide reasonable travel expenses incurred by Mr. Bailey or his spouse for travel to Buffalo from Philadelphia, Pennsylvania, through December 31, 2010. The letter agreement also provides for severance benefits and vesting acceleration. See “Management—Potential Payments upon Termination or Change in Control” for a description of these benefits.

*George G. Chamoun*. We entered into an employment agreement with Mr. Chamoun in December 2000, which is subject to our policy applicable to severance benefits. In addition, we entered into a change of control severance agreement that will become effective as of the effective date of this offering. See “Management—Potential Payments upon Termination or Change in Control” for a description of Mr. Chamoun’s severance benefits and vesting acceleration.

**Potential Payments upon Termination or Change in Control**

***Ronald N. Frankel***

Pursuant to our letter agreement with Mr. Frankel, if we terminate Mr. Frankel’s employment without cause, he will receive a lump-sum severance payment equal to 12 months of his then-current base salary. Cause under Mr. Frankel’s letter agreement is defined as Mr. Frankel’s intentional failure to perform his assigned duties; commission of a felony or any fraudulent or similar act or misconduct; unauthorized use or disclosure of our proprietary information or trade secrets or any other party’s proprietary information or trade secrets; or willful breach of any of Mr. Frankel’s obligations to us.

Options granted to Mr. Frankel have the following vesting acceleration: If Mr. Frankel is terminated without cause at any time, he will receive an additional 12 months of vesting. In addition, in the event of a change of control, 100% of his unvested options will vest if the acquirer or successor entity does not assume such options in full; if his compensation is reduced below the rate as of immediately prior to the change of control; if his place of employment is relocated more than 35 miles from its location immediately prior to the change of control; or if his duties and responsibilities are reduced as a result of or following such change of control (including as a result of our termination of Mr. Frankel for any reason). Cause under Mr. Frankel’s option agreements is defined substantially as under his letter agreement with us, as described above. Change of control under Mr. Frankel’s option agreements is defined as a sale of our assets or our merger or consolidation with or into another corporation.

***Scott A. Bailey***

Pursuant to our letter agreement with Mr. Bailey, if we terminate his employment for any reason other than cause or permanent disability after he and his spouse relocate to the Buffalo area or at any time following our change of control, we will continue to pay Mr. Bailey his base salary for a period of 12 months following such termination. In addition, if we terminated his employment for any reason other than cause or permanent disability at any time, we will pay his COBRA premiums for a period of 12 months following such termination. Mr. Bailey is also entitled to receive 12 months’ vesting on all of his options or restricted stock. Further, if Mr. Bailey is terminated subsequent to our change of control or after the effective date of this offering, we will

also pay Mr. Bailey his target bonus prorated through the last day of his employment. Cause under Mr. Bailey's letter agreement is defined as his unauthorized use or disclosure of our confidential information or trade secrets; material breach of any agreement with us; material failure to comply with our written policies or rules; conviction of or plea of guilty or no contest to a felony; gross negligence or willful misconduct; continuing failure to perform assigned duties; or failure to cooperate in good faith with a governmental or internal investigation of us, our directors, officers or employees, if we have requested his cooperation.

The option granted to Mr. Bailey on November 18, 2010, has the following vesting acceleration. If, in connection with, or within 12 months following, a change of control in which the acquiring or succeeding entity assumes the option or makes a substitution for it, Mr. Bailey is subject to an involuntary termination, he will receive an additional 12 months of vesting. Involuntary termination under Mr. Bailey's option agreement means our termination Mr. Bailey's service without cause or his voluntary resignation within 30 days following a material reduction in his job responsibilities; relocation of more than 50 miles; or a reduction in his then-current base salary by at least 10%, other than pursuant to a generally applicable salary reduction. "Cause" and "change of control" are defined substantially as with respect to Mr. Frankel's option, as described above.

***George G. Chamoun***

Pursuant to our employment agreement with Mr. Chamoun, if he resigns for good reason, or if he is terminated by us for any reason other than for cause (including a termination in contemplation of our change in control), we will continue to pay Mr. Chamoun his base salary for a period of six months following such termination. Good reason means a resignation by Mr. Chamoun due to our material breach of his employment agreement, because he is required to relocate to a location other than one of our principal offices or if (following our change in control) he is not offered a position having duties, rights and responsibilities similar to those before the transaction. Cause under Mr. Chamoun's employment agreement means his dishonesty, commission of a felony, willful violation of his fiduciary duties or material violation of the terms of his employment agreement. Change of control is defined substantially as with respect to Mr. Frankel's option, as described above.

The option granted to Mr. Chamoun on September 14, 2007, has the following vesting acceleration. If, in connection with, or within 12 months following, a change of control in which the acquiring or succeeding entity assumes the option or makes a substitution for it, Mr. Chamoun is subject to an involuntary termination, he will receive an additional 12 months of vesting. Involuntary termination under Mr. Chamoun's option agreement has the same meaning as with respect to Mr. Bailey's option, as described above.

***Post-Offering Change of Control Severance Benefits***

Our board of directors approved change of control severance agreements for our chief executive officer and his direct reports (which includes Messrs. Bailey and Chamoun) that will become effective when this offering is consummated. If an executive is subject to an involuntary termination in connection with or within 12 months following our change of control, he will receive severance equal to twelve months of his then-current base salary plus his then-annual target bonus amount, payable over a 12-month period. In addition, we will pay the executive's COBRA premiums for 12 months, and each executive will be eligible for 12 months' additional vesting with respect to any of our equity granted to such executive. All such benefits are contingent on the executive signing a general release of all claims against us. If an executive has an existing agreement that provides for severance benefits, such executive will receive benefits under whichever agreement provides the greatest benefits (but not both). Change of control under our change of control agreement means our merger or consolidation with or into another corporation; a sale of our assets; a change in the majority of our board of directors; or any transaction as a result of which any person acquires beneficial ownership of at least 50% of the total voting power of our then-outstanding voting securities. Involuntary termination under our change of control agreement is defined substantially as under Mr. Bailey's option, as described above. Cause is defined substantially as under Mr. Frankel's letter agreement, as described above.

***Change-of-Control Benefits Under Our Stock Plans***

Under our 2006 Stock Plan, awards that are not continued, assumed or substituted by the surviving entity will be cancelled in exchange for a payment equal to the difference between the fair market value of the shares subject to such options and the exercise price per share applicable to such award. Such payments may be made in installments and paid pursuant to a vesting schedule at least as favorable as that which would otherwise have applied had such options remained outstanding pursuant to their terms. Change of control is defined under our 2006 Stock Plan as a sale of our assets or our merger or consolidation with another corporation.

In addition, the form of stock option agreement under our 2006 Stock Plan provides for 12 months of accelerated vesting if an optionee is subject to an involuntary termination in connection with, or within 12 months after, a change in control in which our options are assumed or substituted by the surviving entity. Involuntary termination is defined as our termination of the optionee's service without cause or the optionee's resignation as a result of a material reduction in job responsibilities, relocation by more than 50 miles or a reduction in base salary by at least 10% (other than in connection with a general salary level reduction). Cause is defined as willful failure to perform duties or responsibilities; commission of any act of fraud, embezzlement, dishonesty or other willful misconduct; unauthorized use or disclosure of proprietary information or trade secrets; or willful breach of any obligation under a written agreement or covenant with us. A change of control includes our merger or consolidation with or into another corporation, after which our stockholders who owned more than 50% of our capital stock immediately before the transaction will own 50% or less of the total voting power of the surviving corporation or entity; or a sale of all or substantially all of our assets.

Under our 2000 Stock Plan, if we are subject to a change of control, awards terminate if not assumed or substituted by the surviving entity. Change of control under our 2000 Stock Plan is defined as under our 2006 Stock Plan, as described above.

**Estimated Benefits and Payments Upon Termination or Change of Control**

Other than with respect to Mr. Peterman, the following table provides information concerning the potential payments and benefits payable upon termination of our named executive officers' employment or upon a change of control, as if each named executive officer's employment terminated or other vesting acceleration event occurred on December 31, 2010. With respect to Mr. Peterman, the following table provides the actual payments and benefits he received upon termination of his employment pursuant to a letter agreement with us dated December 7, 2009.

For purposes of valuing the vacation payments in the table below (with the exception of Mr. Peterman, whose payment value reflects the actual amount he received upon his termination), we used each executive's base salary in effect as of December 31, 2010, and the number of accrued but unused vacation days as of December 31, 2010. The value of equity acceleration shown in the table below assumes that the vesting acceleration occurred on December 31, 2010, and was calculated by multiplying the number of unvested option shares that will accelerate by the difference between the fair market value of our common stock on December 31, 2010 (assuming that the fair market value of our common stock on that date was $ , the midpoint of the initial public offering price range reflected on the cover page of this prospectus) and the exercise price per share.

If any executive has an existing agreement that already provides for severance benefits, he will be entitled to benefits under the agreement that provides the greatest benefits, but not both.

| Name | Benefit | Voluntary Resignation ($) | Termination Without Cause Unrelated to a Change of Control ($) | Change of Control Benefits: Pursuant to Executives' Change of Control Severance Agreement ($) (6) | Change of Control Benefits: Pursuant to Other Individual Agreement ($) |
|---|---|---|---|---|---|
| Ronald N. Frankel | Cash Severance | — | 295,000(3) | 501,500 | — |
| | Equity Acceleration | — | (3) | | (7) |
| | COBRA Premiums | — | — | | — |
| | Vacation Payout | 39,712 | 39,712 | 39,712 | — |
| | Total Value | 39,712 | | | |
| Scott A. Bailey | Cash Severance | — | 487,500(4) | $ 487,500 | 487,500(8) |
| | Equity Acceleration | — | (4) | | (8) |
| | COBRA Premiums (1) | — | 11,031(4) | — | 11,031(8) |
| | Vacation Payout | — | — | — | — |
| | Total Value | — | | — | |
| George G. Chamoun | Cash Severance | 112,500(2) | 112,500(5) | 337,500 | 112,500(9) |
| | Equity Acceleration | — | — | | (10) |
| | COBRA Premiums | — | — | 11,031 | — |
| | Vacation Payout | 28,558 | 28,558 | 28,558 | 28,558 |
| | Total Value | 166,058 | 166,058 | | |
| Tim Peterman | Cash Severance | — | 45,833 | — | |
| | Equity Acceleration | — | | — | |
| | COBRA Premiums | — | | — | |
| | Vacation Payout | | 2,776 | — | |
| | Total Value | | 48,609 | — | |

(1) The value of COBRA premiums shown with respect to Mr. Bailey reflects the cost of COBRA continuation coverage under health plans sponsored by Mr. Bailey's prior employer, as Mr. Bailey elected not to participate in our health plans until January 1, 2012.

(2) Represents 6 months of base salary payable to Mr. Chamoun if he resigns as a result of our material breach of his employment agreement or if he is required to relocate under certain circumstances or if he is terminated by us without cause.

(3) Represents a lump-sum payment equal to 12 months of base salary and 12 months of vesting acceleration with respect to Mr. Frankel's options granted on April 3, 2007, and September 14, 2007, if he is terminated without cause at any time.

(4) Represents salary continuation payments equal to 12 months of base salary and prorated target bonus, 12 months of COBRA premiums paid by the Company and 12 months of vesting with respect to his options or restricted shares. Mr. Bailey is eligible for such benefits if he is terminated for any reason other than cause or permanent disability at any time following the relocation of Mr. Bailey and his spouse to the Buffalo, New York, area (or , with respect to payment of his COBRA premiums, if he is terminated for any reason other than cause or permanent disability at any time). Mr. Bailey is only eligible to receive a prorated bonus if he is terminated by us other than for cause or permanent disability after the date of this offering.

(5) Represents 6 months of base salary payable to Mr. Chamoun if he is terminated without cause.

(6) The amounts shown are payable if the executive is subject to an involuntary termination in connection with, or within 12 months following, a change of control. Each executive is entitled to severance in an amount equal to 12 months of base salary and annual target bonus; 12 months of COBRA premiums paid by the Company; and 12 months of equity acceleration.

(7) Represents full vesting with respect to options granted to Mr. Frankel if such options are not assumed in full or if Mr. Frankel's compensation is reduced below the rate in effect immediately prior to the change of control, if his work site is relocated by more than 35 miles, or if his duties and responsibilities are reduced as a result of or following the change of control.

(8) Represents salary continuation payments equal to 12 months of his base salary, 12 months of COBRA premiums paid by the Company, 12 months of vesting with respect to his options or restricted shares and

prorated target bonus through his last day of employment if he is terminated for any reason other than cause or permanent disability at any time following our change of control. Mr. Bailey is also eligible to receive 12 months of vesting with respect to his option granted November 18, 2010, if, in connection with or within 12 months following, a change of control in which the acquiring or succeeding entity assumes the option or makes a substitution for it, he is subject to an involuntary termination.

(9) Represents 6 months of base salary payable to Mr. Chamoun if, following a change of control, Mr. Chamoun resigns because he is not offered a position having duties, rights and responsibilities similar to those before the transaction, or if he is terminated by us in contemplation of such change of control.

(10) Represents 12 months of vesting with respect to options granted on September 14, 2007, if, in connection with or within 12 months following a change of control in which the acquiring or succeeding entity assumes options or substitutes for them, Mr. Chamoun is subject to an involuntary termination.

**2010 Director Compensation**

The following table sets forth information about the compensation of each person who served as a director during the 2010 fiscal year, other than a director who also served as a named executive officer. We have a policy of reimbursing our directors for their reasonable out-of-pocket expenses incurred in attending Board and committee meetings.

| Name | Fees Earned or Paid in Cash ($) (1) | Option Awards ($) (2)(3) | Total ($) |
|---|---|---|---|
| Jordan Levy *Chairman* | 25,000 | 76,000(4) | 101,000 |
| Andrew Kau | — | — | — |
| Thomas W. Keaveney | — | — | — |
| Jeff Mallett | 25,000 | — | 25,000 |
| Mark Morrissette | — | — | — |
| Terri Santisi | 25,000 | — | 25,000 |
| Joseph Tzeng | — | — | — |

(1) Prior to the date of this offering, we paid each of Jordan Levy, Terri Santisi and Jeff Mallett an annual retainer of $25,000 for serving on our Board of Directors.

(2) The amounts in this column represent the aggregate grant date fair value of option awards granted to the director in the applicable fiscal year computed in accordance with FASB ASC Topic 718. See Note 9 of the Notes to the Financial Statements included elsewhere in this prospectus for a discussion of the assumptions made by us in determining the grant date fair value of our equity awards.

(3) As of December 31, 2010, the above-listed directors held outstanding options to purchase the following number of shares of our common stock: Jordan Levy (160,000), Jeff Mallett (180,000) and Terri Santisi (105,000).

(4) Reflects an option to purchase 100,000 shares of our common stock granted to Mr. Levy on November 18, 2010, at an exercise price of $1.44 per share. The option vests in annual installments following the completion by Mr. Levy of each of three years of service following February 1, 2011. The option will vest in full if we experience a change of control while Mr. Levy remains in service to us.

In November 2011, we approved the following post-offering annual cash compensation for non-employee directors as well as an annual stock option grant of 10,000 shares to be granted at our annual meeting. In addition, our non-employee directors will also be eligible for an initial stock option grant of up to 100,000 shares, to be granted at our first annual meeting occurring on or following such director's initial election to our board of directors. All such options vest over four years of service, with 25% vesting after completion of one year of service and the remainder vesting monthly over an additional three years of service.

- Board member: $35,000;
- Non-employee chairman of the board: $35,000;
- Audit committee member: $7,500;

- Audit committee chairman: $15,000;
- Compensation committee member: $6,500;
- Compensation committee chairman: $12,500;
- Nominating and corporate governance committee member: $3,500; and
- Nominating and corporate governance committee chairman: $7,500.

**Equity Benefit Plans**

***2012 Equity Incentive Plan***

Our board of directors adopted our 2012 Equity Incentive Plan in 2012, and we will obtain stockholder approval of the plan prior to completion of this offering. This plan will become effective on the effective date of the registration statement of which this prospectus is a part. The purpose of our 2012 Equity Incentive Plan is to promote our long-term success and create stockholder value by promoting the attraction and retention of employees, outside directors and consultants with exceptional qualifications and encouraging them to focus on long-range objectives. Our 2012 Equity Incentive Plan will replace the 2006 Stock Plan. No further grants will be made under our 2006 Stock Plan after this offering. However, the options outstanding after this offering under the 2006 Stock Plan will continue to be governed by their existing terms.

*Share Reserve*. We have reserved shares of our common stock for issuance under the 2012 Equity Incentive Plan. The number of shares reserved for issuance under the plan will be increased automatically on January 1 of each fiscal year, starting with fiscal 2013, by a number equal to the smallest of:

- % of the shares of common stock outstanding at that time;
- shares of our common stock; or
- the number of shares determined by our board of directors.

In general, to the extent that awards under the 2012 Equity Incentive Plan are forfeited or lapse without the issuance of shares, those shares will again become available for awards. All share numbers described in this summary of the 2012 Equity Incentive Plan (including exercise prices for options and stock appreciation rights) are automatically adjusted in the event of a subdivision of the outstanding common stock, a declaration of a dividend payable in common stock or a combination or consolidation of the outstanding shares of common stock (by reclassification or otherwise) into a lesser number of shares of common stock.

*Administration.* The compensation committee of our board of directors will administer the 2012 Equity Incentive Plan. The committee has the complete discretion to make all decisions relating to the plan and outstanding awards.

*Eligibility.* Employees, members of our board of directors who are not employees and consultants are eligible to participate in our 2012 Equity Incentive Plan.

*Types of Award.* Our 2012 Equity Incentive Plan provides for the following types of awards:

- incentive and nonstatutory stock options to purchase shares of our common stock;
- stock appreciation rights;

- restricted shares of our common stock; and
- stock units.

*Options and Stock Appreciation Rights.* The exercise price for options granted under the 2012 Equity Incentive Plan may not be less than 100% of the fair market value of our common stock on the option grant date. Optionees may pay the exercise price by using:

- cash or cash equivalents;
- shares of common stock that the optionee already owns;
- an immediate sale of the option shares through a broker approved by us; or
- a promissory note, if permitted by applicable law.

All forms of payment other than cash require the consent of the compensation committee. A participant who exercises a stock appreciation right receives the increase in value of our common stock over the exercise price. The exercise price for stock appreciation rights may not be less than 100% of the fair market value of our common stock on the grant date. The settlement value of a stock appreciation right may be paid in cash or shares of common stock, or a combination of both. Options and stock appreciation rights vest at the time or times determined by the compensation committee. Options and stock appreciation rights also expire at the time determined by the compensation committee. They generally expire earlier if the participant's service terminates earlier. No participant may receive options or stock appreciation rights under the 2012 Equity Incentive Plan covering more than shares in any fiscal year, except that a new employee may receive options or stock appreciation rights covering up to shares in the fiscal year in which his or her employment starts.

*Restricted Shares and Stock Units.* Restricted shares and stock units may be awarded under the 2012 Equity Incentive Plan in return for any lawful consideration, and participants who receive restricted shares or stock units generally are not required to pay for their awards in cash. In general, these awards will be subject to vesting. Vesting may be based on length of service, the attainment of certain performance-based milestones, or a combination of both, as determined by the compensation committee. No participant may receive restricted shares or stock units with performance-based vesting covering more than shares or stock units in any fiscal year, except that a new employee may receive restricted shares or stock units covering up to shares or stock units in the fiscal year in which his or her employment starts. Settlement of vested stock units may be made in the form of cash, shares of common stock, or a combination of both.

*Change of Control.* The compensation committee may determine, at the time of grant or thereafter, that options or stock appreciation rights granted under the 2012 Equity Incentive Plan will become exercisable, as to all or part of the common stock subject to such options or stock appreciation rights, on an accelerated basis if a change of control of Synacor occurs or if the participant is subject to an involuntary termination after the change of control. The compensation committee may determine, at the time of grant or thereafter, that restricted shares or stock units granted under the 2012 Equity Incentive Plan will become vested on an accelerated basis if a change of control of Synacor occurs or if the participant is subject to an involuntary termination after the change of control. However, in the case of an incentive stock option, acceleration of exercisability may not occur without the written consent of the option holder. Awards may also be subject to accelerated vesting or exercisability in the event of a reorganization, as described below.

A change of control includes:

- a merger or consolidation after which our own stockholders own less than 50% of the surviving corporation or its parent;
- a sale, transfer or other disposition of all or substantially all of our assets;

- a proxy contest that results in the replacement of more than 50% of our directors over a 24-month period; or
- an acquisition of 50% or more of our outstanding stock by any person or group, other than a person related to Synacor (such as a holding company owned by our stockholders or a trustee or other fiduciary holding securities under an employee benefit plan of ours or of our parent or of a subsidiary of ours).

*Reorganizations.* If we experience a merger or consolidation, awards granted under the 2012 Equity Incentive Plan will be subject to the merger or consolidation agreement, which may provide that the awards are continued, assumed, substituted with awards that have substantially the same terms, become fully exercisable with respect to options and stock appreciation rights and fully vested with respect to shares underlying such options and stock appreciation rights; or cancellation of outstanding options, stock appreciation rights and stock units in exchange for a cash payment (which payment may be deferred until the options, stock appreciation rights or stock units would have become exercisable or common shares underlying them would have become vested).

*Amendments or Termination.* Our board of directors may amend or terminate the 2012 Equity Incentive Plan at any time. If our board of directors amends the plan, it does not need to ask for stockholder approval of the amendment unless required by applicable law, regulation or rule. The 2012 Equity Incentive Plan will continue in effect for 10 years from its adoption date, unless our board of directors decides to terminate the plan earlier.

***2012 Employee Stock Purchase Plan***

Our board of directors adopted the 2012 Employee Stock Purchase Plan in , 2012, and we will obtain stockholder approval of the plan prior to completion of this offering. Our 2012 Employee Stock Purchase Plan will become effective on the effective date of the registration statement of which this prospectus is a part. The plan is intended to qualify for preferential tax treatment under Section 423 of the Internal Revenue Code.

*Share Reserve.* We have reserved shares of our common stock for issuance under the 2012 Employee Stock Purchase Plan. All share numbers described in this summary of the 2012 Employee Stock Purchase Plan are automatically adjusted in the event of any increase or decrease in the number of outstanding shares of stock resulting from a subdivision or consolidation of shares or the payment of a stock dividend, any other increase or decrease in such shares effected without our receipt or payment of consideration, the distribution of the shares of one of our subsidiaries to our stockholders, or a similar event.

*Administration.* The compensation committee of our board of directors will administer the 2012 Employee Stock Purchase Plan. The committee has the complete discretion to make all decisions relating to the plan.

*Eligibility.* All of our employees are eligible to participate in the 2012 Employee Stock Purchase Plan after completing one month of service, if we customarily employ them for more than 20 hours per week and for more than five months per year. However, all 5% stockholders are excluded. Eligible employees may begin participating at the start of any offering period.

*Offering Periods.* The first offering period under the 2012 Employee Stock Purchase Plan is expected to start approximately months after the effective date of this offering and to end on . Each subsequent offering period will consist of six consecutive months (although we retain flexibility to change this structure in the future on a prospective basis).

*Amount of Contributions.* The 2012 Employee Stock Purchase Plan permits each eligible employee to purchase common stock through payroll deductions. Each employee's payroll deductions may not exceed 15% of his or her total cash compensation and pre-tax contribution made by the employee under Section 401(k) or 125 of

the Code. Participants may reduce, but not increase, their contribution rate during an offering period. Participants may also withdraw their contributions at any time before stock is purchased. Lump sum contributions are not permitted.

*Purchases of Shares.* Purchases of our common stock under the 2012 Employee Stock Purchase Plan will occur on and of each year. Each participant may purchase as many shares as his or her contributions permit, but not more than shares per six-month offering period. The value of the shares purchased in any calendar year may not exceed $25,000, with a limited carry-over of unused amounts.

*Purchase Price.* The price of each share of common stock purchased under the 2012 Employee Stock Purchase Plan will be equal to the lower of 85% of:

- the fair market value per share of our common stock on the last trading day before the start of the applicable six-month offering period (or, in the case of the first offering period, the price at which shares are offered to the public in this offering); or
- the fair market value per share of common stock on the last trading day in the applicable offering period, which is the purchase date.

*Other Provisions.* Employees may end their participation in the 2012 Employee Stock Purchase Plan at any time. Participation ends automatically upon termination of employment with us. If a change in control of our company occurs, the plan will end and shares will be purchased with the payroll deductions accumulated to date by participating employees, unless the surviving corporation continues the plan. Our board of directors may amend or terminate the plan at any time, and the plan terminates automatically 20 years after its adoption unless the extension of the plan is approved by our board of directors and stockholders. If our board of directors increases the number of shares of common stock reserved for issuance under the plan, except for the automatic increases described above, it must seek the approval of our stockholders. Other amendments require stockholder approval only to the extent required by law.

***2006 Stock Plan***

Our 2006 Stock Plan was adopted by our board of directors on December 5, 2006, and our stockholders approved it on April 4, 2007. The most recent amendment to the 2006 Stock Plan was adopted by our board of directors on August 16, 2011, and we will obtain stockholder approval of such amendment. Our 2006 Stock Plan replaced our 2000 Stock Plan. No further awards will be made under our 2006 Stock Plan after this offering. The awards outstanding after this offering under the 2006 Stock Plan will continue to be governed by their existing terms.

*Share Reserve.* We have reserved 7,536,211 shares of our common stock for issuance under the 2006 Stock Plan, all of which may be issued as incentive stock options. In general, if options or shares awarded under the 2006 Stock Plan are reacquired or repurchased by us or otherwise forfeited by a 2006 Stock Plan participant, then those shares or option shares will again become available for awards under the 2006 Stock Plan.

*Administration.* Our board of directors administered the 2006 Stock Plan before this offering, and the compensation committee of our board of directors will administer this plan after this offering. Before this offering, our board of directors had, and after this offering, our compensation committee will have, complete discretion to make all decisions relating to our 2006 Stock Plan.

*Eligibility.* Employees, members of our board of directors who are not employees and consultants are eligible to participate in our 2006 Stock Plan.

*Types of Award.* Our 2006 Stock Plan provides for the following types of awards:

- incentive and nonstatutory stock options to purchase shares of our common stock; and
- direct award or sale of shares of our common stock, including restricted shares (subject to a right of repurchase by us upon the participant's termination with respect to unvested shares).

Options and restricted shares vest at the times determined by our board of directors. Both options and restricted shares generally vest over a four-year period following the date of grant. In most cases, our options are immediately exercisable, subject to our right to repurchase unvested shares. Options expire not more than 10 years after they are granted but generally expire earlier if the participant's service terminates earlier.

*Payment.* The exercise price for options granted under the 2006 Stock Plan may not be less than 100% of the fair market value of our common stock on the option grant date. Participants may pay the exercise price of options, or the purchase price of shares, by using:

- cash or cash equivalents;
- a full-recourse promissory note, against which the purchased shares are pledged as security for payment of the principal amount of, and interest on, the note;
- shares of common stock that the optionee already owns; or
- an immediate sale of the option shares through a broker designated by us.

Shares may also be awarded under the 2006 Stock Plan in consideration of services rendered to us prior to the grant date of a stock award. To date, no participant under the 2006 Stock Plan has been permitted to pay the purchase price or exercise price with a promissory note.

*Change of Control.* The form of stock option agreement under the 2006 Stock Plan provides for 12 months of accelerated vesting if an optionee is subject to an involuntary termination in connection with, or within 12 months after, a change in control in which our options are assumed or substituted by the surviving entity. Involuntary termination is defined as our termination of the optionee's service without cause or the optionee's resignation as a result of a material reduction in job responsibilities, relocation by more than 50 miles or a reduction in base salary by at least 10% (other than in connection with a general salary level reduction). Cause is defined as willful failure to perform duties or responsibilities; commission of any act of fraud, embezzlement, dishonesty or other willful misconduct; unauthorized use or disclosure of proprietary information or trade secrets; or willful breach of any obligation under a written agreement or covenant with us.

A change of control includes:

- our merger or consolidation with or into another corporation, after which our stockholders who owned more than 50% of our capital stock immediately before the transaction will own 50% or less of the total voting power of the surviving corporation or entity; or
- a sale of all or substantially all of our assets.

*Amendments or Termination.* Our board of directors may amend or terminate the 2006 Stock Plan at any time. If our board of directors amends the plan, it does not need to ask for stockholder approval of the amendment unless the amendment increases the number of shares available for issuance, materially changes the class of persons eligible to receive incentive stock options or is otherwise required by applicable law. The 2006 Stock Plan will continue in effect for 10 years from the later of its adoption date or the date of approval of the latest share increase, unless our board of directors decides to terminate the plan earlier.

***2000 Stock Plan***

Our 2000 Stock Plan was adopted by our board of directors and approved by our stockholders on December 5, 2000. The most recent amendment to the 2000 Stock Plan was adopted by our board of directors on May 12, 2010 and reduced the number of shares reserved for issuance under the plan. The most recent amendment that required stockholder approval was approved by our stockholders on October 19, 2006. No further awards will be made under our 2000 Stock Plan. The awards outstanding after this offering under the 2000 Stock Plan will continue to be governed by their existing terms.

*Share Reserve*. Pursuant to the 2000 Stock Plan and subsequent amendments, we have reserved 6,750,344 shares of our common stock for issuance under the 2000 Stock Plan, all of which may be issued as incentive stock options.

*Administration.* Our board of directors administers the 2000 Stock Plan before this offering and the compensation committee of our board of directors will administer this plan after this offering. Before this offering, our board of directors and after this offering, our compensation committee has complete discretion to make all decisions relating to our 2000 Stock Plan.

*Eligibility.* Employees, members of our board of directors who are not employees and consultants are eligible to participate in our 2000 Stock Plan.

- *Types of Award.* Our 2000 Stock Plan provides for the following types of awards:
- incentive and nonstatutory stock options to purchase shares of our common stock; and
- restricted shares.

Options and restricted shares vest at the times determined by the board of directors. Both options and restricted shares generally vest over a four-year period following the date of grant.

In most cases, our options are exercisable for all of the shares subject to such options at any time six months after the date of grant, subject to our right to repurchase unvested shares. Options expire not more than 10 years after they are granted but generally expire earlier if the participant's service terminates earlier. The compensation committee of our board of directors or our board of directors may at any time offer to buy out for payment in cash or shares of our common stock an option previously granted under the 2000 Stock Plan.

*Payment.* The exercise price for incentive stock options granted under the 2000 Stock Plan may not be less than 100% of the fair market value of our common stock on the option grant date. The exercise price for nonstatutory stock options granted under the 2000 Stock Plan may not be less than 85% of the fair market value of our common stock on the option grant date. The purchase price for restricted shares may not be less than 85% of the fair market value of our common stock on the date of the award.

Participants may pay the exercise price of options or stock purchase rights by using:

- cash or check;
- promissory note;
- cancellation of indebtedness;
- shares of common stock that the optionee already owns (provided such shares have been owned for more than 6 months on the date of surrender); or

- an immediate sale of the option shares through a broker designated by us.

*Amendments or Termination.* Our board of directors may amend or terminate the 2000 Stock Plan at any time. If our board of directors amends the plan, it does not need to ask for stockholder approval of the amendment unless required by applicable law. The 2000 Stock Plan will continue in effect for 10 years from its adoption date by the board of directors, unless our board of directors decides to terminate the plan earlier.

## TRANSACTIONS WITH RELATED PERSONS, PROMOTERS AND CERTAIN CONTROL PERSONS

In addition to the compensation arrangements with directors and executive officers and the registration rights described in this prospectus, the following is a description of each transaction since January 1, 2008 and each currently proposed transaction in which:

- we have been or are to be a participant;
- the amount involved exceeds $120,000; and
- any of our directors, executive officers or holders of more than 5% of our capital stock, or any immediate family member of or person sharing the household with any of these individuals (other than tenants or employees), had or will have a direct or indirect material interest.

### Transactions with our Executive Officers, Directors and Significant Stockholders

***Stock Option Grant to Ronald N. Frankel***

In August 2011, in connection with his service as our chief executive officer, we granted Ronald N. Frankel an option to purchase 350,000 shares of our common stock at an exercise price of $1.66 per share, pursuant to the 2006 Stock Plan. See “Principal Stockholders” for more details regarding the shares held by Mr. Frankel.

***Repurchases of Common Stock from Ronald N. Frankel***

On September 29, 2010, we repurchased 150,000 shares of common stock held by Mr. Frankel at a per share price of $1.34, or an aggregate repurchase price of $201,000. On August 20, 2009, we repurchased 200,000 shares of common stock held by Mr. Frankel at a per share price of $1.00, or an aggregate repurchase price of $200,000.

***Stock Option Grant to Tim Peterman***

In June 2009, we granted Tim Peterman, our former chief operating officer, an option to purchase 500,000 shares of our common stock at an exercise price of $1.26 per share, pursuant to the 2006 Stock Plan.

***Stock Option Grant to William J. Stuart***

In August 2011, we granted William J. Stuart, our chief financial officer, an option to purchase 500,000 shares of our common stock at an exercise price of $1.66 per share, pursuant to the 2006 Stock Plan. See “Principal Stockholders” for more details regarding the shares held by Mr. Stuart.

***Stock Option Grant to Scott A. Bailey***

In November 2010, we granted Scott A. Bailey, our chief operating officer, an option to purchase 800,000 shares of our common stock at an exercise price of $1.44 per share, pursuant to the 2006 Stock Plan. See “Principal Stockholders” for more details regarding the shares held by Mr. Bailey.

***Stock Option Grant to George G. Chamoun***

In August 2011, we granted George G. Chamoun, our executive vice president of sales and marketing, an option to purchase 200,000 shares of our common stock at an exercise price of $1.66 per share, pursuant to the 2006 Stock Plan. See “Principal Stockholders” for more details regarding the shares held by Mr. Chamoun.

***Stock Option Grants to Jordan Levy***

In August 2011, we granted Jordan Levy an option to purchase 35,000 shares of our common stock at an exercise price of $1.66 per share, pursuant to the 2006 Stock Plan. In November 2010, we granted Jordan Levy an option to purchase 100,000 shares of our common stock at an exercise price of $1.44 per share, pursuant to the 2006 Stock Plan. See “Principal Stockholders” for more details regarding the shares held by Mr. Levy.

***JoRon Management LLC Purchase of Mallett Shares***

In July 2011, Jeffrey Mallett, a former member of our board of directors, exercised his option to purchase 180,000 shares of our common stock at an exercise price of $1.26 per share. Mr. Mallett then entered into an agreement with JoRon Management LLC, an entity beneficially owned by Mr. Levy, whereby JoRon Management LLC purchased the 180,000 shares from Mr. Mallett for $226,800.

***Stock Option Grant to Andrew Kau***

In August 2011, we granted Andrew Kau an option to purchase 100,000 shares of our common stock at an exercise price of $1.66 per share, pursuant to the 2006 Stock Plan. See “Principal Stockholders” for more details regarding the shares held by Mr. Kau.

***Stock Option Grant to Mark Morrissette***

In August 2011, we granted Mark Morrissette an option to purchase 100,000 shares of our common stock at an exercise price of $1.66 per share, pursuant to the 2006 Stock Plan. See “Principal Stockholders” for more details regarding the shares held by Mr. Morrissette.

***Stock Option Grant to Joseph Tzeng***

In August 2011, we granted Joseph Tzeng an option to purchase 100,000 shares of our common stock at an exercise price of $1.66 per share, pursuant to the 2006 Stock Plan. See “Principal Stockholders” for more details regarding the shares held by Mr. Tzeng.

***Stock Option Grant to Thomas Keaveney***

In August 2011, we granted Thomas Keaveney an option to purchase 100,000 shares of our common stock at an exercise price of $1.66 per share, pursuant to the 2006 Stock Plan. See “Principal Stockholders” for more details regarding the shares held by Mr. Keaveney.

***Stock Option Grant to Terri Santisi***

In April 2008, we granted Terri Santisi, a former member of our board of directors, an option to purchase 35,000 shares of our common stock at an exercise price of $5.99 per share, pursuant to the 2006 Stock Plan. Subsequently, following our 3-for-1 forward stock split, Ms. Santisi’s option became exercisable for 105,000 shares of our common stock at an exercise price of $2.00 per share. Ms. Santisi’s option was later re-priced to $1.26 per share in connection with our June 2009 Stock Option Re-pricing.

***Repurchase of Common Stock from Eric Blachno***

In December 2009, Eric Blachno, our former chief financial officer, exercised his right to sell 225,000 shares of his common stock back to us at a purchase price of $0.463333 per share.

***Indemnification Agreements***

Prior to the consummation of this offering, we will enter into indemnification agreements with each of our directors and executive officers and certain other key employees. See “Management—Limitation of Liability and Indemnification.”

**Review, Approval or Ratification of Transactions with Related Parties**

Our board of directors has adopted certain written policies and procedures with respect to related party transactions. These policies and procedures require that certain transactions, other than ones that involve compensation, between us and any of our directors, executive officers or beneficial holders of more than 5% of our capital stock, or any immediate family member of, or person sharing the household with, any of these individuals, be consummated only when we determine that the transaction is in, or is not inconsistent with, the best interests of our company and our stockholders, including situations where we may obtain products or services of a nature, quantity or quality, or on other terms, that are not readily available from alternative sources or when the transaction is on terms comparable to those that could be obtained in arm’s length dealings with an unrelated third party. Whether a proposed transaction is on comparable terms to those available from an unrelated third party may be determined by, among other means, gathering publicly available information about the terms offered by third parties in similar transactions, soliciting offers from third parties or engaging independent experts to evaluate the terms offered by the related party.

Our policies and procedures with respect to related party transactions also apply to certain charitable contributions by us or our executive officers and to the hiring of any members of the immediate family of any of our directors or executive officers as our permanent full-time employees. Our policies and procedures do not, however, require approval or ratification of any transaction that is approved by our board of directors by a majority vote of the disinterested members or by our audit committee. The approval of our compensation committee will be required to approve any transaction that involves compensation to our directors and executive officers. Transactions entered into prior to the completion of this offering were not subject to these policies and procedures.

Upon the effectiveness of the registration statement of which this prospectus forms a part, copies of these policies and procedures will be posted on our website at *www.synacor.com* under the Investor Relations section. The inclusion of our website address in this prospectus does not include or incorporate by reference the information on our website into this prospectus.

## PRINCIPAL STOCKHOLDERS

The following table provides information concerning beneficial ownership of our common stock as of September 30, 2011, and as adjusted to reflect the sale of shares of common stock in this offering, by:

- each stockholder, or group of affiliated stockholders, known by us to beneficially own more than 5% of our outstanding common stock;
- each of our directors;
- each of our named executive officers; and
- all of our directors and named executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting power and/or investment power with respect to the securities held. Shares of common stock subject to options currently exercisable or exercisable within 60 days of September 30, 2011 are deemed outstanding and beneficially owned by the person holding such options for purposes of computing the number of shares and percentage beneficially owned by such person, but are not deemed outstanding for purposes of computing the percentage beneficially owned by any other person. Except as indicated in the footnotes to this table, and subject to applicable community property laws, the persons or entities named have sole voting and investment power with respect to all shares of our common stock shown as beneficially owned by them.

The following table lists the number of shares and percentage of shares beneficially owned based on 39,990,379 shares of common stock outstanding as of September 30, 2011. This number reflects:

- 5,200,102 shares of common stock;
- the conversion of 5,548,508 shares of Series A preferred stock into 16,645,524 shares of common stock upon the closing of this offering;
- the conversion of 570,344 shares of Series A-1 preferred stock into 1,711,032 shares of common stock upon the closing of this offering;
- the conversion of 2,737,500 shares of Series B preferred stock into 8,212,500 shares of common stock upon the closing of this offering; and
- the conversion of 2,740,407 shares of Series C preferred stock into 8,221,221 shares of common stock upon the closing of this offering.

The table also lists the applicable percentage beneficial ownership based on shares of common stock outstanding upon completion of this offering, assuming no exercise of the underwriters' option to purchase up to an aggregate of shares of our common stock.

Unless otherwise indicated, the principal address of each of the stockholders below is c/o Synacor, Inc., 40 La Riviere Drive, Suite 300, Buffalo, New York 14202.

| Name and Address of Beneficial Owner | Shares Beneficially Owned Prior to the Offering | | Shares Beneficially Owned After the Offering | |
|---|---|---|---|---|
| | Number | Percent | Number | Percent |
| **5% Stockholders** | | | | |
| Entities associated with Walden International (1) | 9,205,584 | 23.0% | 9,205,584 | |
| One California Street, Suite 2800 | | | | |
| San Francisco, CA 94111 | | | | |
| Entities associated with Crystal Internet Ventures (2) | 7,977,075 | 19.9% | 7,977,075 | |
| 1120 Chester Avenue, Suite 418 | | | | |
| Cleveland, OH 44114 | | | | |
| Entities associated with Advantage Capital Partners (3) | 5,591,277 | 14.0% | 5,591,277 | |
| 909 Poydras Street | | | | |
| Suite 2230 | | | | |
| New Orleans, LA 70112 | | | | |
| Intel Corporation (4) | 4,174,314 | 10.4% | 4,174,314 | |
| 2200 Mission College Boulevard | | | | |
| Santa Clara, CA 95052 | | | | |
| Entities associated with North Atlantic Capital (5) | 2,839,119 | 7.1% | 2,839,119 | |
| 2 City Center, 5th Floor | | | | |
| Portland, ME 04105 | | | | |
| **Directors and Executive Officers** | | | | |
| Ronald N. Frankel (6) | 3,409,167 | 8.1% | 3,409,167 | |
| Andrew Kau (7) | 9,305,584 | 23.2% | 9,305,584 | |
| c/o Walden International | | | | |
| 361 Lytton Avenue, 2nd Floor | | | | |
| Palo Alto, CA 94301 | | | | |
| Joseph Tzeng (8) | 8,077,075 | 20.1% | 8,077,075 | |
| c/o Crystal Internet Ventures | | | | |
| 1120 Chester Avenue, Suite 418 | | | | |
| Cleveland, OH 44114 | | | | |
| Thomas Keaveney (9) | 100,000 | * | 100,000 | |
| c/o Advantage Capital Partners | | | | |
| 909 Poydras Street | | | | |
| Suite 2230 | | | | |
| New Orleans, LA 70112 | | | | |
| Mark Morrissette (10) | 2,939,119 | 7.3% | 2,939,119 | |
| c/o North Atlantic Capital | | | | |
| 2 City Center, 5th Floor | | | | |
| Portland, ME 04105 | | | | |
| Jordan Levy (11) | 907,161 | 2.2% | 907,161 | |
| One HSBC Center, Suite 3850 | | | | |
| Buffalo, NY 14203 | | | | |
| George G. Chamoun (12) | 1,089,351 | 2.7% | 1,089,351 | |
| Scott A. Bailey (13) | 591,668 | 1.5% | 591,668 | |
| William J. Stuart (14) | 259,040 | * | 259,040 | |
| All current directors and executive officers as a group (9 persons) (15) | 26,678,165 | 70.0% | 26,678,165 | |

* Less than 1%

*(footnotes on following pages)*

(1) Represents 150,705 shares held by Pacven Walden Ventures IV Associates Fund, L.P. (“Pacven IV Associates Fund”), 8,084,595 shares held by Pacven Walden Ventures IV, L.P. (“Pacven IV”), 485,142 shares held by WIIG-TDF Partners LLC (“WIIG-TDF”) and 485,142 shares held by Walden EDB Partners II, L.P. (“EDB II”). The general partner of Pacven IV Associates Fund and Pacven IV is Pacven Walden Management II, L.P. (“Pacven Management II”). The general partner of EDB II is Walden Management, LLC. The general partner of Pacven Management II is Pacven Walden Management Co., Ltd. (“Pacven Walden Management”). The manager of Walden Management, LLC is Pacven Walden Management. Lip-Bu Tan is the sole director of Pacven Walden Management and he shares voting and investment power with respect to the shares held by Pacven IV, Pacven IV Associates Fund and EDB II with the other members of the investment committee of Pacven Walden Management. Andrew Kau (who is also a member of our board of directors) is a member of the investment committee of Pacven Walden Management. The directors of WIIG-TDF are WIIG Management Co. Ltd. and TDF Global Co. Ltd. Lip-Bu Tan is the sole director of WIIG Management Co. Ltd. and shares voting and investment power with respect to the shares held by WIIG-TDF with the director of TDF Global Co. Ltd. Each of the individuals named above disclaims beneficial ownership of such shares except to the extent of his or her individual pecuniary interest therein.

(2) Represents 551,352 shares held by Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P. (“CVLP”), and 7,425,723 shares held by Crystal Internet Venture Fund II (BVI), L.P. (“CIVF”). The general partner of CVLP and CIVF is Crystal Venture II, Ltd. (“CVII”). The Class A members of CVII, which have all voting rights of CVII, are Daniel Kellogg and Joseph Tzeng. By virtue of their voting power over the membership interests of CVII, each of these individuals may be deemed to have voting and investment power with respect to the shares held of record by CVLP and CIVF. Each of these individuals disclaims beneficial ownership of such shares except to the extent of his individual pecuniary interest therein.

(3) Represents 4,644,903 shares held by Advantage Capital New York Partners I, L.P. (“Advantage I”) and 946,374 shares held by Advantage Capital New York Partners II, L.P. (“Advantage II”). The sole general partner of Advantage I is Advantage Capital New York GP-I, LLC (“Advantage GP I”), and the sole general partner of Advantage II is Advantage Capital New York GP-II, LLC (“Advantage GP II”). Advantage GP I and Advantage GP II, in their respective capacities as general partner of Advantage I and Advantage II, exercise investment discretion and control of the shares beneficially owned by Advantage I and Advantage II. Steven T. Stull holds a majority of the ownership interests, including voting interests, of Advantage GP I and Advantage GP II and, therefore, may be deemed to have voting and investment power with respect to the shares held of record by Advantage I and Advantage II. Mr. Stull disclaims beneficial ownership of the shares held of record by Advantage I and Advantage II except to the extent of his pecuniary interest therein. Thomas Keaveney does not exercise voting and investment power with respect to the shares held of record by Advantage I and Advantage II.

(4) Represents 4,174,314 shares held by Intel Capital (Cayman) Corporation (formerly known as Intel Capital Corporation), a wholly-owned subsidiary of Intel Corporation.

(5) Represents 1,182,966 shares held by North Atlantic Venture Fund III, A Limited Partnership (“NAVF”) and 1,656,153 shares held by North Atlantic SBIC IV, L.P. (“NASBIC”). The general partner of NAVF is North Atlantic Investors III, LLC. The general partner of NASBIC is North Atlantic Investors SBIC IV, LLC. The managers of North Atlantic Investors III, LLC and North Atlantic Investors SBIC IV, LLC are David M. Coit and Mark J. Morrissette. Each of these individuals exercises shared voting and investment power over the shares held of record by NAVF and NASBIC and disclaims beneficial ownership of such shares except to the extent of his individual pecuniary interest therein.

(6) Represents 1,200,000 shares held by Mr. Frankel and 2,209,167 shares issuable upon exercise of stock options exercisable within 60 days of September 30, 2011, 186,780 of which shares remained subject to vesting as of September 30, 2011. The shares set forth in the table do not include 180,720 shares issuable upon exercise of stock options granted to Mr. Frankel on August 16, 2011, which become exercisable on a series of dates after December 31, 2011.

(7) Includes 100,000 shares issuable upon exercise of stock options issued to Mr. Kau and exercisable within 60 days of September 30, 2011, 100,000 of which shares remained subject to vesting as of September 30, 2011. See footnote (1) regarding Mr. Kau’s relationship with Walden International. Mr. Kau disclaims beneficial

ownership of the shares held of record by the entities affiliated with Walden International referenced in footnote (1) above except to the extent of his individual pecuniary interest therein.

(8) Includes 100,000 shares issuable upon exercise of stock options issued to Mr. Tzeng and exercisable within 60 days of September 30, 2011, 100,000 of which shares remained subject to vesting as of September 30, 2011. See footnote (2) regarding Mr. Tzeng's relationship with Crystal Internet Ventures. Mr. Tzeng disclaims beneficial ownership of the shares held of record by the entities affiliated with Crystal Internet Ventures referenced in footnote (2) above except to the extent of his individual pecuniary interest therein.

(9) Represents 100,000 shares issuable upon exercise of stock options issued to Mr. Keaveney and exercisable within 60 days of September 30, 2011, 100,000 of which shares remained subject to vesting as of September 30, 2011.

(10) Includes 100,000 shares issuable upon exercise of stock options issued to Mr. Morrissette and exercisable within 60 days of September 30, 2011, 100,000 of which shares remained subject to vesting as of September 30, 2011. See footnote (5) regarding Mr. Morrissette's relationship with North Atlantic Capital. Mr. Morrissette disclaims beneficial ownership of the shares held of record by the entities affiliated with North Atlantic Capital referenced in footnote (5) above except to the extent of his individual pecuniary interest therein.

(11) Includes 498,447 shares issuable upon exercise of stock options issued to Mr. Levy and exercisable within 60 days of September 30, 2011, 135,000 of which shares remained subject to vesting as of September 30, 2011. Also includes 408,714 shares held of record by JoRon Management LLC ("JoRon"). Jordan Levy and Ron Schreiber are the managers of JoRon and may therefore be deemed to beneficially own the shares held of record by JoRon. Mr. Levy disclaims beneficial ownership of the shares held by JoRon except to the extent of his individual pecuniary interest therein.

(12) Represents 663,102 shares held by Mr. Chamoun and 426,249 shares issuable upon exercise of stock options issued to Mr. Chamoun and exercisable within 60 days of September 30, 2011, 72,740 of which shares remained subject to vesting as of September 30, 2011. The shares set forth in the table do not include 139,760 shares issuable upon exercise of stock options granted to Mr. Chamoun on August 16, 2011, which become exercisable on a series of dates after December 31, 2011.

(13) Represents 591,668 shares issuable upon exercise of stock options issued to Mr. Bailey and exercisable within 60 days of September 30, 2011, 591,668 of which shares remained subject to vesting as of September 30, 2011. The shares set forth in the table do not include 208,332 shares issuable upon exercise of stock options granted to Mr. Bailey on November 18, 2010, which become exercisable on a series of dates after December 31, 2011.

(14) Represents 259,040 shares issuable upon exercise of stock options issued to Mr. Stuart and exercisable within 60 days of September 30, 2011, 259,040 of which shares remained subject to vesting as of September 30, 2011. The shares set forth in the table do not include 240,960 shares issuable upon exercise of stock options granted to Mr. Stuart on August 16, 2011, which become exercisable on a series of dates after December 31, 2011.

(15) Represents 4,384,571 shares issuable upon exercise of stock options exercisable within 60 days of September 30, 2011, 1,645,228 of which shares remained subject to vesting as of September 30, 2011.

## DESCRIPTION OF CAPITAL STOCK

### General

The following is a summary of our capital stock and certain provisions of our amended and restated certificate of incorporation and amended and restated bylaws, as they will be in effect upon the closing of this offering. This summary does not purport to be complete and is qualified in its entirety by the provisions of our amended and restated certificate of incorporation and amended and restated bylaws, copies of which will be filed as exhibits to the registration statement of which this prospectus is a part.

Following the closing of this offering, our authorized capital stock will consist of 100,000,000 shares of common stock, par value $0.01 per share, and 10,000,000 shares of preferred stock, par value $0.01 per share. Immediately after the consummation of the offering, we will have shares of common stock issued and outstanding and no shares of preferred stock issued and outstanding.

### Common Stock

As of September 30, 2011, there were 39,990,379 shares of common stock outstanding held of record by approximately 179 stockholders. This number of shares has been adjusted to reflect:

- 5,200,102 shares of common stock;
- the conversion of 5,548,508 shares of Series A preferred stock into 16,645,524 shares of common stock upon the closing of this offering;
- the conversion of 570,344 shares of Series A-1 preferred stock into 1,711,032 shares of common stock upon the closing of this offering;
- the conversion of 2,737,500 shares of Series B preferred stock into 8,212,500 shares of common stock upon the closing of this offering; and
- the conversion of 2,740,407 shares of Series C preferred stock into 8,221,221 shares of common stock upon the closing of this offering.

There will be shares of common stock outstanding, assuming no exercise of the underwriters' option to purchase additional shares in the offering and assuming no exercise after September 30, 2011 of outstanding options, after giving effect to the sale of the shares of common stock to the public offered in this prospectus.

The holders of common stock are entitled to one vote per share on all matters to be voted upon by the stockholders, with certain exceptions described in our amended and restated certificate of incorporation. The holders of common stock are entitled to receive ratably such dividends, if any, as may be declared from time to time by the board of directors out of funds legally available, subject to preferences that may be applicable to preferred stock then outstanding, if any. See "Dividend Policy." In the event of a liquidation, dissolution or winding up of our company, the holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock then outstanding, if any. The common stock has no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the common stock. All outstanding shares of common stock are fully paid and non-assessable, and the shares of common stock to be issued upon completion of this offering will be fully paid and non-assessable.

**Preferred Stock**

Concurrently with the closing of this offering, outstanding shares of Series A preferred stock will be converted into 16,645,524 shares of common stock, outstanding shares of Series A-1 preferred stock will be converted into 1,711,032 shares of common stock, outstanding shares of Series B preferred stock will be converted into 8,212,500 shares of common stock and outstanding shares of Series C preferred stock will be converted into 8,221,221 shares of common stock.

After the completion of this offering, our board of directors will be authorized, without further stockholder approval, to issue preferred stock in one or more series, to establish the number of shares to be included in each such series and to fix the designation, powers, preferences and rights of such shares and any qualifications, limitations or restrictions thereof. The issuance of preferred stock may have the effect of delaying, deferring or preventing a change of control of our company without further action by the stockholders and may adversely affect the voting and other rights of the holders of common stock. The issuance of preferred stock with voting and conversion rights may adversely affect the voting power of the holders of common stock, including the loss of voting control to others. At present, we have no plans to issue any preferred stock.

**Registration Rights**

After the completion of this offering, holders of 37,630,875 shares of common stock will be entitled to rights with respect to the registration of those shares under the Securities Act. Under the terms of the investors' rights agreement between us and the holders of these registrable securities, if we propose to register any of our securities under the Securities Act, either for our own account or for the account of other security holders exercising registration rights, these holders are entitled to notice of registration and are entitled to include their shares of common stock in the registration.

Certain holders of these registrable securities are also entitled to specified demand registration rights under which they may require us to file a registration statement under the Securities Act at our expense with respect to our shares of common stock, and we are required to use our commercially reasonable efforts to effect this registration. We are required to effect only two registrations pursuant to this provision of the investors' rights agreement. Further, the holders of these registrable securities may require us to file additional registration statements on Form S-3.

All of these registration rights are subject to conditions and limitations, among them the right of the underwriters of an offering to limit the number of shares included in the registration and our right not to effect a requested registration within 180 days following the initial offering of our securities, including this offering. All applicable registration rights in connection with this offering have been waived. The foregoing summary is not a complete description of the investors' rights agreement and is qualified in its entirety by the full text of the investors' rights agreement, a copy of which is filed as Exhibit 4.3 to the registration statement of which this prospectus is a part.

**Anti-Takeover Effects of Our Certificate of Incorporation and Bylaws and Delaware Law**

Some provisions of Delaware law and our amended and restated certificate of incorporation and amended and restated bylaws could make the following transactions more difficult:

- acquisition of our company by means of a tender offer, a proxy contest or otherwise; and
- removal of our incumbent directors and officers.

These provisions, summarized below, are expected to discourage and prevent coercive takeover practices and inadequate takeover bids. These provisions are designed to encourage persons seeking to acquire

control of our company to first negotiate with our board of directors. They are also intended to provide our management with the flexibility to enhance the likelihood of continuity and stability if our board of directors determines that a takeover is not in the best interests of our stockholders. These provisions, however, could have the effect of discouraging attempts to acquire us, which could deprive our stockholders of opportunities to sell their shares of common stock at prices higher than prevailing market prices.

***Election and Removal of Directors***

Our amended and restated certificate of incorporation and our amended and restated bylaws contain provisions that establish specific procedures for appointing and removing members of the board of directors. Under our amended and restated certificate of incorporation and amended and restated bylaws, our board will be classified into three classes of directors and, under our amended and restated bylaws, directors will be elected by a plurality of the votes cast in each election. Only one class will stand for election at each annual meeting, and directors will be elected to serve three-year terms. In addition, our amended and restated certificate of incorporation and amended and restated bylaws will provide that vacancies and newly created directorships on the board of directors may be filled only by a majority of the directors then serving on the board (except as otherwise required by law or by resolution of the board). Under our amended and restated certificate of incorporation and amended and restated bylaws, directors may only be removed for cause, and only with the affirmative vote of a majority of the voting interest of stockholders entitled to vote

***Special Stockholder Meetings***

Under our amended and restated certificate of incorporation and amended and restated bylaws, only the chairman of the board, our chief executive officer and our board of directors may call special meetings of stockholders.

***Requirements for Advance Notification of Stockholder Nominations and Proposals***

Our amended and restated bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors.

***Delaware Anti-Takeover Law***

Following this offering, we will be subject to Section 203 of the Delaware General Corporation Law, which is an anti-takeover law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years following the date that the person became an interested stockholder, unless the business combination or the transaction in which the person became an interested stockholder is approved in a prescribed manner. Generally, a business combination includes a merger, asset or stock sale, or another transaction resulting in a financial benefit to the interested stockholder. Generally, an interested stockholder is a person who, together with affiliates and associates, owns 15% or more of the corporation’s voting stock. The existence of this provision may have an anti-takeover effect with respect to transactions that are not approved in advance by our board of directors, including discouraging attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

***Elimination of Stockholder Action by Written Consent***

Our amended and restated certificate of incorporation and amended and restated bylaws eliminate the right of stockholders to act by written consent without a meeting after this offering.

***No Cumulative Voting***

Under Delaware law, cumulative voting for the election of directors is not permitted unless a corporation's certificate of incorporation authorizes cumulative voting. Our amended and restated certificate of incorporation and amended and restated bylaws do not provide for cumulative voting in the election of directors. Cumulative voting allows a minority stockholder to vote a portion or all of its shares for one or more candidates for seats on the board of directors. Without cumulative voting, a minority stockholder will not be able to gain as many seats on our board of directors based on the number of shares of our stock the stockholder holds as the stockholder would be able to gain if cumulative voting were permitted. The absence of cumulative voting makes it more difficult for a minority stockholder to gain a seat on our board of directors to influence our board's decision regarding a takeover.

***Undesignated Preferred Stock***

The authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of our company.

***Amendment of Provisions in Certificate of Incorporation and Bylaws***

The amendment of most of the above provisions in our amended and restated certificate of incorporation and amended and restated bylaws requires approval by holders of at least two-thirds of our outstanding capital stock entitled to vote generally in the election of directors.

These and other provisions could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, may also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in our management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is . Its telephone number is .

**Listing on**

We intend to apply to have our common stock listed on under the symbol " ."

## SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock, and we cannot assure you that a significant public market for our common stock will develop or be sustained after this offering. Other than as described below, no shares currently outstanding will be available for sale immediately after this offering due to certain contractual and securities law restrictions on resale. Sales of substantial amounts of our common stock, including shares issued upon exercise of outstanding options to purchase shares of common stock, in the public market after the restrictions lapse, or the possibility of such sales, could cause the prevailing market price to decline and limit our ability to raise equity capital in the future.

Upon completion of this offering, we will have issued and outstanding an aggregate of shares of common stock, assuming no exercise of the underwriters' option to purchase additional shares and no exercise of options to purchase common stock that were outstanding as of September 30, 2011. The shares of common stock being sold in this offering will be freely tradable without restriction or further registration under the Securities Act unless purchased by our "affiliates" (as that term is defined in Rule 144 under the Securities Act).

The remaining 40,101,305 shares of common stock held by existing stockholders are "restricted securities" as that term is defined in Rule 144 under the Securities Act. Restricted securities may be sold in the public market only if registered or if they qualify for an exemption from registration under Section 4(1) or Rules 144 or 701 promulgated under the Securities Act. We summarize these rules below.

Subject to any applicable vesting restrictions, the following table shows approximately when the 40,101,305 shares of our common stock that are not being sold in this offering, but which will be outstanding when this offering is complete, will be eligible for sale in the public market:

| Days After Date of this Prospectus | Shares Eligible for Sale | Explanation |
|---|---|---|
| Upon effectiveness | | Shares sold by us in the offering |
| Upon effectiveness | 21,384 | Freely tradable shares saleable under Rule 144 that are not subject to the lock-up |
| 90 days | — | Shares saleable under Rules 144 and 701 that are not subject to a lock-up |
| 180 days | 40,079,921 | Lock-up released, subject to extension; shares saleable under Rules 144 and 701 |

Resale of 28,184,871 of the restricted shares that will become available for sale in the public market starting 180 days after the effective date (or longer period described below) will be limited by volume and other resale restrictions under Rule 144 because the holders of those shares are our affiliates.

### Lock-Up Agreements

Our directors, executive officers, holders of substantially all of our common stock and holders of options and warrants to purchase our stock have agreed with the underwriters, subject to certain exceptions, not to dispose of or hedge any of their common stock or any securities convertible into or exchangeable or exercisable for shares of common stock for a period through the date 180 days after the date of this prospectus, except with the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc. In addition, substantially all of the holders of our common stock and options to purchase our common stock have previously entered agreements with us not to sell or otherwise transfer any of their common stock or securities convertible into or exchangeable for shares of common stock for a period through the date 180 days after the date of this prospectus.

The 180-day restricted period under the agreements with the underwriters described in the preceding paragraph will be automatically extended if: (1) during the last 17 days of the 180-day restricted period we issue an earnings release or material news or a material event relating to us occurs; or (2) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results or become aware that material news or a material event will occur during the 16-day period following the last day of the 180-day period, in which case the restrictions described in the preceding paragraph will continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or a material event, as applicable, unless Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc. waive, in writing, such extension.

**Rule 144**

In general, under Rule 144 as currently in effect, once we have been subject to public company reporting requirements for at least 90 days, a person who is not deemed to have been one of our affiliates for purposes of the Securities Act at any time during the 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than our affiliates, is entitled to sell those shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, subject to compliance with the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then that person is entitled to sell those shares without complying with any of the requirements of Rule 144.

In general, under Rule 144 as currently in effect, beginning 90 days after the date of this prospectus, and subject to the restrictions contained in the lock-up agreements described above, our affiliates or persons selling shares on behalf of our affiliates would be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- 1% of the number of shares of common stock then outstanding, which will equal approximately shares immediately after the completion of this offering, assuming no exercise of the underwriters' over-allotment option; and
- the average weekly trading volume of the common stock on the open market during the four calendar weeks preceding the filing of a Form 144 with respect to such sale.

Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us.

**Rule 701**

Rule 701, as currently in effect, permits resales of shares in reliance upon Rule 144 but without compliance with certain restrictions, including the holding period requirement, of Rule 144. Any employee, officer or director of or consultant to us who purchased shares under a written compensatory plan or contract prior to this offering may be entitled to rely on the resale provisions of Rule 701. Rule 701 permits affiliates to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. Rule 701 further provides that non-affiliates may sell such shares in reliance on Rule 144 without having to comply with the holding period, public information, volume limitation or notice provisions of Rule 144. All holders of Rule 701 shares are required to wait until 90 days after the date of this prospectus before selling such shares. All Rule 701 shares are, however, subject to lock-up agreements and will only become eligible for sale upon the expiration of the contractual lock-up agreements.

**Registration Rights**

After the completion of this offering, the holders of 37,630,875 shares of our common stock will be entitled to the registration rights described in “Description of Capital Stock—Registration Rights.” All such shares are covered by lock-up agreements. Following the expiration of the applicable lock-up period, registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration, except for shares purchased by our affiliates.

**Form S-8 Registration Statements**

Following the consummation of this offering, we intend to file one or more registration statements on Form S-8 under the Securities Act to register the shares of our common stock that are issuable pursuant to our 2012 Equity Incentive Plan, 2006 Stock Plan and 2000 Stock Plan. See “Management—Equity Benefit Plans.” Subject to the lock-up agreements described above and any applicable vesting restrictions, shares registered under these registration statements will be available for resale in the public market immediately upon the effectiveness of these registration statements, except with respect to Rule 144 volume limitations that apply to our affiliates.

## UNDERWRITING

Merrill Lynch, Pierce, Fenner & Smith Incorporated and Citigroup Global Markets Inc. are acting as representatives of each of the underwriters named below. Subject to the terms and conditions set forth in an underwriting agreement among us and the underwriters, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the number of shares of common stock set forth opposite its name below.

| Underwriter | Number of Shares |
|---|---|
| Merrill Lynch, Pierce, Fenner & Smith Incorporated | |
| Citigroup Global Markets Inc. | |
| Stifel, Nicolaus & Company, Incorporated | |
| BMO Capital Markets Corp. | |
| Needham & Company, LLC | |
| Oppenheimer & Co. Inc. | |
| Total | |

Subject to the terms and conditions set forth in the underwriting agreement, the underwriters have agreed, severally and not jointly, to purchase all of the shares sold under the underwriting agreement if any of these shares are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the underwriting agreement may be terminated.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

### Commissions and Discounts

The representatives have advised us that the underwriters propose initially to offer the shares to the public at the public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of $ per share. After the initial offering, the public offering price, concession or any other term of the offering may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us. The information assumes either no exercise or full exercise by the underwriters of their overallotment option.

| | Per Share | Without Option | With Option |
|---|---|---|---|
| Public offering price | $ | $ | $ |
| Underwriting discount | $ | $ | $ |
| Proceeds, before expenses, to Synacor, Inc. | $ | $ | $ |

The expenses of the offering, not including the underwriting discount, are estimated at $ and are payable by us.

**Overallotment Option**

We have granted an option to the underwriters, exercisable for 30 days after the date of this prospectus, to purchase up to additional shares at the public offering price, less the underwriting discount. The underwriters may exercise this option solely to cover any overallotments. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the underwriting agreement, to purchase a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

**No Sales of Similar Securities**

We, our executive officers and directors and our other existing security holders have agreed not to sell or transfer any common stock or securities convertible into, exchangeable for, exercisable for, or repayable with common stock, for 180 days after the date of this prospectus without first obtaining the written consent of the representatives. Specifically, we and these other persons have agreed, with certain limited exceptions, not to directly or indirectly

- offer, pledge, sell or contract to sell any common stock,
- sell any option or contract to purchase any common stock,
- purchase any option or contract to sell any common stock,
- grant any option, right or warrant for the sale of any common stock,
- lend or otherwise dispose of or transfer any common stock,
- request or demand that we file a registration statement related to the common stock, or
- enter into any swap or other agreement that transfers, in whole or in part, the economic consequence of ownership of any common stock whether any such swap or transaction is to be settled by delivery of shares or other securities, in cash or otherwise.

This lock-up provision applies to common stock and to securities convertible into or exchangeable or exercisable for or repayable with common stock. It also applies to common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition. In the event that either (x) during the last 17 days of the lock-up period referred to above, we issue an earnings release or material news or a material event relating to us occurs or (y) prior to the expiration of the lock-up period, we announce that we will release earnings results or become aware that material news or a material event will occur during the 16-day period beginning on the last day of the lock-up period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event, as applicable, unless the representatives waive, in writing, such extension.

**Listing**

We expect the shares to be approved for listing on , subject to notice of issuance, under the symbol " ."

Before this offering, there has been no public market for our common stock. The initial public offering price will be determined through negotiations between us and the representatives. In addition to prevailing market conditions, the factors to be considered in determining the initial public offering price are

- the valuation multiples of publicly traded companies that the representatives believe to be comparable to us,
- our financial information,
- the history of, and the prospects for, our company and the industry in which we compete,
- an assessment of our management, its past and present operations, and the prospects for, and timing of, our future revenue,
- the present state of our development, and
- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares may not develop. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price.

The underwriters do not expect to sell more than 5% of the shares in the aggregate to accounts over which they exercise discretionary authority.

**Price Stabilization, Short Positions and Penalty Bids**

Until the distribution of the shares is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our common stock. However, the representatives may engage in transactions that stabilize the price of the common stock, such as bids or purchases to peg, fix or maintain that price.

In connection with the offering, the underwriters may purchase and sell our common stock in the open market. These transactions may include short sales, purchases on the open market to cover positions created by short sales and stabilizing transactions. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. “Covered” short sales are sales made in an amount not greater than the underwriters’ overallotment option described above. The underwriters may close out any covered short position by either exercising their overallotment option or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the overallotment option. “Naked” short sales are sales in excess of the overallotment option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of our common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of shares of common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Similar to other purchase transactions, the underwriters' purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. The underwriters may conduct these transactions on , in the over-the-counter market or otherwise.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. In addition, neither we nor any of the underwriters make any representation that the representatives will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

**Electronic Distribution**

In connection with the offering, certain of the underwriters or securities dealers may distribute prospectuses by electronic means, such as e-mail.

**Other Relationships**

Some of the underwriters and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

In addition, in the ordinary course of their business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

**Notice to Prospective Investors in the European Economic Area**

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State"), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "Relevant Implementation Date"), no offer of shares may be made to the public in that Relevant Member State other than:

A. to any legal entity which is a qualified investor as defined in the Prospectus Directive;

B. to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the representatives; or

C. in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of shares shall require the Company or the representatives to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

Each person in a Relevant Member State (other than a Relevant Member State where there is a Permitted Public Offer) who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed that (A) it is a "qualified investor" within the meaning of the law in that Relevant Member State implementing Article 2(1)(e) of the Prospectus Directive, and (B) in the case of any shares acquired by it as a financial intermediary, as that term is used in Article 3(2) of the Prospectus Directive, the shares acquired by it in the offering have not been acquired on behalf of, nor have they been acquired with a view to their offer or resale to, persons in any Relevant Member State other than "qualified investors" as defined in the Prospectus Directive, or in circumstances in which the prior consent of the representatives has been given to the offer or resale. In the case of any shares being offered to a financial intermediary as that term is used in Article 3(2) of the Prospectus Directive, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer of any shares to the public other than their offer or resale in a Relevant Member State to qualified investors as so defined or in circumstances in which the prior consent of the representatives has been obtained to each such proposed offer or resale.

The Company, the representatives and their affiliates will rely upon the truth and accuracy of the foregoing representation, acknowledgement and agreement.

This prospectus has been prepared on the basis that any offer of shares in any Relevant Member State will be made pursuant to an exemption under the Prospectus Directive from the requirement to publish a prospectus for offers of shares. Accordingly any person making or intending to make an offer in that Relevant Member State of shares which are the subject of the offering contemplated in this prospectus may only do so in circumstances in which no obligation arises for the Company or any of the underwriters to publish a prospectus pursuant to Article 3 of the Prospectus Directive in relation to such offer. Neither the Company nor the underwriters have authorized, nor do they authorize, the making of any offer of shares in circumstances in which an obligation arises for the Company or the underwriters to publish a prospectus for such offer.

For the purpose of the above provisions, the expression "an offer to the public" in relation to any shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe the shares, as the same may be varied in the Relevant Member State by any measure implementing the Prospectus Directive in the Relevant Member State and the expression "Prospectus Directive" means Directive 2003/71/EC (including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member States) and includes any relevant implementing measure in the Relevant Member State and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

**Notice to Prospective Investors in the United Kingdom**

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are "qualified investors" (as defined in the Prospectus Directive) (i) who have professional experience in matters relating to investments falling within Article 19 (5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the "Order") and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49 (2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons"). This document must not be acted on or relied on in the United Kingdom by persons who are not relevant persons. In the United Kingdom, any investment or investment activity to which this document relates is only available to, and will be engaged in with, relevant persons.

**Notice to Prospective Investors in Switzerland**

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, the Company, the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA (FINMA), and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

**Notice to Prospective Investors in the Dubai International Financial Centre**

This prospectus relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ("DFSA"). This prospectus is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus nor taken steps to verify the information set forth herein and has no responsibility for the prospectus. The shares to which this prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the shares. If you do not understand the contents of this prospectus you should consult an authorized financial advisor.

## LEGAL MATTERS

The validity of the common stock being offered hereby will be passed upon for the company by Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, New York, New York. Certain legal matters in connection with this offering will be passed upon for the underwriters by O'Melveny & Myers, LLP, Los Angeles, California.

## EXPERTS

The financial statements as of December 31, 2009 and 2010, and for the years ended December 31, 2008, 2009, and 2010 included in this prospectus have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein and have been so included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

## WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock we are offering. This prospectus, which constitutes part of the registration statement, does not contain all of the information set forth in the registration statement. For further information about us and the common stock we propose to sell in this offering, we refer you to the registration statement and the exhibits and schedules filed as a part of the registration statement. Statements contained in this prospectus as to the contents of any contract or other document filed as an exhibit to the registration statement are not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, we refer you to the copy of the contract or document that has been filed. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. The exhibits to the registration statement should be reviewed for the complete contents of these contracts and documents.

You may inspect a copy of the registration statement and the exhibits and schedules to the registration statement without charge at the Public Reference Room located at the offices of the SEC at 100 F Street, N.E., Washington, D.C. 20549. You may obtain copies of all or any part of the registration statement from the Public Reference Room maintained by the SEC located at 100 F Street, N.E., Washington, D.C. 20549 upon the payment of the fees prescribed by the SEC. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains a website at http://www.sec.gov that contains reports, proxy and information statements and other information regarding registrants like us that file electronically with the SEC. You can also inspect our registration statement on this website.

Upon completion of this offering, we will become subject to the information and periodic reporting requirements of the Exchange Act, and we intend to file periodic reports, proxy statements and other information with the SEC. The periodic reports and other information that we file with the SEC will be available for inspection and copying at the SEC's public reference facilities and on the website of the SEC referred to above. We intend to furnish our stockholders with annual reports containing financial statements audited by an independent registered public accounting firm. We also maintain an Internet site at www.synacor.com. Our website and the information contained on or accessible through our website shall not be deemed to be incorporated into this prospectus or the registration statement of which it forms a part.

## INDEX TO THE FINANCIAL STATEMENTS

## SYNACOR, INC.

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors of
Synacor, Inc.
Buffalo, New York

We have audited the accompanying balance sheets of Synacor, Inc. (the "Company") as of December 31, 2009 and 2010, and the related statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2010. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these 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. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2009 and 2010, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2010, in conformity with accounting principles generally accepted in the United States of America.

/s/ Deloitte & Touche LLP

Williamsville, New York
March 29, 2011 (November 18, 2011 as to Note 6 and 10)

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## SYNACOR, INC.

## BALANCE SHEETS

## AS OF DECEMBER 31, 2009 AND 2010
(In thousands except for share and per share data)

| | 2009 | 2010 | Pro Forma Stockholders' Equity as of December 31, 2010 (note 1) Unaudited |
|---|---|---|---|
| **ASSETS** | | | |
| CURRENT ASSETS: | | | |
| Cash and cash equivalents | $ 10,462 | $ 5,412 | |
| Accounts receivable—net of allowance of $63 and $19 | 7,773 | 9,654 | |
| Prepaid expenses and other current assets | 916 | 1,536 | |
| Total current assets | 19,151 | 16,602 | |
| PROPERTY AND EQUIPMENT—Net | 6,631 | 7,110 | |
| OTHER LONG-TERM ASSETS | 222 | 615 | |
| TOTAL ASSETS | $ 26,004 | $ 24,327 | |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | | |
| CURRENT LIABILITIES: | | | |
| Accounts payable | $ 6,531 | $ 7,612 | |
| Accrued expenses and other current liabilities | 2,828 | 3,272 | |
| Current portion of bank financing | 103 | 500 | |
| Current portion of capital lease obligations | 1,976 | 1,478 | |
| Total current liabilities | 11,438 | 12,862 | |
| LONG-TERM PORTION OF BANK FINANCING | 309 | 250 | |
| LONG-TERM PORTION OF CAPITAL LEASE OBLIGATIONS | 938 | 953 | |
| OTHER LONG-TERM LIABILITIES | 266 | 106 | |
| Total liabilities | 12,951 | 14,171 | |
| COMMITMENTS AND CONTINGENCIES (Note 7) | | | |
| STOCKHOLDERS' EQUITY: | | | |
| Common stock, $0.01 par value—authorized, 60,000,000 shares; 3,669,893 issued and 3,180,893 outstanding at December 31, 2009 and 3,808,308 issued and 3,169,308 shares outstanding at December 31, 2010 | 37 | 38 | 386 |
| Convertible preferred stock (liquidation value of $5,240 at December 31, 2010), $0.01 par value—authorized Series A, 5,709,638 shares; issued and outstanding, 5,548,508 shares at December 31, 2009 and 2010 | 5,077 | 5,077 | — |
| Convertible preferred stock (liquidation value of $750 at December 31, 2010), $0.01 par value—authorized Series A-1, 570,344 shares; issued and outstanding, 570,344 shares at December 31, 2009 and 2010 | 730 | 730 | — |
| Convertible preferred stock (liquidation value of $5,475 at December 31, 2010), $0.01 par value—authorized Series B, 3,500,000 shares; issued and outstanding, 2,737,500 shares at December 31, 2009 and 2010 | 5,401 | 5,401 | — |
| Convertible preferred stock (liquidation value of $17,374 at December 31, 2010), $0.01 par value—authorized Series C, 2,740,407 shares; issued and outstanding, 2,740,407 shares at December 31, 2009 and 2010 | 17,224 | 17,224 | — |
| Treasury stock—at cost, 489,000 shares in 2009 and 639,000 shares in 2010 | (368) | (569) | (569) |
| Additional paid-in capital | 43,446 | 44,340 | 72,424 |
| Accumulated deficit | (58,494) | (62,085) | (62,085) |
| Total stockholders' equity | 13,053 | 10,156 | 10,156 |
| TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY | $ 26,004 | $ 24,327 | $ 24,327 |

The accompanying notes are an integral part of these financial statements.

**SYNACOR, INC.**

**STATEMENTS OF OPERATIONS**

**FOR THE YEARS ENDED DECEMBER 31, 2008, 2009, AND 2010**
**(In thousands except share and per share data)**

| | 2008 | 2009 | 2010 |
|---|---|---|---|
| REVENUE | $ 52,571 | $ 60,798 | $ 66,232 |
| COSTS AND OPERATING EXPENSES: | | | |
| Cost of revenue (exclusive of depreciation shown separately below) | 28,575 | 34,074 | 36,703 |
| Research and development (exclusive of depreciation shown separately below) | 12,783 | 13,627 | 18,494 |
| Sales and marketing | 5,732 | 5,591 | 6,211 |
| General and administrative (exclusive of depreciation shown separately below) | 4,997 | 4,966 | 5,656 |
| Withdrawn initial public offering expenses | 3,405 | — | — |
| Depreciation | 1,574 | 2,005 | 2,506 |
| Other operating expenses | 1,121 | — | — |
| Total costs and operating expenses | 58,187 | 60,263 | 69,570 |
| INCOME (LOSS) FROM OPERATIONS | (5,616) | 535 | (3,338) |
| OTHER INCOME (EXPENSE) | 156 | 69 | (2) |
| INTEREST EXPENSE | (294) | (285) | (240) |
| INCOME (LOSS) BEFORE INCOME TAXES | (5,754) | 319 | (3,580) |
| PROVISION FOR INCOME TAXES | 10 | 15 | 11 |
| NET INCOME (LOSS) | $ (5,764) | $ 304 | $ (3,591) |
| NET INCOME (LOSS) ATTRIBUTABLE TO COMMON STOCKHOLDERS | $ (5,764) | $ 25 | $ (3,591) |
| NET INCOME (LOSS) PER SHARE ATTRIBUTABLE TO COMMON STOCKHOLDERS: | | | |
| Basic | $ (1.70) | $ 0.01 | $ (0.96) |
| Diluted | $ (1.70) | $ 0.01 | $ (0.96) |
| WEIGHTED AVERAGE SHARES USED TO COMPUTE NET INCOME (LOSS) PER SHARE ATTRIBUTABLE TO COMMON STOCKHOLDERS: | | | |
| Basic | 3,380,917 | 3,628,058 | 3,730,588 |
| Diluted | 3,380,917 | 44,586,142 | 3,730,588 |
| PRO FORMA NET LOSS PER SHARE ATTRIBUTABLE TO COMMON STOCKHOLDERS —Basic and Diluted (unaudited) (Note 1) | | | $ (0.09) |
| PRO FORMA WEIGHTED AVERAGE SHARES USED TO COMPUTE NET LOSS PER SHARE ATTRIBUTABLE TO COMMON STOCKHOLDERS —Basic and Diluted (unaudited) (Note 1) | | | 38,520,865 |

The accompanying notes are an integral part of these financial statements.

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## SYNACOR, INC.

## STATEMENTS OF STOCKHOLDERS' EQUITY

## FOR THE YEARS ENDED DECEMBER 31, 2008, 2009, AND 2010
(In thousands except for share data)

| | Common Stock | | Treasury Stock (Common) | | Series A Preferred Stock | | Series A-1 Preferred Stock | | Series B Preferred Stock | | Series C Preferred Stock | | Additional Paid-In Capital | Accumulated Deficit | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Shares | Amount | Shares | Amount | Shares | Amount | Shares | Amount | | | |
| BALANCE— January 1, 2008 | 3,182,547 | $ 32 | — | $ — | 5,548,508 | $ 5,077 | 570,344 | $ 730 | 2,737,500 | $ 5,401 | 2,740,407 | $ 17,224 | $ 41,745 | $ (53,034) | $17,175 |
| Exercise of common stock options | 144,872 | 2 | | | | | | | | | | | 26 | | 28 |
| Stock-based compensati expense | | | | | | | | | | | | | 668 | | 668 |
| Vesting of restricted stock | 225,000 | 2 | | | | | | | | | | | 102 | | 104 |
| Net loss | | | | | | | | | | | | | | (5,764) | (5,764) |
| BALANCE— December 31, 2008 | 3,552,419 | 36 | — | — | 5,548,508 | 5,077 | 570,344 | 730 | 2,737,500 | 5,401 | 2,740,407 | 17,224 | 42,541 | (58,798) | 12,211 |
| Exercise of common stock options | 117,474 | 1 | | | | | | | | | | | 4 | | 5 |
| Stock-based compensation expense | | | | | | | | | | | | | 901 | | 901 |
| Repurchase of common shares | | | (489,000) | (368) | | | | | | | | | | | (368) |
| Net income | | | | | | | | | | | | | | 304 | 304 |
| BALANCE— December 31, 2009 | 3,669,893 | 37 | (489,000) | (368) | 5,548,508 | 5,077 | 570,344 | 730 | 2,737,500 | 5,401 | 2,740,407 | 17,224 | 43,446 | (58,494) | 13,053 |
| Exercise of common stock options | 138,415 | 1 | | | | | | | | | | | 26 | | 27 |
| Stock-based compensati expense | | | | | | | | | | | | | 868 | | 868 |
| Repurchase of common shares | | | (150,000) | (201) | | | | | | | | | | | (201) |
| Net loss | | | | | | | | | | | | | | (3,591) | (3,591) |
| BALANCE— December 31, 2010 | 3,808,308 | $ 38 | (639,000) | $ (569) | 5,548,508 | $ 5,077 | 570,344 | $ 730 | 2,737,500 | $ 5,401 | 2,740,407 | $ 17,224 | $ 44,340 | $ (62,085) | $10,156 |

The accompanying notes are an integral part of these financial statements.

**SYNACOR, INC.**

**STATEMENTS OF CASH FLOWS**

**FOR THE YEARS ENDED DECEMBER 31, 2008, 2009, AND 2010**
**(In thousands)**

| | 2008 | 2009 | 2010 |
|---|---|---|---|
| CASH FLOWS FROM OPERATING ACTIVITIES: | | | |
| Net income (loss) | $ (5,764) | $ 304 | $ (3,591) |
| Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities: | | | |
| Depreciation | 1,574 | 2,005 | 2,506 |
| Accelerated depreciation on data center equipment (Note 12) | 424 | — | — |
| Stock-based compensation expense | 668 | 901 | 868 |
| Bad debt write off | — | 287 | — |
| Write-off of capitalized initial public offering costs | 3,405 | — | — |
| Loss on disposal of property and equipment | 75 | 116 | 5 |
| Change in assets and liabilities: | | | |
| Accounts receivable, net | (1,029) | (898) | (1,881) |
| Prepaid expenses and other current assets | 589 | 855 | (484) |
| Other long-term assets | 1,133 | 293 | (121) |
| Accounts payable | (658) | 2,164 | 1,081 |
| Accrued expenses and other current liabilities | (361) | (1,076) | 444 |
| Other long-term liabilities | (179) | (462) | (160) |
| Net cash (used in) provided by operating activities | (123) | 4,489 | (1,333) |
| CASH FLOWS FROM INVESTING ACTIVITIES—Purchases of property and equipment | (667) | (828) | (1,558) |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | | |
| Borrowings on bank financing | — | 412 | 588 |
| Repayment on bank financing | — | — | (250) |
| Repayments on capital lease obligations | (1,480) | (2,078) | (2,323) |
| Proceeds from exercise of common stock options | 28 | 5 | 27 |
| Purchase of treasury stock | — | (368) | (201) |
| Net cash used in financing activities | (1,452) | (2,029) | (2,159) |
| NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS | (2,242) | 1,632 | (5,050) |
| CASH AND CASH EQUIVALENTS—Beginning of year | 11,072 | 8,830 | 10,462 |
| CASH AND CASH EQUIVALENTS—End of year | $ 8,830 | $10,462 | $ 5,412 |
| SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION: | | | |
| Cash paid for interest | $ 294 | $ 285 | $ 247 |
| Non cash financing and investing activity—property and equipment acquired under capital lease obligations and bank financing | $ 4,753 | $ 160 | $ 1,840 |

The accompanying notes are an integral part of these financial statements.

**SYNACOR, INC.**

**NOTES TO THE FINANCIAL STATEMENTS**

**AS OF DECEMBER 31, 2009, AND 2010, AND**
**FOR THE YEARS ENDED DECEMBER 31, 2008, 2009, AND 2010**
**(In thousands except for share and per share data)**

**1. The Company and Summary of Significant Accounting Policies**

Synacor, Inc. (the "Company") is a leading provider of authentication and aggregation solutions for delivery of online content and services. The Company delivers solutions as a set of services through its hosted and managed platform, enabling cable and telecom service providers and consumer electronics manufacturers to provide the online content and services that their consumers increasingly demand. The Company's platform allows its customers to package a wide array of online content and services with their high-speed Internet, communications, television and other offerings. Synacor's customers offer the Company's services under their own brands on Internet-enabled devices such as PCs, tablets, smartphones and connected TVs.

**Cash and Cash Equivalents** —The Company invests its excess cash in money market funds. All investments with an original maturity of three months or less are considered cash equivalents. The Company has not experienced any loss in fair value on these investments.

**Accounts Receivable** —The Company records accounts receivable at the invoiced amount and does not charge interest on past due invoices. An allowance for doubtful accounts is maintained to reserve for potentially uncollectible accounts receivable. The Company reviews its accounts receivable from customers which are past due to identify specific accounts with known disputes or collectability issues. In determining the amount of the reserve, the Company makes judgments about the creditworthiness of customers based on ongoing credit evaluations.

**Property and Equipment** —Property and equipment are stated at cost, less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets as follows:

| | |
|---|---|
| Leasehold improvements | 3–10 years |
| Computer hardware | 5 years |
| Computer software | 3 years |
| Furniture and fixtures | 7 years |
| Other | 3–5 years |

Leasehold improvements are amortized over the shorter of the lease term or the estimated useful life of the assets.

**Long-Lived Assets** —The Company reviews the carrying value of its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable. For purposes of evaluating and measuring impairment, the Company groups a long-lived asset or assets with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the assets to future undiscounted net cash flows expected to be generated by the assets. If such assets are considered to be impaired, the impairment to be recognized is measured as the amount by which the carrying amount of the assets exceeds the fair value of the assets. There has been no material adjustments to long-lived assets in any of the years presented.

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

**Revenue Recognition** —The Company derives revenue from two categories: revenue generated from search and display advertising activities and subscriber-based revenue, each of which is described below. Search and display advertising is recorded on a gross basis, which includes the net amount received from Google under the Company's agreement with Google. The following table shows the revenue in each category for the years ended December 31, 2008, 2009 and 2010 (in thousands):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2008 | 2009 | 2010 |
| Search and display advertising | $32,212 | $39,268 | $45,859 |
| Subscriber-based | 20,359 | 21,530 | 20,373 |
| Total revenue | $52,571 | $60,798 | $66,232 |

The Company uses Internet search and display advertising to generate revenue from the traffic on its customers' websites.

- In the case of search advertising, the Company has a revenue-sharing relationship with Google, pursuant to which it includes a Google-branded search tool on its customers' websites. When a consumer makes a search query using this tool, the Company delivers the query to Google and they return search results to consumers that include advertiser-sponsored links. If the consumer clicks on a sponsored link, Google receives payment from the sponsor of that link and shares a portion of that payment with the Company, which in turn is shared with the applicable customer. The net payment received from Google is recognized as revenue.

- Display advertising revenue is generated when consumers view or click on a text, graphic, or video advertisement that was delivered on a Synacor-operated website. Advertising inventory is filled with advertisements sourced by the Company's direct salesforce, independent advertising sales representatives, and also advertising network partners. Display advertising revenue is calculated on a cost per impression basis, which means the advertiser pays based on the number of times its advertisements appear, or a cost per action basis, which means that an advertiser pays when a consumer performs an action after engaging one of its advertisements. Historically, only a small percentage of display advertising has been calculated on a cost per action basis.

Subscriber-based revenue is defined as subscription fees and other fees that the Company receives from customers for the use of its proprietary technology platform and the use of, or access to, e-mail, security, games and other value added services and paid content. Monthly subscriber levels typically form the basis for calculating and generating subscriber-based revenue. They are generally determined by multiplying a per-subscriber per-month fee by the number of subscribers using the particular services being offered or consumed. In other cases, the fee is fixed. Revenue is recognized from customers as the service is delivered.

Search and display advertising and subscriber-based revenue are recognized when the following criteria are met: persuasive evidence of an arrangement exists; delivery has occurred; the selling price is fixed or determinable; and collectability is reasonably assured.

The Company evaluates its relationship between search and display advertising partners and customers in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 605-45, *Principal Agent Considerations* . The Company has determined that the revenue derived from

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

traffic supplied by its customers is reported on a gross basis because Synacor is the primary obligor (the Company is responsible to its customers for fulfilling search and display advertising services and value added and other services), is involved in the service specifications, performs part of the service, has discretion in supplier selection, has latitude in establishing price and bears credit risk.

In October 2009, the FASB amended the accounting standard for multiple deliverable revenue arrangements, which provided updated guidance on whether multiple deliverables exist, how deliverables in an arrangement should be separated, and how consideration should be allocated. This standard eliminates the use of the residual method and will require arrangement consideration to be allocated based on the relative selling price for each deliverable. The selling price for each arrangement deliverable can be established based on vendor specific objective evidence ("VSOE") or third-party evidence ("TPE") if VSOE is not available. The new standard provides additional flexibility to utilize an estimate of selling price ("ESP") if neither VSOE nor TPE is available.

The Company elected to early adopt this accounting standard on January 1, 2010 on a prospective basis for applicable transactions originating or materially modified after December 31, 2009. The adoption of this standard did not have a material impact on the Company's consolidated financial position, cash flows, or results of operations for the year ended December 31, 2010.

**Cost of Revenue** —Cost of revenue consists of revenue-sharing, content acquisition costs and co-location facility costs. Revenue-sharing consists of amounts accrued and paid to customers for the traffic on their websites resulting in the generation of search and display advertising revenue. The revenue-sharing agreements with customers are primarily variable payments based on a percentage of the search and display advertising revenue. Content acquisition agreements may be based on a fixed payment schedule, on the number of subscribers per month, or a combination of both. Fixed-payment agreements are expensed over the term defined in the agreement. Agreements based on the number of subscribers are expensed on a monthly basis. Co-location facility costs consist of rent and operating costs for the Company's data center facilities.

**Concentrations of Risk** —As of December 31, 2009 and 2010, and for the years ended December 31, 2008, 2009, and 2010 the Company had concentrations equal to or exceeding 10% of the Company's accounts receivable and revenue as follows:

| | Accounts Receivable | | Revenue | | |
|---|---|---|---|---|---|
| | 2009 | 2010 | 2008 | 2009 | 2010 |
| Google | 33% | 39% | 48% | 45% | 49% |
| Platform Customer A | 25 | 22 | 20 | 18 | 14 |

For the years ended December 31, 2008, 2009 and 2010 the following platform customers received revenue share payments equal to or exceeding 10% of the Company's cost of revenue. The costs represent revenue share paid to them for their supply of internet traffic on our customer branded platforms.

| | Cost of Revenue | | |
|---|---|---|---|
| | 2008 | 2009 | 2010 |
| Platform Customer A | 18% | 18% | 21% |
| Platform Customer B | 24 | 26 | 25 |

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash and cash equivalents. The Company places its cash primarily in checking and money market accounts with high credit quality financial institutions, which, at times, have exceeded federally insured limits. At December 31, 2010, the Company had cash of $5,053 at financial institutions in excess of the federally insured limits.

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

**Research and Development** —Research and development expenses consist primarily of compensation related expenses incurred for the development of, enhancements to, and maintenance and operation of the Company's technology platform and related infrastructures.

**Software Development Costs** —Costs incurred during the preliminary project stage for software programs are expensed as incurred. External and internal costs incurred during the application development stage of new software development as well as for upgrades and enhancements for software programs that result in additional functionality are capitalized. In the years presented, the Company has not incurred significant external or internal costs related to the application development stage. Internal and external training and maintenance costs are expensed as incurred.

**Sales and Marketing** —Sales and marketing expenses consist primarily of compensation related expenses to the Company's direct sales and marketing personnel, as well as costs related to advertising, industry conferences, promotional materials, and other sales and marketing programs. Advertising cost is expensed as incurred.

**General and Administrative** —General and administrative expenses consist primarily of compensation related expenses for executive management, finance, accounting, human resources, and other administrative functions.

**Earnings Per Share** —Basic earnings per share, or EPS, is calculated in accordance with FASB ASC Topic 260, *Earnings per Share* , and is calculated using the weighted average number of common shares outstanding during each period. Contingently issuable or repurchasable shares are not used in the calculation of basic earnings per share until the contingency is resolved.

Diluted EPS assumes the conversion, exercise or issuance of all potential common stock equivalents unless the effect is to reduce a loss or increase the income per share. For purposes of this calculation, convertible preferred stock and options are considered to be potential common shares and are only included in the calculation of diluted earnings per share when their effect is dilutive.

The shares used to compute basic and diluted net income per share represent the weighted-average common shares outstanding. The Company's preferred stockholders have the right to participate with common stockholders in dividends and unallocated income. Net losses are not allocated to the preferred stockholders. Therefore, when applicable, basic and diluted EPS are computed using the two-class method, under which the Company's undistributed earnings are allocated amongst the common and preferred stockholders.

**Unaudited Pro Forma Stockholder's Equity and Pro Forma Net Loss Per Share** —If an initial public offering results in a post-offering valuation of the Company's common stock on a fully diluted basis of at least $150,000 and the proceeds are not less than $25,000, all 11,596,759 shares of convertible preferred stock will be mandatorily converted into shares of common stock on a 3:1 ratio, resulting in a total of 34,790,277 common shares. The unaudited pro forma stockholders' equity as of December 31, 2010 and the unaudited pro forma net loss per share data for the year ended December 31, 2010 have been prepared assuming that the conversion of preferred stock occurred on January 1, 2010. Refer to Note 10 *Net Income (Loss) Per Common Share Data* , for disclosure of the calculation of unaudited pro forma net loss per share.

**Stock-Based Compensation** —The Company records compensation costs related to stock-based awards in accordance with FASB ASC 718, *Compensation—Stock Compensation* . Under the fair value recognition provisions of ASC 718, the Company measures stock-based compensation cost at the grant date based on the estimated fair value of the award. Compensation cost is recognized ratably over the requisite service period of the award. The Company utilizes the Black-Scholes option-pricing model to estimate the fair value of stock options

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

granted. The amount of stock-based compensation expense recognized during a period is based on the portion of the awards that are ultimately expected to vest. The Company estimates prevesting forfeitures at the time of grant by analyzing historical data and revises those estimates in subsequent periods if actual forfeitures differ from those estimates. The total expense recognized over the vesting period will only be for those awards that ultimately vest. See Note 9 for additional information on stock-based compensation.

**Income Taxes** —Deferred income tax assets and liabilities are determined based on temporary differences between the financial statement and income tax bases of assets and liabilities and net operating loss and credit carryforwards using enacted income tax rates in effect for the year in which the differences are expected to reverse. A valuation allowance is established to the extent necessary to reduce deferred income tax assets to amounts that more likely than not will be realized. The Company has recorded a valuation allowance against all of its net deferred tax assets due to uncertainty of their ultimate realization.

The Company accounts for uncertain tax positions using a more-likely-than-not recognition threshold based on the technical merits of the tax position taken. Tax benefits that meet the more-likely-than-not recognition threshold should be measured as the largest amount of tax benefits, determined on a cumulative probability basis, which is more likely than not to be realized upon ultimate settlement in the financial statements. It is the Company's policy to recognize interest and penalties related to income tax matters in income tax expense. As of December 31, 2010, there was no accrued interest or penalties related to uncertain tax positions.

**Accounting Estimates** —The preparation of financial statements in conformity with Generally Accepted Accounting Principles ("GAAP") in the U.S. requires management to make estimates, judgments and assumptions that affect the amounts reported and disclosed in the financial statements and the accompanying notes. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Such estimates primarily relate to unsettled transactions and events as of the date of the financial statements. Accordingly, actual results may differ from estimated amounts.

**Fair Value of Financial Instruments** —The carrying amounts of the Company's capital leases and bank financing approximate fair value of these obligations based upon management's best estimates of interest rates that would be available for similar debt obligations at December 31, 2010.

**Fair Value Measurements** —The provisions of ASC 820, *Fair Value Measurements and Disclosures* , establishes a framework for measuring the fair value in accounting principles generally accepted in the U.S. and establishes a hierarchy that categorizes and prioritizes the sources to be used to estimate fair value as follows:

*Level 1* —Level 1 inputs are defined as observable inputs such as quoted prices in active markets.

*Level 2* —Level 2 inputs include quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability (interest rates, yield curves, etc.), and inputs that are derived principally from or corroborated by observable market data by correlation or other means (market corroborated inputs).

*Level 3* —Level 3 inputs are unobservable inputs that reflect the Company's determination of assumptions that market participants would use in pricing the asset or liability. These inputs are developed based on the best information available, including the Company's own data.

In accordance with ASC 820, included within the Company's cash and cash equivalents as of December 31, 2010 are $794 of money market funds that are classified as Level 1 financial assets. The fair value of cash and cash

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

equivalents are primarily composed of the Company's investments in money market instruments with original maturities of three months or less. The Company's cash and cash equivalent balances excluded above are composed of cash, certificates of deposits with original maturities of one month or less, and overnight investments.

Effective January 1, 2010, the Company adopted new authoritative guidance on fair value measurements and disclosures. The new guidance requires additional disclosures regarding fair value measurements, amends disclosures about post-retirement benefit plan assets, and provides clarification regarding the level of disaggregation of fair value disclosures by investment class. This guidance is effective for interim and annual reporting periods beginning after December 15, 2009, except for certain Level 3 activity disclosure requirements that will be effective for reporting periods beginning after December 15, 2010. Accordingly, the Company adopted this new guidance beginning January 1, 2010, except for the additional Level 3 requirements, which were adopted in 2011. Level 3 assets and liabilities are those whose fair value inputs are unobservable and reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date. The adoption of this guidance did not have a material impact on the Company's financial statements.

**Subsequent Events** —The Company has evaluated subsequent events from the end of the most recent fiscal year through March 29, 2011 and November 18, 2011, the dates the financial statements were available to be issued.

**2. Property and Equipment—net**

As of December 31, property and equipment, net consisted of the following (in thousands):

| | 2009 | 2010 |
|---|---|---|
| Computer equipment (1) | $ 8,333 | $10,622 |
| Computer software | 977 | 1,004 |
| Furniture and fixtures | 854 | 1,040 |
| Leasehold improvements | 565 | 678 |
| Other | 141 | 269 |
| | 10,870 | 13,613 |
| Less accumulated depreciation (2) | (4,239) | (6,503) |
| Total property and equipment—net | $ 6,631 | $ 7,110 |

(1) Includes equipment under capital lease obligations of approximately $6,121 and $6,578 as of December 31, 2009 and 2010, respectively.
(2) Includes $2,144 and $3,381 of accumulated depreciation of equipment under capital leases as of December 31, 2009 and 2010, respectively.

NOTES TO THE FINANCIAL STATEMENTS (continued)

**3. Accrued Expenses and Other Current Liabilities**

As of December 31, accrued expenses and other current liabilities consisted of the following (in thousands):

| | 2009 | 2010 |
|---|---|---|
| Accrued compensation | $1,638 | $1,988 |
| Accrued content fees | 217 | 314 |
| Unearned revenue on contracts | 605 | 627 |
| Other | 368 | 343 |
| Total | $2,828 | $3,272 |

**4. Bank Financing**

During 2009, the Company amended its existing loan and security agreement, pursuant to which the Company can borrow $1,000 under an equipment line available to be drawn upon for a period of 12 months from agreement execution. Additionally the Company can borrow under a revolving credit line of $5,000 for an extended term of 24 months from agreement execution. Borrowings under the revolving credit line can take place until June 2011. Any borrowings under the equipment line and the revolving credit line accrue interest at the greater of 4% or prime rate plus margins of 0.50% and 0.25%, respectively, and must be repaid by June 2012 and June 2011, respectively. Both the equipment line and the revolving credit line agreement contain provisions that allow the lender to accelerate repayment of the borrowing upon a material adverse change as defined in the agreement. The equipment line and the revolving credit line agreement contain certain financial performance and reporting covenants and at December 31, 2010 and 2009 the Company was in compliance with all of their covenants.

There were no borrowings on the revolving credit line as of December 31, 2010 and 2009. During 2009, the Company borrowed $412 of the equipment line, of which $103 was current and $309 was long-term at December 31, 2009. During 2010, the Company borrowed the remaining $588 balance of the equipment line. As of December 31, 2010, the Company's balance of the equipment line is $750, of which $500 is current and $250 is long-term.

**5. Income Taxes**

The provision for income taxes for the years ended December 31, 2008, 2009, and 2010, comprised the following (in thousands):

| | 2008 | 2009 | 2010 |
|---|---|---|---|
| Current: | | | |
| United States Federal | $ — | $ 9 | $ 2 |
| State | — | — | — |
| Foreign | 10 | 6 | 9 |
| Total current provision for income taxes | 10 | 15 | 11 |
| Deferred: | | | |
| United States Federal | (1,719) | 186 | (786) |
| State | (396) | 35 | (158) |
| Foreign | — | — | — |
| Total deferred provision (benefit) for income taxes | (2,115) | 221 | (944) |
| Less increase (decrease) in valuation allowance | 2,115 | (221) | 944 |
| Total provision for income taxes | $ 10 | $ 15 | $ 11 |

The income tax effects of significant temporary differences and carryforwards that give rise to deferred income tax assets and liabilities as of December 31, 2009 and 2010 are as follows (in thousands):

| | 2009 | 2010 |
|---|---|---|
| Deferred income tax assets: | | |
| Stock and other compensation expense | $ 171 | $ 334 |
| Net operating losses | 7,692 | 8,638 |
| Credit carryforwards | 135 | 136 |
| Other | 362 | 94 |
| Gross deferred tax assets | 8,360 | 9,202 |
| Valuation allowance | (7,506) | (8,450) |
| Net deferred tax assets | 854 | 752 |
| Deferred income tax liabilities: | | |
| Fixed assets | (849) | (497) |
| Other | (5) | (11) |
| Gross deferred tax liabilities | (854) | (508) |
| Subtotal | — | 244 |
| Less unrecognized tax benefit liability | — | (244) |
| Net deferred tax assets | $ — | $ — |

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows (in thousands):

| | 2008 | 2009 | 2010 |
|---|---|---|---|
| Balance—beginning of year | $ 557 | $ 41 | $— |
| Additions for tax positions of prior years | — | — | 244 |
| Reductions for tax positions of prior years | (516) | (41) | — |
| Balance—end of year | $ 41 | $— | $244 |

The tax positions at the end of 2010 were primarily related to changes in tax depreciation methods related to prior year fixed assets.

Income tax expense for the years ended December 2008, 2009, and 2010, differs from the expected income tax (benefit) expense calculated using the statutory U.S. Federal income tax rate as follows:

| | 2008 | | 2009 | | 2010 | |
|---|---|---|---|---|---|---|
| Federal income tax (benefit) expense at statutory rate | $(1,956) | 34% | $ 105 | 34% | $(1,217) | 34% |
| State and local taxes—net of federal benefit | (357) | 6 | 99 | 32 | (158) | 4 |
| Expiration of state NOLs | — | — | — | — | 135 | (4) |
| Valuation allowance | 2,115 | (37) | (221) | (71) | 944 | (26) |
| Permanent differences | 229 | (3) | 336 | 108 | 256 | (7) |
| Uncertain tax position current activity | (516) | 8 | (41) | (13) | — | — |
| Other | 495 | (8) | (263) | (85) | 51 | (1) |
| Total | $ 10 | — % | $ 15 | 5% | $ 11 | — % |

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

The Company had federal and state net operating loss carryforwards ("NOL") of approximately $21,100 and $19,800, respectively, at December 31, 2010. The Company had federal and state NOL carryforwards of approximately $18,500 and $16,800, respectively, at December 31, 2009. The NOLs will begin to expire in 2018. Due to the uncertainty as to the Company's ability to generate sufficient taxable income in the future and utilize the NOLs before they expire, the Company has recorded a valuation allowance to reduce the net deferred tax asset to zero. The Company's ability to use the operating loss carryforwards to offset the future taxable income is subject to restrictions enacted in the United States Internal Revenue Code of 1986. These restrictions limit the future use of the operating loss carryforwards if certain ownership changes described in the Internal Revenue Code occur.

**6. Information about Segment and Geographic Areas**

The Company considers operating segments to be components of the Company in which separate financial information is available that is evaluated regularly by the Company's chief operating decision maker in deciding how to allocate resources and in assessing performance. The chief operating decision maker for the Company is the Chief Executive Officer. The Chief Executive Officer reviews financial information presented on a total Company basis, accompanied by information about revenue by major service line for purposes of allocating resources and evaluating financial performance. The Company has one business activity and there are no segment managers who are held accountable for operations, operating results or plans for levels or components below the Company level. Accordingly, the Company has determined that it has a single reporting segment and operating unit structure of providing personalized Internet platforms and online entertainment services to high-speed Internet subscribers.

The following table sets forth revenue and long-lived tangible assets by geographic area:

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2008 | 2009 | 2010 |
| Revenue: | | | |
| United States | $51,210 | $59,356 | $65,180 |
| United Kingdom | 1,361 | 888 | 766 |
| Netherlands | — | 554 | 286 |
| Total revenue | $52,571 | $60,798 | $66,232 |

| | Years Ended December 31, | |
|---|---|---|
| | 2009 | 2010 |
| Long-lived tangible assets: | | |
| United States | $ 5,978 | $ 6,236 |
| Netherlands | 653 | 874 |
| Total long-lived tangible assets | $ 6,631 | $ 7,110 |

**7. Commitments and Contingencies**

**Lease Commitments** —The Company leases office space and data center space under operating lease agreements and certain equipment under capital lease agreements with interest rates ranging from 5% to 8%.

Rent expense for operating leases was approximately $944, $995, and $1,048 for 2008, 2009, and 2010, respectively.

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

Lease commitments as of December 31, 2010 can be summarized as follows (in thousands):

| Years Ending December 31 | Operating Lease Commitments |
|---|---|
| 2011 | $ 1,095 |
| 2012 | 959 |
| 2013 | 594 |
| 2014 | 472 |
| 2015 | 472 |
| Due after 5 years | 118 |
| Total lease commitments | $ 3,710 |

| Years Ending December 31 | Capital Lease Commitments |
|---|---|
| 2011 | $ 1,563 |
| 2012 | 665 |
| 2013 | 330 |
| Gross lease commitment | 2,558 |
| Less interest | (127) |
| Net lease commitments | $ 2,431 |

**Contract Commitments** —The Company is obligated to make payments under various contracts with vendors and other business partners, principally for revenue share and content arrangements. Contract commitments as of December 31, 2010 can be summarized as follows (in thousands):

| Years Ending December 31 | Contract Commitments |
|---|---|
| 2011 | $ 5,422 |
| 2012 | 3,451 |
| 2013 | 3,275 |
| 2014 | 275 |
| Total contract commitments | $ 12,423 |

**Litigation** —From time to time, the Company is a party to legal actions. In the opinion of management, the outcome of these matters will not have a material impact on the financial statements of the Company.

**8. Equity**

**Common Stock** —On July 28, 2008, the Company's board of directors and stockholders approved the First Certificate of Amendment to the Fourth Amended and Restated Certificate of Incorporation. The total number of common shares that the Company is authorized to issue is 60 million with a par value of $0.01 per share.

**Restricted Stock** —On April 19, 2007, the Company completed a restricted stock sale of 540,000 shares of common stock to its chief financial officer pursuant to the terms of the related stock purchase agreement, which included a repurchase right held by the Company. The chief financial officer tendered cash of $250, or $0.46 per share, to the Company in return for the shares of restricted common stock. During 2008, 225,000 restricted shares were vested, and the chief financial officer tendered his resignation effective December 31, 2008. In 2009, the Company repurchased 315,000 unvested and 225,000 vested shares at a price of $0.46 per share.

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

**Treasury Stock** —In August of 2009, the Company repurchased 264,000 common shares from executives of the Company at $1.00 per share. In September of 2010, the Company repurchased 150,000 common shares from an executive of the Company at $1.34 per share.

***Convertible Preferred Stock***

*Conversion* —Each share of Series A, A-1, B, and C preferred stock is convertible at the option of the holder at any time into common stock. The conversion rate is the quotient obtained by dividing the original issue price of the Series A, A-1, B, or C by the conversion price. Subsequent to the First Certificate of Amendment to the Fourth Amended and Restated Certificate of Incorporation on July 31, 2008, the conversion price has been adjusted to effect a conversion of one preferred share into three common shares. The conversion price is subject to adjustment as set forth in the restated certificate of incorporation for certain dilutive issuances, splits, and combinations, as therein defined. Conversion is automatic upon either the consent of the holders or 66% of the outstanding shares of preferred stock or the effective date of a firm commitment underwritten public offering of the Company's common stock in which the post-offering valuation on a fully diluted basis is at least $150 million and the proceeds are not less than $25 million.

*Voting* —Each share of A, A-1, B, and C preferred stock has voting rights, on an as-if-converted basis, identical to common stock and votes together as one class with the common stock.

*Dividends* —The holders of shares of Series C preferred stock shall be entitled to receive dividends, out of any assets legally available therefore, prior and in preference to any declaration or payment of any dividend on the Series A preferred stock, Series A-1 preferred stock, Series B preferred stock, and common stock of the Company. The holders of shares of Series B preferred stock shall be entitled to receive dividends, out of any assets legally available therefore, prior and in preference to any declaration or payment of any dividend on the Series A preferred stock, Series A-1 preferred stock, and common stock of the Company. The holders of shares of Series A preferred stock and Series A-1 preferred stock shall be entitled to receive dividends, on a pari passu basis, out of any assets legally available therefore, prior and in preference to any declaration or payment of any dividend on the common stock of the Company. Dividends are payable when, as, and if declared by the board of directors. Such dividends are not cumulative.

*Redemption* —The Series A, A-1, B and C preferred stock is not redeemable at the option of the holder.

*Liquidation* —In the event of any liquidation, dissolution, or winding down of the Company, either voluntary or involuntary, including a merger, acquisition, or sale of assets where the beneficial owners of the Company's common stock and convertible preferred stock own less than 50% of the resulting voting power ("Liquidation Event"), the holders of shares of Series C preferred stock shall be entitled to receive, prior and in preference to any distribution of the proceeds of such Liquidation Event to the holders of Series A, A-1, and B preferred stock and common stock by reason of their ownership thereof, an amount equal to 100% per share of the original issue price for each share of Series C preferred stock then held by them, plus declared but unpaid dividends on such share. Upon completion of the distribution required to Series C stockholders, the holders of shares of Series B preferred stock shall be entitled to receive, prior and in preference to any distribution of the proceeds of such Liquidation Event to the holders of Series A and A-1 preferred stock and common stock by reason of their ownership thereof, an amount equal to 100% per share of the original issue price for each share of Series B preferred stock then held by them, plus declared but unpaid dividends on such share. Upon completion of the distribution required to Series B stockholders, the Series A and A-1 stockholders are entitled to receive 100% per share of the original issue price, plus any declared but unpaid dividends prior and in preference to any distribution to the common stockholders. Upon completion of the distribution required to Series B, A, and A-1 stockholders, the holders of common stock are entitled to receive an amount per share equal to declared but unpaid dividends. After payment of the above distributions, the remaining assets of the Company shall be

distributed to the common and Series C, B, A, and A-1 stockholders pro rata based on the number of common shares held by each (on an as-if-converted basis).

**9. Stock-based Compensation**

**Stock Option Re-Pricings** —In June 2009, the Company's Board of Directors, with input from management, determined that the fair value of the Company's common stock had declined to $1.26 per share based on an independent valuation performed for the Company. In connection with this decline, option grants totaling 2,217,694 options, during the period from July 31, 2007 through September 16, 2008 with an exercise price above $1.99 were amended to have an exercise price of $1.26. The vesting commencement date and the length of the vesting period for each of these grants were not altered.

In February 2008, the Company's board of directors, with input from management, determined that the fair value of the Company's common stock had declined to $2.00 per share based on an independent valuation performed for the Company. In connection with this decline, the board of directors approved the following:

*Non-Executive Level Employees* —All options grants during 2007 with exercise prices above $2.00 were amended to reflect an exercise price of $2.00. During the year ended December 31, 2007, the Company had granted 587,694 of stock options with per-share exercise prices of $2.47 that were re-priced. The vesting commencement date and the length of the vesting period for each of these grants were not changed.

*Executive Level Employees* —All executive level employees chose to re-price their 2007 option grants to a $2.00 exercise price and to reset their vesting commencement date to the re-pricing date. During the year ended December 31, 2007, the Company had granted 1,395,000 of stock options to executive-level employees with per-share exercise prices of $2.47 that were re-priced. No executive level employees chose to retain their original options at $2.47 with the original vesting commencement date.

These modifications resulted in additional employee stock-based compensation expense of $179 and $387 for the years ended December 31, 2008 and 2009, respectively, to be expensed over the remaining vesting period of these grants.

The Company recorded $668, $901, and $868 of stock-based compensation for the years ended December 31, 2008, 2009, and 2010, respectively. No income tax deduction is allowed for incentive stock options. Accordingly, no deferred income tax asset is recorded for the expense related to these options.

**Stock Option Plans** —The Company has adopted three stock option plans, which authorize the grant of up to 11,679,717 options to officers and other key employees to purchase the Company's common stock, subject to the terms of the plans. The options generally vest ratably over four years. The options are generally exercisable after the date of grant, and typically expire 10 years from their respective grant dates or earlier if employment is terminated. In connection with the early exercise of stock options, the Company has the right, but not the obligation, to repurchase shares of common stock upon termination of the individual's service to the Company at the original price per share. During the years ended December 31, 2009 and 2010 there were no early exercises.

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

A summary of the status of options granted under all option plans is presented below:

| | Number of Stock Options | Weighted Average Exercise Price |
|---|---|---|
| Outstanding—January 1, 2010 | 8,855,206 | $ 0.62 |
| Granted | 2,043,966 | 1.37 |
| Exercised | (138,415) | 0.21 |
| Forfeited | (969,461) | 1.80 |
| Outstanding—December 31, 2010 | 9,791,296 | 0.67 |
| Expected to vest—December 31, 2010 | 9,274,589 | 0.66 |
| Vested and exercisable—December 31, 2010 | 7,361,452 | 0.46 |

The weighted-average remaining contractual life of the options outstanding and expected to vest were 6.2, 5.4, and 5.2 years as of December 31, 2008, 2009, and 2010, respectively. The aggregate intrinsic value for outstanding, expected to vest, and vested and exercisable shares were $7,494, $7,268, and $7,234, respectively, as of December 31, 2010. The total intrinsic value of options exercised during the year ended December 31, 2010, was $170. The aggregate intrinsic value represents the total pre-tax intrinsic value (the difference between the Company's estimated stock value and the exercise price, multiplied by the number of in-the-money stock options) had all stock option holders exercised their stock options on the balance sheet date. This amount will change based on the fair market value of the Company's stock.

The Company determines the fair value of its stock-based awards on the date of grant using the Black-Scholes option-pricing model. The determination of fair value using the Black-Scholes model requires a number of complex and subjective variables. One key input into the model is the estimated fair value of the Company's common stock on the date of grant.

Other key variables in the Black-Scholes option-pricing model include the expected volatility of the Company's common stock price, the expected term of the award, the risk-free interest rate, and the expected dividend yield. The Company determined that, as a private company, it was not practicable to estimate the volatility of the Company's stock price, based on the low frequency of price observations. Therefore, expected volatilities were based on a volatility factor computed based upon an external peer group analysis of publicly traded companies in 2010. The expected term for options granted prior to January 1, 2006, is 10 years. For options granted subsequent to December 31, 2005, the expected term is 6.25 years. The expected term was estimated by using the actual contractual term of the awards and the length of time for the employees to exercise the awards. The risk-free interest rate was based on the implied yield available at the time the options were granted on U.S. Treasury zero coupon issues with a remaining term equal to the expected term of the option. The expected dividend yield is 0% based upon the Company's historical practice of electing not to declare or pay cash dividends on its common stock. In addition, under ASC 718, the Company is required to estimate forfeitures of unvested awards when recognizing compensation expense. An 8% and 11% annual forfeiture rate was used for the stock-based compensation expense recorded during the year ended December 31, 2010 for executives and non executives, respectively.

In connection with the preparation of the Company's financial statements for the year ended December 31, 2010, the Company engaged Anvil Advisors LLC ("Anvil"), an unrelated valuation specialist as defined under the American Institute of Certified Public Accountants Practice Guide, Valuation of Privately-Held Company Equity Securities Issued as Compensation, to assist Company management in estimating the fair value of its common stock in connection with options granted during that period. In valuation reports dated May 2010

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

and November 2010, Anvil retrospectively valued the Company's common stock. Similar valuation techniques were used in estimating the fair value of the Company's common stock in connection with options granted during 2008 and 2009.

In the 2008, 2009 and 2010 valuations, Anvil estimated the enterprise value of the Company on each applicable valuation date using a combination of the discounted future cash flow method, the market multiple method and the comparable transaction method and then computed a weighted average of the applicable combination based on the likelihood of an initial public offering. During the periods where an initial public offering was thought to be likely, the market multiple method was given greater weight. Subsequent to the withdrawal of a registration statement for an initial public offering in October 2008, the discounted cash flow method was given greater weight. In 2010, because the Company did not have sufficient profitability, the discounted future cash flow method was not used. Anvil then used the company security valuation method to allocate the enterprise value of the Company among its various classes of equity to derive a fully marketable value per share for the common stock. Anvil applied an appropriate discount for lack of marketability to this fully marketable value to arrive at the fair value per share of common stock.

The difference between the exercise price of the options and the Company's estimate of the fair value has been factored into the compensation expense.

The following is a summary of the valuation dates and corresponding common stock fair values during 2010:

| Valuation Date | Common Stock Fair Value Per Share |
|---|---|
| March 31, 2010 | $ 1.34 |
| September 30, 2010 | 1.44 |

Assumptions for the 2008 and 2009 common stock valuations were based upon the Company's circumstances and market conditions at the time of the valuations. The following is a description of the significant assumptions used in the valuations of the Company's common stock during 2010:

*March 31, 2010 Valuation* —Market conditions continued to be poor from the December 31, 2009 valuation date through March 31, 2010. The probabilities of an initial public offering and a sale of the Company were 20% and 80%, respectively. The weightings given to the market multiple method and the comparable transaction method were 50% and 50%, respectively. The company-specific volatility was 70% and the lack-of-marketability discount was 20%.

*September 30, 2010 Valuation* —Market conditions continued to be unfavorable during the second quarter and just began to improve in the third quarter. The probabilities of an initial public offering and a sale of the Company remained at 20% and 80%, respectively. The weightings given to each method was 50%. The company-specific volatility was 70% and the lack-of-marketability discount was 20%.

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

For options granted during the years ended December 31, 2008 and 2009, the weighted-average fair value of the stock options granted, estimated on the date of the grant using the Black-Scholes option-pricing model, was $0.84 and $1.25 and used the following assumptions:

| | 2008 | 2009 |
|---|---|---|
| Expected life of options (in years) | 6.25 | 6.25 |
| Risk-free interest rate | 3.1% | 3.4% |
| Expected volatility | 54 | 52 |
| Expected dividend yield | — | — |

A summary of the option grants and assumptions used in the Black-Scholes option-pricing model to value the options during the year ended December 31, 2010, is as follows:

| Grant Date | Options Granted | Weighted-Average Fair Value | Expected Life of Options (In years) | Risk-Free Interest Rate | Expected Volatility | Expected Dividend Yield |
|---|---|---|---|---|---|---|
| February 25, 2010 | 265,750 | $ 0.59 | 6.25 | 3.09% | 49% | — % |
| May 12, 2010 | 198,966 | 0.74 | 6.25 | 2.97 | 55 | — |
| June 29, 2010 | 71,000 | 0.72 | 6.25 | 2.43 | 54 | — |
| August 10, 2010 | 381,750 | 0.71 | 6.25 | 2.14 | 54 | — |
| September 22, 2010 | 122,500 | 0.71 | 6.25 | 1.96 | 54 | — |
| November 18, 2010 | 981,000 | 0.76 | 6.25 | 2.20 | 53 | — |
| December 17, 2010 | 23,000 | 0.77 | 6.25 | 2.69 | 53 | — |
| Total grants | 2,043,966 | | | | | |

Stock option information at December 31, 2010, is as follows:

| Range of Exercise Prices | Number of Options Outstanding | Weighted-Average Exercise Price | Number of Options Vested and Exercisable | Weighted-Average Exercise Price |
|---|---|---|---|---|
| $ 0.02 | 3,418,870 | $ 0.02 | 3,418,870 | $ 0.02 |
| 0.10 | 1,561,776 | 0.10 | 1,561,776 | 0.10 |
| 0.46 | 913,106 | 0.46 | 879,124 | 0.46 |
| 1.20 | 406,500 | 1.20 | 100,426 | 1.20 |
| 1.26 | 1,654,444 | 1.26 | 1,195,496 | 1.26 |
| 1.29 | 154,250 | 1.29 | 78,212 | 1.29 |
| 1.34 | 661,250 | 1.34 | 73,617 | 1.34 |
| 1.44 | 1,004,000 | 1.44 | 36,831 | 1.44 |
| 50.00 | 17,100 | 50.00 | 17,100 | 50.00 |
| | 9,791,296 | 0.67 | 7,361,452 | 0.46 |

As of December 31, 2010, the unrecognized compensation cost related to non-vested options granted, for which vesting is probable, under the plan was approximately $2,274. This cost is expected to be recognized over a weighted-average period of 1.8 years. The total fair value of shares vested was $453, $845, and $624 during the years ended December 31, 2008, 2009, and 2010, respectively.

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

Total stock-based compensation expense included in the accompanying consolidated statements of operations for the years ended December 31, 2008, 2009, 2010 and, is as follows (in thousands):

| | 2008 | 2009 | 2010 |
|---|---|---|---|
| Research and development | $221 | $252 | $398 |
| Sales and marketing | 142 | 189 | 202 |
| General and administrative | 305 | 460 | 268 |
| Total stock-based compensation expense | $668 | $901 | $868 |

**10. Net Income (Loss) Per Common Share Data**

Basic and diluted net income (loss) per common share is presented in conformity with the two-class method required for participating securities. The Company has determined that its Series C, B, A, and A-1 convertible preferred stock represent participating securities because they participate with common stock in dividends and unallocated income. Historically, the Company has not paid dividends. The holders of the Series C, B, A, and A-1 convertible preferred stock do not have a contractual obligation to share in the losses of the Company. The Company considers its preferred stock to be participating securities and, in accordance with the two-class method, earnings allocated to preferred stock and the related number of outstanding shares of preferred stock have been excluded from the computation of basic and diluted net income (loss) per common share.

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

The table below summarizes the calculation of basic and diluted net income (loss) per share for the years ended December 31, 2008, 2009 and 2010 (in thousands, except share and per share amounts):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2008 | 2009 | 2010 |
| Net income (loss) | $ (5,764) | $ 304 | $ (3,591) |
| Less: Undistributed earnings allocated to preferred stockholders | — | (279) | — |
| Net income (loss) attributable to common stockholders | $ (5,764) | $ 25 | $ (3,591) |
| Weighted-average common shares used to compute net income (loss) per share attributable to common stockholders | 3,380,917 | 3,628,058 | 3,730,588 |
| Basic net income (loss) per share attributable to common stockholders | $ (1.70) | $ 0.01 | $ (0.96) |
| Diluted net income (loss) per share attributable to common stockholders: | | | |
| Net income (loss) | $ (5,764) | $ 25 | $ (3,591) |
| Add: Undistributed earnings allocated to preferred stockholders | — | 279 | — |
| Net income (loss) attributable to common stockholders | $ (5,764) | $ 304 | $ (3,591) |
| Number of shares used in basic calculation | 3,380,917 | 3,628,058 | 3,730,588 |
| Weighted-average effect of dilutive securities | | | |
| Add: | | | |
| Conversion of preferred stock (as-if converted basis) | — | 34,790,277 | — |
| Stock options | — | 6,167,807 | — |
| Number of shares used in diluted calculation (a) | 3,380,917 | 44,586,142 | 3,730,588 |
| Diluted net income (loss) per share attributable to common stockholders | $ (1.70) | $ 0.01 | $ (0.96) |

(a) Stock options, restricted stock shares and convertible preferred shares are not included in the calculation of diluted net loss per share for the years ended December 31, 2008 and 2010 because the Company had a net loss for each year. Accordingly, the inclusion of these equity awards would have had an antidilutive effect on the calculation of diluted loss per share.

The following equivalent shares were excluded from the calculation of diluted net income (loss) per share because their effect would have been anti-dilutive for the periods presented:

| | Year Ended December 31, | | |
|---|---|---|---|
| Antidilutive Equity Awards | 2008 | 2009 | 2010 |
| Stock options | 3,749,797 | 4,562,267 | 4,685,388 |
| Restricted stock shares | 315,000 | — | — |
| Convertible preferred shares | 34,790,277 | — | 34,790,277 |
| Total | 38,855,074 | 4,562,267 | 39,475,665 |

**NOTES TO THE FINANCIAL STATEMENTS (continued)**

**Pro Forma Net Loss Per Share (Unaudited)** —The shares used in computing pro forma net loss per share for the year ended December 31, 2010 have been adjusted to assume the conversion of preferred to common shares occurred at the beginning of the fiscal year (in thousands, except share and per share amounts):

| | Year Ended December 31, 2010 |
|---|---|
| Net loss attributable to common stockholders | $ (3,591) |
| Weighted average shares used to compute net loss per share attributable to common stockholders | 3,730,588 |
| Effect of pro forma adjustments: | |
| Conversion of preferred to common shares | 34,790,277 |
| Pro forma weighted average shares used to compute net loss per share attributable to common stockholders —basic and diluted (unaudited) | 38,520,865 |
| Pro forma net loss per share attributable to common stockholders —basic and diluted (unaudited) | $ (0.09) |

**11. EMPLOYEE BENEFIT PLAN**

The Company sponsors a 401(k) profit sharing plan that covers substantially all employees. Under the plan, eligible employees are permitted to contribute a portion of gross compensation not to exceed standard limitations provided by the Internal Revenue Service. The Company maintains the right to match employee contributions; however, no matching contributions were made during the years ended December 31, 2008, 2009, or 2010.

**12. OTHER OPERATING EXPENSES**

During 2008, the Company completed relocating its data center operations from Buffalo, New York, to Atlanta, Georgia. The total cost of this project included the following (in thousands):

| | |
|---|---|
| Moving expenses and consulting fees | $ 697 |
| Accelerated depreciation on old data center fixed assets | 424 |
| Total other operating expense | $1,121 |

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## SYNACOR, INC.

## CONDENSED BALANCE SHEETS—UNAUDITED

## AS OF DECEMBER 31, 2010 AND SEPTEMBER 30, 2011
## (In thousands except for share and per share data)

| | December 31, 2010 | September 30, 2011 | Pro Forma Stockholders' Equity as of September 30, 2011 (note 1) |
|---|---|---|---|
| **ASSETS** | | | |
| CURRENT ASSETS: | | | |
| Cash and cash equivalents | $ 5,412 | $ 7,253 | |
| Accounts receivable—net of allowance of $19 and $16 | 9,654 | 12,004 | |
| Prepaid expenses and other current assets | 1,536 | 1,451 | |
| Total current assets | 16,602 | 20,708 | |
| PROPERTY AND EQUIPMENT—Net | 7,110 | 7,377 | |
| OTHER LONG-TERM ASSETS | 615 | 716 | |
| TOTAL ASSETS | $ 24,327 | $ 28,801 | |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | | |
| CURRENT LIABILITIES: | | | |
| Accounts payable | $ 7,612 | $ 8,319 | |
| Accrued expenses and other current liabilities | 3,272 | 4,081 | |
| Current portion of bank financing | 500 | 375 | |
| Current portion of capital lease obligations | 1,478 | 1,167 | |
| Total current liabilities | 12,862 | 13,942 | |
| LONG-TERM PORTION OF BANK FINANCING | 250 | — | |
| LONG-TERM PORTION OF CAPITAL LEASE OBLIGATIONS | 953 | 1,501 | |
| OTHER LONG-TERM LIABILITIES | 106 | 80 | |
| Total liabilities | 14,171 | 15,523 | |
| COMMITMENTS AND CONTINGENCIES (Note 6) | | | |
| STOCKHOLDERS' EQUITY: | | | |
| Common stock, $0.01 par value—authorized, 60,000,000 shares; 5,839,102 issued and 5,200,102 outstanding at September 30, 2011 and 3,808,308 issued and 3,169,308 shares outstanding at December 31, 2010 | 38 | 58 | 406 |
| Convertible preferred stock (liquidation value of $5,240 at September 30, 2011), $0.01 par value—authorized Series A, 5,709,638 shares; issued and outstanding, 5,548,508 shares at September 30, 2011 and December 31, 2010 | 5,077 | 5,077 | — |
| Convertible preferred stock (liquidation value of $750 at September 30, 2011), $0.01 par value—authorized Series A-1, 570,344 shares; issued and outstanding, 570,344 shares at September 30, 2011 and December 31, 2010 | 730 | 730 | — |
| Convertible preferred stock (liquidation value of $5,475 at September 30, 2011), $0.01 par value—authorized Series B, 3,500,000 shares; issued and outstanding, 2,737,500 shares at September 30, 2011 and December 31, 2010 | 5,401 | 5,401 | — |
| Convertible preferred stock (liquidation value of $17,374 at September 30, 2011), $0.01 par value—authorized Series C, 2,740,407 shares; issued and outstanding, 2,740,407 shares at September 30, 2011 and December 31, 2010 | 17,224 | 17,224 | — |
| Treasury stock—at cost, 639,000 shares at September 30, 2011 and December 31, 2010 | (569) | (569) | (569) |
| Additional paid-in capital | 44,340 | 45,254 | 73,338 |
| Accumulated deficit | (62,085) | (59,897) | (59,897) |
| Total stockholders' equity | 10,156 | 13,278 | 13,278 |
| TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY | $ 24,327 | $ 28,801 | $ 28,801 |

The accompanying notes are an integral part of these condensed financial statements.

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**SYNACOR, INC.**

**CONDENSED STATEMENTS OF OPERATIONS—UNAUDITED**

**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2010 AND 2011**
**(In thousands except for share and per share data)**

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2010 | 2011 |
| REVENUE | $ 48,041 | $ 62,115 |
| COSTS AND OPERATING EXPENSES: | | |
| Cost of revenue (exclusive of depreciation shown separately below) | 26,907 | 32,872 |
| Research and development (exclusive of depreciation shown separately below) | 13,710 | 14,270 |
| Sales and marketing | 4,597 | 5,811 |
| General and administrative (exclusive of depreciation shown separately below) | 3,941 | 4,887 |
| Depreciation | 1,884 | 1,950 |
| Total costs and operating expenses | 51,039 | 59,790 |
| INCOME (LOSS) FROM OPERATIONS | (2,998) | 2,325 |
| OTHER EXPENSE | 17 | 18 |
| INTEREST EXPENSE | 189 | 64 |
| INCOME (LOSS) BEFORE INCOME TAXES | (3,204) | 2,243 |
| PROVISION FOR INCOME TAXES | 18 | 55 |
| NET INCOME (LOSS) | $ (3,222) | $ 2,188 |
| NET INCOME (LOSS) ATTRIBUTABLE TO COMMON STOCKHOLDERS | $ (3,222) | $ 285 |
| NET INCOME (LOSS) PER SHARE ATTRIBUTABLE TO COMMON STOCKHOLDERS: | | |
| Basic | $ (0.87) | $ 0.07 |
| Diluted | $ (0.87) | $ 0.05 |
| WEIGHTED AVERAGE SHARES USED TO COMPUTE NET INCOME (LOSS) PER SHARE ATTRIBUTABLE TO COMMON STOCKHOLDERS: | | |
| Basic | 3,711,130 | 4,013,478 |
| Diluted | 3,711,130 | 44,866,723 |
| PRO FORMA NET INCOME PER SHARE ATTRIBUTABLE TO COMMON STOCKHOLDERS (NOTE 1): | | |
| Basic | | $ 0.06 |
| Diluted | | $ 0.05 |
| PRO FORMA WEIGHTED AVERAGE SHARES USED TO COMPUTE NET INCOME PER SHARE ATTRIBUTABLE TO COMMON STOCKHOLDERS (NOTE 1): | | |
| Basic | | 38,803,755 |
| Diluted | | 44,866,723 |

The accompanying notes are an integral part of these condensed financial statements.

**SYNACOR, INC.**

**CONDENSED STATEMENTS OF CASH FLOWS—UNAUDITED**

**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2010 AND 2011**
**(In thousands)**

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2010 | 2011 |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Net income (loss) | $ (3,222) | $ 2,188 |
| Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities: | | |
| Depreciation | 1,884 | 1,950 |
| Stock-based compensation expense | 605 | 640 |
| Loss on disposal of property and equipment | 3 | 10 |
| Change in assets and liabilities: | | |
| Accounts receivable, net | 219 | (2,350) |
| Prepaid expenses and other current assets | (442) | 121 |
| Other long-term assets | (235) | (38) |
| Accounts payable | (1,078) | 707 |
| Accrued expenses and other current liabilities | 130 | 809 |
| Other long-term liabilities | (162) | (26) |
| Net cash provided by (used in) operating activities | (2,298) | 4,011 |
| CASH FLOWS FROM INVESTING ACTIVITIES—Purchases of property and equipment | (1,279) | (1,478) |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Borrowings on bank financing | 588 | |
| Proceeds from sale/leaseback | | 794 |
| Repayment on bank financing | (125) | (375) |
| Repayments on capital lease obligations | (1,700) | (1,400) |
| Proceeds from exercise of common stock options | 26 | 289 |
| Net cash used in financing activities | (1,211) | (692) |
| NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS | (4,788) | 1,841 |
| CASH AND CASH EQUIVALENTS—Beginning of year | 10,462 | 5,412 |
| CASH AND CASH EQUIVALENTS—End of period | $ 5,674 | $ 7,253 |
| SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION: | | |
| Cash paid for interest | $ 189 | $ 64 |
| Non cash financing and investing activity—property and equipment acquired under capital lease obligations and bank financing | $ 1,698 | $ 843 |

The accompanying notes are an integral part of these condensed financial statements.

**SYNACOR, INC.**

**NOTES TO THE CONDENSED FINANCIAL STATEMENTS—UNAUDITED**

**AS OF DECEMBER 31, 2010 AND SEPTEMBER 30, 2011, AND**
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2010 AND 2011**
**(In thousands except for share and per share data)**

**1. The Company and Summary of Significant Accounting Policies**

Synacor, Inc. (the "Company") is a leading provider of authentication and aggregation solutions for delivery of online content and services. The Company delivers solutions as a set of services through its hosted and managed platform, enabling cable and telecom service providers and consumer electronics manufacturers to provide the online content and services that their consumers increasingly demand. The Company's platform allows its customers to package a wide array of online content and services with their high-speed Internet, communications, television and other offerings. Synacor's customers offer the Company's services under their own brands on Internet-enabled devices such as PCs, tablets, smartphones and connected TVs.

**Basis of Presentation** —The accompanying interim condensed financial statements are unaudited and have been prepared by the Company's management in accordance with accounting principles generally accepted in the United States of America ("GAAP"). In the opinion of management, all significant adjustments, which include all normal recurring adjustments, considered necessary for the fair presentation of the unaudited condensed financial statements have been included, and the unaudited condensed financial statements present fairly the financial position and results of operations for the interim periods presented. These unaudited condensed financial statements should be read in conjunction with the audited financial statements and related footnotes of the Company included elsewhere in this prospectus. Results of operations and cash flows for the interim period are not necessarily indicative of future results.

**Accounting Estimates** —The preparation of financial statements in conformity with GAAP in the U.S. requires management to make estimates, judgments and assumptions that affect the amounts reported and disclosed in the financial statements and the accompanying notes. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Such estimates primarily relate to unsettled transactions and events as of the date of the financial statements. Accordingly, actual results may differ from estimated amounts.

**Fair Value Measurements** —The provisions of the Financial Accounting Standards Board ("FASB") Accounting Standard Codification ("ASC") 820, *Fair Value Measurements and Disclosures* , establishes a framework for measuring the fair value in accounting principles generally accepted in the U.S. and establishes a hierarchy that categorizes and prioritizes the sources to be used to estimate fair value as follows:

*Level 1* —Level 1 inputs are defined as observable inputs such as quoted prices in active markets.

*Level 2* —Level 2 inputs include quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability (interest rates, yield curves, etc.), and inputs that are derived principally from or corroborated by observable market data by correlation or other means (market corroborated inputs).

*Level 3* —Level 3 inputs are unobservable inputs that reflect the Company's determination of assumptions that market participants would use in pricing the asset or liability. These inputs are developed based on the best information available, including the Company's own data.

In accordance with ASC 820, included within the Company's cash and cash equivalents at September 30, 2011 are $1,294 of money market funds that are classified as Level 1 financial assets. The fair value of cash and

**NOTES TO THE CONDENSED FINANCIAL STATEMENTS—UNAUDITED (continued)**

cash equivalents are primarily composed of the Company's investments in money market instruments with original maturities of three months or less. The Company's cash and cash equivalent balances excluded above are composed of cash, certificates of deposits with original maturities of one month or less, and overnight investments.

The estimated fair value of the bank financing liabilities and capital lease obligations approximate their carrying value.

**Pro Forma Stockholder's Equity and Pro Forma Net Income Per Share** —If an initial public offering results in a post-offering valuation of the Company's common stock on a fully diluted basis of at least $150,000 and the proceeds are not less than $25,000, all 11,596,759 shares of convertible preferred stock will be mandatorily converted into shares of common stock on a 3:1 ratio, resulting in a total of 34,790,277 common shares. The pro forma stockholder's equity as of September 30, 2011 and the pro forma net income per common share data for the nine months ended September 30, 2011 have been prepared assuming that the conversion of preferred stock occurred on January 1, 2011. Refer to Note 8, *Net Income (Loss) Per Common Share Data* , for disclosure of the calculation of pro forma net income per share.

**Recently Issued Accounting Standards** —In the normal course of business, management evaluates all new accounting pronouncements issued by the Financial Accounting Standards Board, Securities and Exchange Commission, Emerging Issues Task Force, American Institute of Certified Public Accountants or other authoritative accounting bodies to determine the potential impact they may have on the Company's Financial Statements. Based upon this review, except as noted below, management does not expect any of the recently issued accounting pronouncements, which have not already been adopted, to have a material impact on the Company's Financial Statements.

In May 2011, the FASB issued guidance that establishes a global standard for applying fair value measurement. In addition to a few updates to the measurement guidance it includes enhanced disclosure requirements. The most significant change for companies reporting under GAAP is an expansion of the disclosures required for Level 3 measurements; that is, measurements based on unobservable inputs, such as a company's own data. This update is effective for the Company beginning in fiscal year 2012. The adoption of this guidance is not expected to have a material impact on the Company's financial statements.

**Subsequent Events** —The Company has evaluated subsequent events from September 30, 2011 through November 18, 2011, the date the financial statements were available to be issued.

**2. Property and Equipment—Net**

As of September 30, 2011, property and equipment, net consisted of the following (in thousands):

| | 2011 |
|---|---|
| Computer equipment (1) | $12,289 |
| Computer software | 1,376 |
| Furniture and fixtures | 1,047 |
| Leasehold improvements | 689 |
| Other | 172 |
| | 15,573 |
| Less accumulated depreciation (2) | (8,196) |
| Total property and equipment—net | $ 7,377 |

(1) Includes equipment under capital lease obligations of approximately $5,569 as of September 30, 2011.
(2) Includes $2,028 of accumulated depreciation of equipment under capital leases as of September 30, 2011.

NOTES TO THE CONDENSED FINANCIAL STATEMENTS—UNAUDITED (continued)

**3. Accrued Expenses and Other Current Liabilities**

As of September 30, 2011, accrued expenses and other current liabilities consisted of the following (in thousands):

| | 2011 |
|---|---|
| Accrued compensation | $2,451 |
| Accrued content fees | 607 |
| Unearned revenue on contracts | 241 |
| Other | 782 |
| Total | $4,081 |

**4. Bank Financing**

In July 2011, the Company amended its existing loan and security agreement, pursuant to which the Company can refinance its existing term loan with a new term loan of $3,000. The ability to refinance can take place until January 2012. If the existing term loan is refinanced, payments will be interest only until January 2012. Thereafter, the loan principal payment will be due in 30 equal installments ending in July 2014. Any borrowings under the equipment line accrue interest at the greater of 4% or prime rate plus margin of 0.50%. As of September 30, 2011 the term loan has not been refinanced and the outstanding balance is $375, all of which is current. At December 31, 2010 the term loan balance was $750, of which $500 was current and $250 was long-term.

Additionally, the July 2011 amended agreement increased the Company's ability to borrow under a revolving credit line from $5,000 at December 31, 2010 to $6,000 for an extended term of 24 months from agreement execution, ending July 2013. Any borrowings under the revolving credit line accrue interest at the greater of 4% or prime rate plus margin of 0.25% and must be repaid by July 2013. There were no borrowings outstanding on the revolving credit line as of September 30, 2011.

Both the term loan and the revolving credit line agreement contain provisions that allow the lender to accelerate repayment of the borrowing upon a material adverse change as defined in the agreement. The term loan and the revolving credit line agreement contain certain financial performance and reporting covenants, and at September 30, 2011, the Company was in compliance with the covenants.

**5. Information About Segment and Geographic Areas**

The Company considers operating segments to be components of the Company in which separate financial information is available that is evaluated regularly by the Company's chief operating decision maker in deciding how to allocate resources and in assessing performance. The chief operating decision maker for the Company is the Chief Executive Officer. The Chief Executive Officer reviews financial information presented on a total Company basis, accompanied by information about revenue by major service line for purposes of allocating resources and evaluating financial performance. The Company has one business activity and there are no segment managers who are held accountable for operations, operating results or plans for levels or components below the Company level. Accordingly, the Company has determined that it has a single reporting segment and operating unit structure of providing personalized Internet platforms and online entertainment services to high-speed Internet subscribers.

**NOTES TO THE CONDENSED FINANCIAL STATEMENTS—UNAUDITED (continued)**

The following table sets forth revenue and long-lived tangible assets by geographic area (in thousands):

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2010 | 2011 |
| Revenue: | | |
| United States | $47,074 | $61,270 |
| United Kingdom | 687 | 845 |
| Netherlands | 280 | — |
| Total revenue | $48,041 | $62,115 |

| | September 30, 2011 |
|---|---|
| Long-lived tangible assets: | |
| United States | $ 6,693 |
| Netherlands | 684 |
| Total long-lived tangible assets | $ 7,377 |

**6. Commitments and Contingencies**

From time to time, the Company is a party to legal actions. In the opinion of management, the outcome of these matters will not have a material impact on the financial statements of the Company.

**7. Stock-based Compensation**

The Company recorded stock-based compensation expense of $605 and $640 for the nine months ended September 30, 2010 and 2011, respectively. No income tax deduction is allowed for incentive stock options. Accordingly, no deferred income tax asset is recorded for the expense related to these options.

Total stock-based compensation expense included in the accompanying condensed statements of operations for the nine months ended September 30, 2010 and 2011, is as follows (in thousands):

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2010 | 2011 |
| Research and development | $278 | $205 |
| Sales and marketing | 140 | 141 |
| General and administrative | 187 | 294 |
| Total stock-based compensation expense | $605 | $640 |

**Stock Option Plans** —The Company has adopted three stock option plans, which authorize the grant of up to 14,340,717 options to officers and other key employees to purchase the Company's common stock, subject to the terms of the plans. The options generally vest ratably over four years. The options are generally exercisable after the date of grant, and typically expire 10 years from their respective grant dates or earlier if employment is terminated. In connection with the early exercise of stock options, the Company has the right, but not the obligation, to repurchase shares of common stock upon termination of the individual's service to the Company at the original price per share. During the nine months ended September 30, 2011 there were no early exercises.

**NOTES TO THE CONDENSED FINANCIAL STATEMENTS—UNAUDITED (continued)**

A summary of the status of options granted under all option plans is presented below:

| | Number of Stock Options | Weighted Average Exercise Price |
|---|---|---|
| Outstanding—January 1, 2011 | 9,791,296 | $ 0.67 |
| Granted | 2,621,350 | 1.65 |
| Exercised | (2,030,795) | 0.14 |
| Forfeited | (452,158) | 1.23 |
| Outstanding—September 30, 2011 | 9,929,693 | 0.93 |
| Expected to vest—September 30, 2011 | 9,403,390 | 0.90 |
| Vested and exercisable—September 30, 2011 | 5,669,166 | 0.47 |

The weighted-average remaining contractual life of the options outstanding and expected to vest were 5.2 and 6.3 years as of December 31, 2010 and September 30, 2011, respectively. The aggregate intrinsic value for outstanding, expected to vest, and vested and exercisable shares were $9,100, $8,949, and $6,879, respectively, as of September 30, 2011. The total intrinsic value of options exercised during the nine months ended September 30, 2011, was $3,463. The aggregate intrinsic value represents the total pre-tax intrinsic value (the difference between the Company's estimated stock value and the exercise price, multiplied by the number of in-the-money stock options) had all stock option holders exercised their stock options on the balance sheet date. This amount will change based on the fair market value of the Company's stock.

The Company uses the Black-Scholes-Merton option-pricing model to determine the fair value of stock options. The determination of the grant date fair value of options using an option-pricing model is affected by our estimated common stock fair value as well as assumptions regarding a number of other complex and subjective variables. These variables include the fair value of our common stock, our expected stock price volatility over the expected term of the options, stock option exercise and cancellation behaviors, risk-free interest rates, and expected dividends, which are estimated as follows:

- *Fair Value of Common Stock* —Because the Company's stock has not been publicly traded, it must estimate the fair value of common stock.
- *Expected Term* —The expected term represents the period of time the stock options are expected to be outstanding and is based on the "simplified method" allowed under SEC guidance. The Company uses the "simplified method" due to the lack of sufficient historical exercise data to provide a reasonable basis upon which to otherwise estimate the expected life of the stock options.
- *Volatility* —Since the Company does not have a trading history for its common stock, the expected stock price volatility was estimated by taking the average historic price volatility for publicly-traded options of comparable industry peers similar in size, stage of life cycle and financial leverage, based on daily price observations over a period equivalent to the expected term of the stock option grants. The Company did not rely on implied volatilities of traded options in its industry peers' common stock because the volume of activity was relatively low. The Company intends to continue to consistently apply this process using the same or similar public companies until a sufficient amount of historical information regarding the volatility of its common stock share price becomes available, or unless circumstances change such that the identified companies are no longer similar, in which case, more suitable companies whose share prices are publicly available would be utilized in the calculation.

**NOTES TO THE CONDENSED FINANCIAL STATEMENTS—UNAUDITED (continued)**

- *Risk-Free Interest Rate* —The risk-free interest rate is based on the yields of U.S. Treasury securities with maturities similar to the expected term of the options for each option group.

- *Dividend Yield* —The expected dividend yield is 0% based upon the Company's historical practice of electing not to declare or pay cash dividends on its common stock.

In addition, the Company is required to estimate the expected forfeiture rate and only recognize expense for those shares expected to vest. The forfeiture rate is estimated based on historical experience. To the extent the actual forfeiture rate is different from the estimate, stock-based compensation expense is adjusted accordingly.

In connection with the preparation of the Company's financial statements, the Company engaged Anvil Advisors LLC ("Anvil"), an unrelated valuation specialist as defined under the American Institute of Certified Public Accountants Practice Guide, *Valuation of Privately-Held Company Equity Securities Issued as Compensation* , to assist Company management in estimating the fair value of its common stock in connection with options granted. In the valuation report dated April 2011, Anvil retrospectively valued the Company's common stock. In the 2011 valuation, the Anvil estimated the enterprise value of the Company on each applicable valuation date using the market multiple method and the comparable transaction method and then computed a weighted average of the applicable combination based on the likelihood of an initial public offering. Anvil then used the company security valuation method to allocate the enterprise value of the Company among its various classes of equity to derive a fully marketable value per share for the common stock. Anvil applied an appropriate discount for lack of marketability to this fully marketable value to arrive at the fair value per share of common stock.

The following is a summary of the valuation dates and corresponding common stock fair values during 2011:

| | Common Stock |
|---|---|
| **Valuation Date** | **Fair Value Per Share** |
| March 31, 2011 | $ 1.66 |
| September 30, 2011 | 1.85 |

The following is a description of the significant assumptions used in the valuations of the Company's common stock during 2011:

*March 31, 2011 Valuation* —The US economy and financial market conditions continued to improve from the September 30, 2010 valuation date through March 31, 2011. The probabilities of an initial public offering and a sale of the Company were 20% and 80%, respectively. The weightings given to the market multiple method and the comparable transaction method were 50% and 50%, respectively. The company-specific volatility was 70% and the lack-of-marketability discount was 20%.

*September 30, 2011 Valuation* —The US economy and financial market conditions were difficult from March 31, 2011 to September 30, 2011, however the Company's business continued to grow. The probabilities of an initial public offering and a sale of the Company were 20% and 80%, respectively. The weightings given to the market multiple method and the comparable transaction method were 50% and 50%, respectively. The company-specific volatility was 70% and the lack-of-marketability discount was 20%.

**NOTES TO THE CONDENSED FINANCIAL STATEMENTS—UNAUDITED (continued)**

For options granted during the year ended December 31, 2010, the weighted-average fair value of the stock options granted, estimated on the date of the grant using the Black-Scholes option-pricing model was $0.72 and used the following assumptions:

| | |
|---|---|
| Expected life of options (in years) | 6.25 |
| Risk-free interest rate | 2.4% |
| Expected volatility | 53% |
| Expected dividend yield | — |

A summary of the option grants and assumptions used in the Black-Scholes option-pricing model to value the options during the period ended September 30, 2011, is as follows:

| Grant Date | Options Granted | Weighted-Average Fair Value | Expected Life of Options (In years) | Risk-Free Interest Rate | Expected Volatility | Expected Dividend Yield |
|---|---|---|---|---|---|---|
| February 3, 2011 | 31,000 | $ 0.75 | 6.25 | 2.92% | 50% | — % |
| March 16, 2011 | 114,750 | 0.73 | 6.25 | 2.56 | 50 | — |
| May 5, 2011 | 9,000 | 0.84 | 6.25 | 2.54 | 50 | — |
| June 16, 2011 | 112,000 | 0.83 | 6.25 | 2.22 | 50 | — |
| August 16, 2011 | 2,354,600 | 0.83 | 6.25 | 1.54 | 51 | — |
| Total grants | 2,621,350 | | | | | |

Stock option information at September 30, 2011, is as follows:

| Exercise Prices | Number of Options Outstanding | Weighted-Average Exercise Price | Number of Options Vested and Exercisable | Weighted-Average Exercise Price |
|---|---|---|---|---|
| $0.02 | 1,647,322 | $ 0.02 | 1,647,322 | $ 0.02 |
| 0.10 | 1,497,576 | 0.10 | 1,497,576 | 0.10 |
| 0.46 | 865,575 | 0.46 | 865,575 | 0.46 |
| 1.20 | 266,500 | 1.20 | 120,186 | 1.20 |
| 1.26 | 1,354,620 | 1.26 | 1,275,982 | 1.26 |
| 1.29 | 130,250 | 1.29 | 90,374 | 1.29 |
| 1.34 | 547,500 | 1.34 | 163,513 | 1.34 |
| 1.44 | 1,144,750 | 1.44 | 8,638 | 1.44 |
| 1.66 | 2,475,600 | 1.66 | — | 1.66 |
| | 9,929,693 | 0.93 | 5,669,166 | 0.47 |

As of September 30, 2011, the unrecognized compensation cost related to non-vested options granted, for which vesting is probable, under the plan was approximately $2,820. This cost is expected to be recognized over a weighted-average period of 1.8 years. The total fair value of shares vested was $549 and $373 during the nine months ended September 30, 2010 and 2011, respectively.

*Subsequent Event*

The Company granted 198,000 options in November 2011, based on its estimate of the fair value of its common stock in part on a report dated November 2011 from Anvil, which concluded that the common stock value was $1.85 per share as of September 30, 2011.

NOTES TO THE CONDENSED FINANCIAL STATEMENTS—UNAUDITED (continued)

**8. Net Income (Loss) Per Common Share Data**

Basic and diluted net income (loss) per common share is presented in conformity with the two-class method required for participating securities. The Company has determined that its Series C, B, A, and A-1 convertible preferred stock represent participating securities because they participate with common stock in dividends and unallocated income. Historically, the Company has not paid dividends. The holders of the Series C, B, A, and A-1 convertible preferred stock do not have a contractual obligation to share in the losses of the Company. The Company considers its preferred stock to be participating securities and, in accordance with the two-class method, earnings allocated to preferred stock and the related number of outstanding shares of preferred stock have been excluded from the computation of basic and diluted net income (loss) per common share.

The following table presents the calculation of basic and diluted net income (loss) per share for the nine-month periods ended September 30, 2011 and 2010 (in thousands, except share and per share amounts):

| | Nine Months Ended, September 30, | |
|---|---|---|
| | 2010 | 2011 |
| Net income (loss) | $ (3,222) | $ 2,188 |
| Less: undistributed earnings allocated to preferred stockholders | — | (1,903) |
| Net income (loss) attributable to common stockholders | $ (3,222) | $ 285 |
| Weighted-average common shares used to compute net income (loss) per share attributable to common stockholders | 3,711,130 | 4,013,478 |
| Basic net income (loss) per share attributable to common stockholders | $ (0.87) | $ 0.07 |
| Diluted net income (loss) per share attributable to common stockholders | | |
| Net income (loss) | $ (3,222) | $ 285 |
| Add: undistributed earnings allocated to preferred stockholders | — | 1,903 |
| Net income (loss) attributable to common stockholders | $ (3,222) | $ 2,188 |
| Number of shares used in basic calculation | 3,711,130 | 4,013,478 |
| Weighted-average effect of dilutive securities | | |
| Add: | | |
| Conversion of preferred stock (as-if converted basis) | — | 34,790,277 |
| Stock options | — | 6,062,968 |
| Number of shares used in diluted calculation (a) | 3,711,130 | 44,866,723 |
| Diluted net income (loss) per share attributable to common stockholders | $ (0.87) | $ 0.05 |

(a) Stock options and convertible preferred shares are not included in the calculation of diluted net loss per share for the nine-month period ended September 30, 2010 because the Company had a net loss for that period. Accordingly, the inclusion of these equity awards would have had an antidilutive effect on the calculation of diluted loss per share.

**NOTES TO THE CONDENSED FINANCIAL STATEMENTS—UNAUDITED (continued)**

The following equivalent shares were excluded from the calculation of diluted net income (loss) per share because their effect would have been anti-dilutive for the period presented:

| | Nine Months Ended September 30, | |
|---|---|---|
| | 2010 | 2011 |
| Antidilutive equity awards | | |
| Stock options | 4,743,951 | 4,109,496 |
| Convertible preferred shares | 34,790,277 | — |
| Total | 39,534,228 | 4,109,496 |

**Pro Forma Net Income Per Share** —The shares used in computing pro forma net income per share for the nine months ended September 30, 2011 have been adjusted to assume the conversion of preferred to common shares occurred at the beginning of the fiscal year (in thousands, except share and per share amounts):

| | Nine Months Ended September 30, 2011 |
|---|---|
| Net income attributable to common stockholders | $ 2,188 |
| Weighted average shares used to compute net income per share attributable to common stockholders | 4,013,478 |
| Effect of pro forma adjustments: | |
| Conversion of preferred to common shares | 34,790,277 |
| Pro forma weighted average shares used to compute basic net income per share attributable to common stockholders | 38,803,755 |
| Diluted shares: | |
| Stock options | 6,062,968 |
| Pro forma weighted average shares used to compute diluted net income per share attributable to common stockholders | 44,866,723 |
| Pro forma net income per share attributable to common stockholders: | |
| Basic | $ 0.06 |
| Diluted | $ 0.05 |

* * * * * *

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Until , (25 days after the date of this prospectus), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to unsold allotments or subscriptions.

# Shares

synacor

**Common Stock**

**P R O S P E C T U S**

## BofA Merrill Lynch
## Citigroup
## Stifel Nicolaus Weisel

**BMO Capital Markets**

**Needham & Company, LLC**

**Oppenheimer & Co.**

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## PART II

## Information Not Required in Prospectus

### Item 13. *Other Expenses of Issuance and Distribution*

The following table presents the costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the sale of common stock being registered. All amounts are estimates except the SEC registration fee, the FINRA filing fee and listing fee.

| | |
|---|---|
| SEC Registration fee (1) | $8,595 |
| FINRA filing fee | 8,000 |
| listing fee | |
| Printing and engraving expenses | * |
| Legal fees and expenses | * |
| Accounting fees and expenses | * |
| Blue sky fees and expenses | * |
| Custodian and transfer agent fees | * |
| Miscellaneous fees and expenses | * |
| Total | $ * |

* To be furnished by amendment.

(1) Of the total fee, $5,947 is being paid concurrently with the filing of this registration statement. Pursuant to Rule 457(p) under the Securities Act, the registration fee is offset by the $2,648 registration fee previously paid by the registrant, Synacor, Inc., in connection with the registration statement on Form S-1 (File No. 333-145077) initially filed by the registrant on August 2, 2007 and subsequently withdrawn.

### Item 14. *Indemnification of Directors and Officers*

Our amended and restated certificate of incorporation and amended and restated bylaws contain provisions relating to the limitation of liability and indemnification of directors and officers. The amended and restated certificate of incorporation provides that our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duty as a director, except for liability:

- for any breach of the director's duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- in respect of unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- for any transaction from which the director derives any improper personal benefit.

Our amended and restated certificate of incorporation also provides that if Delaware law is amended after the approval by our stockholders of the certificate of incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of our directors will be eliminated or limited to the fullest extent permitted by Delaware law.

Our amended and restated bylaws provide that we will indemnify our directors and officers to the fullest extent permitted by Delaware law, as it now exists or may in the future be amended, against all expenses and liabilities reasonably incurred in connection with their service for us or on our behalf. Our amended and restated bylaws provide that we shall advance the expenses incurred by a director or officer in advance of the final disposition of an action or proceeding. The bylaws also authorize us to indemnify any of our employees or agents and permit us to secure insurance on behalf of any officer, director, employee or agent for any liability arising out of his or her action in that capacity, whether or not Delaware law would otherwise permit indemnification.

Prior to the completion of this offering, we expect to enter into indemnification agreements with each of our directors and executive officers and certain other key employees, a form of which is attached as Exhibit 10.1. The form of agreement will provide that we will indemnify each of our directors, executive officers and such other key employees against any and all expenses incurred by that director, executive officer or other key employee because of his or her status as one of our directors, executive officers or other key employees, to the fullest extent permitted by Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws (except in a proceeding initiated by such person without board approval). In addition, the form agreement provides that, to the fullest extent permitted by Delaware law, we will advance all expenses incurred by our directors, executive officers and other key employees in connection with a legal proceeding.

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

Reference is made to Section 6(b) of the underwriting agreement contained in Exhibit 1.1 to this registration statement, indemnifying our directors and officers against limited liabilities. In addition, Section 1.9 of our investors' rights agreement contained in Exhibit 4.3 to this registration statement provides for indemnification of certain of our stockholders against liabilities described in our investors' rights agreement.

We maintain directors' and officers' liability insurance for our officers and directors.

**Item 15.** ***Recent Sales of Unregistered Securities***

In the three years preceding the filing of this registration statement, we have issued the following securities that were not registered under the Securities Act:

1. Since January 1, 2008, we granted stock options to purchase an aggregate of 6,850,066 shares of our common stock at exercise prices ranging from $1.20 to $2.00 per share (on a post-split basis) to executive officers, employees, consultants, directors and other service providers under our 2006 Stock Plan. On February 26, 2008 we re-priced the then-outstanding options held by employees and service providers with an exercise price of $2.466667 per share (on a post-split basis) to an exercise price of $2.00 per share (on a post-split basis). On June 10, 2009, we re-priced the then-outstanding options held by employees and service providers with exercise prices of $2.00 (on a post-split basis) and $1.99 to an exercise price of $1.26 per share.

2. Since January 1, 2008, we issued and sold an aggregate of 2,276,633 shares of our common stock for aggregate consideration of approximately $86,323.87 upon the exercise of stock options that were granted under our 2000 Stock Plan.

3. Since January 1, 2008, we issued and sold an aggregate of 265,848 shares of our common stock for aggregate consideration of approximately $285,457.51 upon the exercise of stock options and stock awards that were granted under our 2006 Stock Plan.

The sale of securities described in Items 15(1) through (3) were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(2) of the Securities Act or Rule 701 promulgated under the Securities Act. The recipients of securities in each transaction represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution and appropriate legends were affixed to the share certificates issued in these transactions.

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**Item 16.** ***Exhibits and Financial Statement Schedules***

*(a) Exhibits*

| Exhibit No. | Description |
|---|---|
| 1.1* | Form of Underwriting Agreement |
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| 3.2* | Form of Fifth Amended and Restated Certificate of Incorporation to be effective upon closing |
| 3.3 | Amended and Restated Bylaws |
| 3.4* | Form of Amended and Restated Bylaws to be effective upon closing |
| 4.1 | Reference is made to Exhibits 3.1, 3.2, 3.3 and 3.4 |
| 4.2* | Form of certificate for common stock |
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| 24.1 | Power of Attorney (contained in the signature page to this registration statement) |

* To be filed by amendment.

*(b) Financial Statement Schedules*

**Item 17.** ***Undertakings***

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

1. For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

2. For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

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## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Buffalo, State of New York, on this 18th day of November, 2011.

**SYNACOR, INC.**

By: /s/ Ronald N. Frankel
**Ronald N. Frankel**
**President and Chief Executive Officer**

## POWER OF ATTORNEY

In accordance with the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates stated. Each person whose signature appears below constitutes and appoints Ronald N. Frankel and William J. Stuart, and each of them severally, as his or her true and lawful attorney-in-fact and agent, each acting alone with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) and exhibits to the Registration Statement on Form S-1, and to any registration statement filed under Commission Rule 462, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Commission, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons on behalf of the registrant and in the capacities and on the dates indicated:

| Signature | Title | Date |
|---|---|---|
| /s/ Ronald N. Frankel<br>**Ronald N. Frankel** | President, Chief Executive Officer and Director (Principal Executive Officer) | November 18, 2011 |
| /s/ William J. Stuart<br>**William J. Stuart** | Chief Financial Officer (Principal Financial and Accounting Officer) | November 18, 2011 |
| /s/ Andrew Kau<br>**Andrew Kau** | Director | November 18, 2011 |
| /s/ Thomas W. Keaveney<br>**Thomas W. Keaveney** | Director | November 18, 2011 |
| /s/ Jordan Levy<br>**Jordan Levy** | Director | November 18, 2011 |
| /s/ Mark Morrissette<br>**Mark Morrissette** | Director | November 18, 2011 |
| /s/ Joseph Tzeng<br>**Joseph Tzeng** | Director | November 18, 2011 |

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* To be filed by amendment.

**Exhibit 3.1**

# FOURTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

# OF

# SYNACOR, INC.

**(Pursuant to Sections 242 and 245 of the**

**General Corporation Law of the State of Delaware)**

Synacor, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the " General Corporation Law "),

DOES HEREBY CERTIFY:

FIRST: That the name of this corporation is Synacor, Inc. (this " corporation ") and that this corporation was originally incorporated pursuant to the General Corporation Law on November 6, 2002 under the name Synacor, Inc. An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on November 18, 2002, a Second Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on October 6, 2003 and a Third Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on September 30, 2004.

SECOND: That the Board of Directors duly adopted resolutions proposing to amend and restate the Third Amended and Restated Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Third Amended and Restated Certificate of Incorporation of this corporation be amended and restated in its entirety as follows:

## ARTICLE I

The name of this corporation is Synacor, Inc.

## ARTICLE II

The address of the registered office of this corporation in the State of Delaware is 2711 Centerville Road, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is Corporation Service Company.

## ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

## ARTICLE IV

A. Classes of Stock . This corporation is authorized to issue two classes of stock to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares that this corporation is authorized to issue is Thirty Two Million Five Hundred Twenty Thousand Three Hundred Eighty Nine (32,520,389). The total number of shares of Common Stock authorized to be issued is Twenty Million (20,000,000), par value $0.01 per share. The total number of shares of Preferred Stock authorized to be issued is Twelve Million Five Hundred Twenty Thousand Three Hundred Eighty Nine (12,520,389), par value $0.01 per share.

B. Rights, Preferences and Restrictions of Preferred Stock . The Preferred Stock authorized by this Fourth Amended and Restated Certificate of Incorporation may be issued from time to time in one or more series. The relative rights, preferences, privileges and restrictions granted to and imposed on the Preferred Stock, which class shall consist of Five Million Seven Hundred Nine Thousand Six Hundred Thirty Eight (5,709,638) of which are designated as “ Series A Preferred Stock ”, Five Hundred Seventy Thousand Three Hundred Forty Four (570,344) of which are designated as “ Series A-1 Preferred Stock ,” Three Million Five Hundred Thousand (3,500,000) of which are designated as “ Series B Preferred Stock ,” and Two Million Seven Hundred Forty Thousand Four Hundred Seven (2,740,407) of which are designated as “ Series C Preferred Stock ,” are as set forth below in this Article IV(B).

1. Dividend Provisions .

(a) The holders of shares of Series C Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) on the Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock and Common Stock of this corporation, at a rate of $0.51 per annum for each share of Series C Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations and the like). The holders of shares of Series B Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) on the Series A Preferred Stock, Series A-1 Preferred Stock and Common Stock of this corporation at a rate of $0.16 per annum for each share of Series B Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations and the like). The holders of shares of Series A Preferred Stock and Series A-1 Preferred Stock shall be entitled to receive dividends, on a *pari passu* basis, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other

than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this corporation) on the Common Stock of this corporation at a rate of $0.09 per annum for each share of Series A Preferred Stock and $0.11 per annum for each share of Series A-1 Preferred Stock (in each case, as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations and the like). Dividends are payable when, as and if declared by the Board of Directors. Such dividends shall not be cumulative.

(b) After payment of such dividends, any additional dividends or distributions shall be distributed among all holders of Common Stock and Preferred Stock in proportion to the number of shares of Common Stock that would be held by each such holder if all shares of Preferred Stock were converted to Common Stock at the then effective conversion rate.

2. Liquidation Preference .

(a) In the event of any Liquidation Event (as defined below), either voluntary or involuntary, the holders of shares of Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of the proceeds of such Liquidation Event (the " Proceeds ") to the holders of Series A Preferred Stock, Series A-1 Preferred Stock, Series B Preferred Stock and Common Stock by reason of their ownership thereof, an amount equal to the Original Issue Price (as defined below) for each share of Series C Preferred Stock then held by them, plus declared but unpaid dividends on such share. If, upon the occurrence of such event, the Proceeds thus distributed among the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire Proceeds legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this subsection (a).

(b) In the event of any Liquidation Event (as defined below), either voluntary or involuntary, the holders of shares of Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of the Proceeds to the holders of Series A Preferred Stock, Series A-1 Preferred Stock and Common Stock by reason of their ownership thereof, an amount the Original Issue Price (as defined below) for each share of Series B Preferred Stock then held by them, plus declared but unpaid dividends on such share. If, upon the occurrence of such event, the Proceeds thus distributed among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire Proceeds legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this subsection (b).

(c) Upon completion of the distribution required by subsections (a) and (b) of this Section 2, the holders of shares of Series A Preferred Stock and Series A-1 Preferred Stock shall be entitled to receive, on a *pari passu* basis prior and in preference to any distribution of the Proceeds to the holders of Common Stock by reason of their ownership thereof, an amount equal to the Original Issue Price (as defined below) for each share of Series A

Preferred Stock then held by them and an amount equal to the Original Issue Price (as defined below) for each share of Series A-1 Preferred Stock then held by them, plus declared but unpaid dividends on each such share. If, upon the occurrence of such event, the Proceeds thus distributed among the holders of the Series A Preferred Stock and the Series A-1 Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire Proceeds legally available for distribution to the holders of the Series A Preferred Stock and the Series A-1 Preferred Stock shall be distributed ratably among the holders of the Series A Preferred Stock and the Series A-1 Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive under this subsection (c). For purposes of this Fourth Amended and Restated Certificate of Incorporation, " Original Issue Price " shall mean $1.17 per share for each share of the Series A Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock), $1.315 per share for each share of the Series A-1 Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock), $2.00 per share for each share of the Series B Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock) and $6.34 per share for each share of the Series C Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock).

(d) Upon completion of the distribution required by subsections (a), (b) and (c) of this Section 2, all of the remaining Proceeds shall be distributed among the holders of Preferred Stock and Common Stock pro rata based on the number of shares of Common Stock held by each (assuming full conversion of all such Preferred Stock).

(e) Notwithstanding the above, for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation Event, each such holder of shares of a series of Preferred Stock shall be deemed to have converted (regardless of whether such holder has actually converted) such holder's shares of such series into shares of Common Stock immediately prior to the Liquidation Event if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such series of Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of Preferred Stock into Common Stock pursuant to this subsection (e), then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Common Stock.

(f) (i) For purposes of this Section 2, a " Liquidation Event " shall include (A) the closing of the sale, transfer or other disposition of all or substantially all of this corporation's assets, (B) the consummation of the merger or consolidation of this corporation with or into another entity (except a merger or consolidation in which the holders of capital stock of this corporation immediately prior to such merger or consolidation continue to hold at least 50% of the voting power of the capital stock of this corporation or the surviving or acquiring entity), (C) the closing of the transfer (whether by merger, consolidation or otherwise), in one transaction or a series of related transactions, to a person or group of affiliated persons (other

than an underwriter of this corporation's securities), of this corporation's securities if, after such closing, such person or group of affiliated persons would hold 50% or more of the outstanding voting stock of this corporation (or the surviving or acquiring entity) or (D) a liquidation, dissolution or winding up of this corporation; provided , however , that a transaction shall not constitute a Liquidation Event if its sole purpose is to change the state of this corporation's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held this corporation's securities immediately prior to such transaction. The treatment of any particular transaction or series of related transactions as a Liquidation Event may be waived by the vote or written consent of the holders of two thirds of the outstanding Preferred Stock (voting together as a single class and on an as converted to Common Stock basis).

(ii) In any Liquidation Event, if Proceeds received by this corporation or its stockholders are other than cash, its value will be deemed its fair market value, as mutually determined by the Board of Directors and the holders of at least two thirds of the voting power of all then outstanding shares of Preferred Stock (voting together as a single class and on an as converted to Common Stock basis); provided that any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the twenty (20) trading-day period ending three (3) trading days prior to the closing of the Liquidation Event;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the twenty (20) trading-day period ending three (3) trading days prior to the closing of the Liquidation Event; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Board of Directors and the holders of at least two thirds of the voting power of all then outstanding shares of Preferred Stock (voting together as a single class and on an as converted to Common Stock basis).

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by the Board of Directors and the holders of at least a majority of the voting power of all then outstanding shares of such Preferred Stock (voting together as a single class and on an as converted to Common Stock basis).

(C) The foregoing methods for valuing non-cash consideration to be distributed in connection with a Liquidation Event may be superseded by any determination of such value set forth in the definitive agreements governing such Liquidation Event.

(iii) In the event the requirements of this Section 2 are not complied with, this corporation shall forthwith either:

(A) cause the closing of such Liquidation Event to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 2(f)(iv) hereof.

(iv) This corporation shall give each holder of record of shares of Preferred Stock written notice of such impending Liquidation Event not later than twenty (20) days prior to the stockholders' meeting called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and this corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after this corporation has given the first notice provided for herein or sooner than ten (10) days after this corporation has given notice of any material changes provided for herein; provided , however , that subject to compliance with the General Corporation Law such periods may be shortened or waived upon the written consent of the holders of Preferred Stock that represent at least two thirds of the voting power of all then outstanding shares of such Preferred Stock (voting together as a single class and on an as converted to Common Stock basis).

3. Redemption . The Preferred Stock is not redeemable at the option of the holder thereof.

4. Conversion . The holders of the Preferred Stock shall have conversion rights as follows (the " Conversion Rights "):

(a) Right to Convert . Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price for such series by the applicable Conversion Price for such series (the conversion rate for a series of Preferred Stock into Common Stock is referred to herein as the " Conversion Rate " for such series), determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share for each series of Preferred Stock shall be the Original Issue Price applicable to such series; provided ,

however , that the Conversion Price for the Preferred Stock shall be subject to adjustment as set forth in subsection 4(d).

(b) Automatic Conversion .

(i) Each share of Series C Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Rate at the time in effect for such series of Preferred Stock immediately upon the earlier of (A) this corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 or Form SB-2 under the Securities Act of 1933, as amended, the public offering price of which represents a post-offering valuation (on a fully diluted basis) of at least $150,000,000 and was not less than $25,000,000 in the aggregate (a " Qualified Public Offering ") and (B) the date specified by written consent or agreement of the holders of two thirds of the then outstanding shares of Series C Preferred Stock.

(ii) Each share of Series B Preferred Stock, Series A-1 Preferred Stock and Series A Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Rate at the time in effect for such series of Preferred Stock immediately upon the earlier of (A) a Qualified Public Offering and (B) the date specified by written consent or agreement of the holders of two thirds of the then outstanding shares of Series B Preferred Stock, Series A-1 Preferred Stock and Series A Preferred Stock, voting together as a single class on an as-converted basis.

(c) Mechanics of Conversion . Before any holder of Preferred Stock shall be entitled to voluntarily convert the same into shares of Common Stock, he or she shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent for the Preferred Stock, and shall give written notice to this corporation at its principal corporate office of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities. If the conversion is in connection with the Automatic Conversion provisions of subsection 4(b) above, such conversion shall be deemed to have been made, whether or not such stockholder surrenders its stock certificate, on the conversion date described in the stockholder consent approving such conversion, and the persons entitled to receive shares of

Common Stock issuable upon such conversion shall be treated for all purposes as the record holders of such shares of Common Stock as of such date.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations . The Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) (A) If this corporation shall issue, on or after the date upon which this Fourth Amended and Restated Certificate of Incorporation is accepted for filing by the Secretary of State of the State of Delaware (the " Filing Date "), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price applicable to a series of Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by this corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus the number of shares of such Additional Stock so issued. For purposes of this Section 4(d), the term " Common Stock Outstanding " shall mean and include the following: (1) outstanding Common Stock, (2) Common Stock issuable upon conversion of outstanding Preferred Stock, (3) Common Stock issuable upon exercise of outstanding stock options and (4) Common Stock issuable upon exercise (and, in the case of warrants to purchase shares of Preferred Stock, conversion) of outstanding warrants. Shares described in (1) through (4) above shall be included whether vested or unvested, whether contingent or non-contingent and whether exercisable or not yet exercisable.

(B) No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections 4(d)(i)(E)(3) and (E)(4), no adjustment of such Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any discounts, commissions or other expenses allowed, paid or incurred by this corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined by the Board of Directors irrespective of any accounting treatment.

(E) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for purposes of determining the number of shares of Additional Stock issued and the consideration paid therefor:

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D) above), if any, received by this corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, the Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options

or rights related to such convertible or exchangeable securities, the Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Additional Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or (4).

(ii) " Additional Stock " shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E)) by this corporation on or after the Filing Date other than:

(A) Common Stock issued pursuant to a transaction described in subsection 4(d)(iii) hereof;

(B) up to 3,078,239 shares of Common Stock (excluding shares repurchased at cost by this corporation in connection with the termination of service) issued to employees, directors, consultants and other service providers for the primary purpose of soliciting or retaining their services pursuant to stock option or stock purchase plans or other agreements approved by this corporation's Board of Directors, or such greater number as is approved by this corporation's Board of Directors, including the approval of at least two (2) of the Investor Directors;

(C) Common Stock issued pursuant to a Qualified Public Offering;

(D) Common Stock issued pursuant to the conversion or exercise of convertible or exercisable securities outstanding on the Filing Date, including, without limitation, the conversion of interest pursuant to that certain Note and Warrant Purchase Agreement dated November 18, 2002 and those certain promissory notes issued in connection therewith;

(E) Common Stock issued upon conversion of the Preferred Stock;

(F) Common Stock issued in connection with a bona fide business acquisition of this corporation that constitutes a Liquidation Event, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise and permitted pursuant to the terms of Section 6 hereof, and Common Stock issued to sellers as purchase price in connection with acquisitions of other entities;

(G) Common Stock issued or deemed issued pursuant to subsection 4(d)(i)(E) as a result of a decrease in the Conversion Price of any series of Preferred

Stock resulting from the operation of this Section 4(d) or as a result of an increase in the number of shares of Common Stock issuable pursuant to the antidilution provisions of any other convertible security issued by this corporation; or

(H) Shares of Common Stock issued pursuant to any equipment leasing arrangement or debt financing from a bank or similar institution approved by the Board of Directors; provided that such financing is primarily for non-equity purposes.

(iii) In the event this corporation should at any time or from time to time after the Filing Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as " Common Stock Equivalents ") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then , as of such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of the Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents with the number of shares issuable with respect to Common Stock Equivalents determined from time to time in the manner provided for deemed issuances in subsection 4(d)(i)(E).

(iv) If the number of shares of Common Stock outstanding at any time after the Filing Date is decreased by a combination of the outstanding shares of Common Stock, then , following the record date of such combination, the Conversion Price for each series of the Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions . In the event this corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 4(d)(iii) above, then , in each such case for the purpose of this subsection 4(e), the holders of the Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this corporation into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this corporation entitled to receive such distribution.

(f) Recapitalizations . If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or in Section 2) provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon conversion of the Preferred Stock the number of shares of stock or other securities or property of

this corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of the Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Preferred Stock) shall be applicable after that event as nearly equivalently as may be practicable.

(g) No Fractional Shares and Certificate as to Adjustments .

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Preferred Stock and the aggregate number of shares of Common Stock to be issued to particular stockholders shall be rounded down to the nearest whole share and this corporation shall pay in cash the fair market value of any fractional shares as of the time when entitlement to receive such fractions is determined (as determined in good faith by the Board of Directors). Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of Preferred Stock pursuant to this Section 4, this corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Preferred Stock.

(h) Notices of Record Date . In the event of any taking by this corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, this corporation shall mail to each holder of Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution, and the amount and character of such dividend or distribution.

(i) Reservation of Stock Issuable Upon Conversion . This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, in addition to such other remedies as shall

be available to the holder of such Preferred Stock, this corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Third Amended and Restated Certificate of Incorporation.

(j) Notices . Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given (a) upon personal delivery to the party to be notified, (b) one (1) business day after confirmation sent by facsimile transmission, (c) one (1) business day after the business day of deposit with a nationally recognized overnight courier service for next day delivery, freight prepaid, or (d) three (3) business days after deposit with the United States Post Office for delivery by first class, registered or certified mail, postage prepaid, and addressed to the holder of record at his address appearing on the books of this corporation.

(k) Waiver of Adjustment to Conversion Price . Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived, either prospectively or retroactively and either generally or in a particular instance, by the consent or vote of the holders of (i) in the case of the Series A Preferred Stock and Series A-1 Preferred Stock, at least two thirds of the outstanding shares of Preferred Stock of such series, (ii) in the case of the Series B Preferred Stock, at least sixty percent (60%) of the outstanding shares of Preferred Stock of such series and (iii) in the case of the Series C Preferred Stock, at least fifty-five percent (55%) of the outstanding shares of Preferred Stock of such series. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

5. Voting Rights .

(a) General Voting Rights . The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such shares of Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of this corporation, and except as provided in subsection 5(b) below with respect to the election of directors by the separate class vote of the holders of Common Stock, shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted to Common Stock basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Voting for the Election of Directors . As long as one third of the shares of Series A Preferred Stock originally issued remain outstanding, the holders of at least a majority of the outstanding shares of Series A Preferred Stock shall be entitled to elect two (2) directors of this corporation at any election of directors (the " Series A Directors "). As long as at least one-third of the shares of Series B Preferred Stock originally issued remain outstanding, the

holders of at least a majority of the outstanding shares of Series B Preferred Stock shall be entitled to elect one (1) director of this corporation at any election of directors (the " Series B Director "). As long as at one-third of the shares of Series C Preferred Stock originally issued remain outstanding, the holders of at least a majority of the outstanding shares of Series C Preferred Stock shall be entitled to elect one (1) director of this corporation at any election of directors (the " Series C Director ," and together with the Series A Directors and the Series B Director, the " Investor Directors "). The holders of outstanding Common Stock shall be entitled to elect one (1) director of this corporation at any election of directors. The holders of at least a majority of the Preferred Stock and Common Stock (voting together as a single class and not as separate series, and on an as-converted to Common Stock basis) shall be entitled to elect any remaining directors of this corporation.

Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the General Corporation Law, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of this Fourth Amended and Restated Certificate of Incorporation, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; provided , however , that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the Board's action to fill such vacancy by (i) voting for their own designee to fill such vacancy at a meeting of the Company's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee at a meeting of the stockholders. Any director elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent.

6. Protective Provisions .

(a) So long as any shares of Series B Preferred Stock remain outstanding, this corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least sixty percent (60%) of the then outstanding shares of Series B Preferred Stock (voting separately, as a single class, on an as-converted to Common Stock basis):

(i) alter or change the rights, preferences or privileges, or restrictions provided for the benefit, of the shares of Series B Preferred Stock so as to affect adversely the shares;

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series B Preferred Stock; or

(iii) amend this corporation's Fourth Amended and Restated Certificate of Incorporation or Bylaws so as to affect adversely the shares of Series B Preferred Stock.

(b) So long as any shares of Series C Preferred Stock remain outstanding, this corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of at least fifty-five percent (55%) of the then outstanding shares of Series C Preferred Stock (voting separately, as a single class, on an as-converted to Common Stock basis):

(i) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided , however , that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for this corporation or any subsidiary pursuant to agreements under which this corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment or service, or pursuant to a right of first refusal;

(ii) alter or change the rights, preferences or privileges, or restrictions provided for the benefit, of the shares of Series C Preferred Stock so as to affect adversely the shares;

(iii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Series C Preferred Stock;

(iv) authorize or issue, or obligate itself to issue, or reclassify any equity security (including any other security convertible into or exercisable for any such equity security) having a preference over, or being on a parity with, the Series C Preferred Stock with respect to dividends, liquidation, redemption, voting, or conversion rights, other than (A) the issuance of any authorized but unissued shares of Series C Preferred Stock designated in this Fourth Amended and Restated Certificate of Incorporation (including any security convertible into or exercisable for such shares of Preferred Stock) and issued pursuant to that certain Series C Preferred Stock Purchase Agreement dated on or about the Filing Date or (B) the issuance of any authorized but unissued shares of Series A Preferred Stock designated in this Fourth Amended and Restated Certificate of Incorporation (including any security convertible into or exercisable for such shares of Preferred Stock) and issued pursuant to the Note and Warrant Purchase Agreement dated November 18, 2002; or

(v) amend this corporation's Fourth Amended and Restated Certificate of Incorporation or Bylaws so as to affect adversely the shares of Series C Preferred Stock.

(c) So long as any shares of Preferred Stock remain outstanding, this corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Preferred Stock (voting together as a single class and on an as-converted basis):

(i) consummate a Liquidation Event;

(ii) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Preferred Stock or Common Stock;

(iii) change the principal business of the Company or enter into a new, unrelated line of business or exit the current line of business;

(iv) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided , however , that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for this corporation or any subsidiary pursuant to agreements under which this corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment or service, or pursuant to a right of first refusal;

(v) declare or pay a dividend on any shares of Preferred Stock or Common Stock;

(vi) amend this corporation's Fourth Amended and Restated Certificate of Incorporation or Bylaws so as to adversely affect the shares of Preferred Stock; or

(vii) change current authorized number of directors of this corporation from seven (7) directors; provided , however , that the number of directors may be increased to nine (9) upon the approval of this corporation's Board of Directors including the approval of all of the Investor Directors;

(viii) enter into any joint venture or other similar arrangement involving payments to or by this corporation exceeding $2,500,000 unless otherwise approved by the Board, including a majority of the Investor Directors; or

(ix) authorize, create, assume or become liable for, at any time after the Filing Date, aggregate indebtedness that exceeds $2,500,000 other than trade debt in the ordinary course of business and indebtedness that is otherwise approved by the Board, including a majority of the Investor Directors.

7. Status of Converted Stock . In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by this corporation. The Fourth Amended and Restated Certificate of Incorporation of this corporation shall be appropriately amended to effect the corresponding reduction in this corporation's authorized capital stock.

C. Common Stock . The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Article IV(C).

1. Dividend Rights . Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any

assets of this corporation legally available therefor, any dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights . Upon the liquidation, dissolution or winding up of this corporation, the assets of this corporation shall be distributed as provided in Section 2 of Article IV(B) hereof.

3. Redemption . The Common Stock is not redeemable at the option of the holder.

4. Voting Rights . The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of this corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of this corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

**ARTICLE V**

Except as otherwise provided in this Fourth Amended and Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of this corporation.

**ARTICLE VI**

The number of directors of this corporation shall be determined in the manner set forth in the Bylaws of this corporation.

**ARTICLE VII**

Elections of directors need not be by written ballot unless the Bylaws of this corporation shall so provide.

**ARTICLE VIII**

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of this corporation may provide. The books of this corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of this corporation.

**ARTICLE IX**

A director of this corporation shall not be personally liable to this corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for

liability (i) for any breach of the director's duty of loyalty to this corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended after approval by the stockholders of this Article IX to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of this corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article IX by the stockholders of this corporation shall not adversely affect any right or protection of a director of this corporation existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

**ARTICLE X**

This corporation reserves the right to amend, alter, change or repeal any provision contained in this Fourth Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

**ARTICLE XI**

To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this corporation (and any other persons to which General Corporation Law permits this corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article XI shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of this corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

THIRD: The foregoing amendment and restatement was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the General Corporation Law.

FOURTH: That said Fourth Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this corporation's Second Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

**IN WITNESS WHEREOF** , the undersigned has executed this Fourth Amended and Restated Certificate of Incorporation on this 19th day of October, 2006.

/s/ Ron Frankel
Ron Frankel, President

**Exhibit 3.3**

# AMENDED AND RESTATED

# BYLAWS OF

# SYNACOR, INC.

# A DELAWARE CORPORATION

## TABLE OF CONTENTS

## ARTICLE I

## OFFICES AND RECORDS

Section 1.1 Delaware Office . The registered office of the Corporation in the State of Delaware shall be located in the City of Wilmington, County of New Castle.

Section 1.2 Other Offices . The Corporation may have such other offices, either within or without the State of Delaware, as the Board of Directors may designate or as the business of the Corporation may from time to time require.

Section 1.3 Books and Records . The books and records of the Corporation may be kept at the Corporation's headquarters in Buffalo, New York or at such other locations outside the State of Delaware as may from time to time be designated by the Board of Directors.

## ARTICLE II

## STOCKHOLDERS

Section 2.1 Annual Meeting . The annual meeting of the stockholders of the Corporation shall be held at such date, place and/or time as may be fixed by resolution of the Board of Directors.

Section 2.2 Special Meeting . Special meetings of stockholders of the Corporation may be called only by the Chairman of the Board or the Chief Executive Officer or by the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board. For purposes of these Amended and Restated Bylaws, the term "Whole Board" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships.

Section 2.3 Place of Meeting . The Board of Directors may designate the place of meeting for any meeting of the stockholders or the means of remote communications by which any meeting shall be held. If no designation is made by the Board of Directors, the place of meeting shall be the principal office of the Corporation.

Section 2.4 Notice of Meeting . Except as otherwise required by law, written, printed or electronic notice stating the place, if any, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting and, in the case of a special meeting, the purposes for which the meeting is called, shall be prepared and delivered by the Corporation not less than ten (10) days nor more than sixty (60) days before the date of the meeting, either personally, by mail, or in the case of stockholders who have consented to such delivery, by electronic transmission (as such term is defined in the Delaware General Corporation Law), to each stockholder of record entitled to vote at such

meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail with postage thereon prepaid, addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation. Notice given by electronic transmission shall be effective (A) if by facsimile, when faxed to a number where the stockholder has consented to receive notice; (B) if by electronic mail, when mailed electronically to an electronic mail address at which the stockholder has consented to receive such notice; (C) if by posting on an electronic network together with a separate notice of such posting, upon the later to occur of (1) the posting or (2) the giving of separate notice of the posting; or (D) if by other form of electronic transmission, when directed to the stockholder in the manner consented to by the stockholder. Meetings may be held without notice if all stockholders entitled to vote are present (except as otherwise provided by law), or if notice is waived by those not present.

Section 2.5 Quorum and Adjournment . Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the voting power of the outstanding shares of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series voting separately as a class or series, the holders of a majority of the voting power of the shares of such class or series shall constitute a quorum for the transaction of such business for the purposes of taking action on such business. If a quorum shall fail to attend any meeting, the chairman of the meeting may adjourn the meeting to another place, if any, date or time. No notice of the adjourned meeting need be given if the time, place, if any, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided such adjournment is for not more than thirty (30) days and further provided that no new record date is fixed for the adjourned meeting.

Section 2.6 Proxies . At all meetings of stockholders, a stockholder may vote by proxy executed in writing by the stockholder or as may be permitted by law, or by his duly authorized attorney-in-fact. Such proxy must be filed with the Secretary of the Corporation or his representative, or otherwise delivered telephonically or electronically as set forth in the applicable proxy statement, at or before the time of the meeting.

Section 2.7 Notice of Stockholder Business and Nominations .

A. Nominations of persons for election to the Board of Directors and the proposal of business to be transacted by the stockholders may be made at an annual meeting of stockholders (1) pursuant to the Corporation's notice with respect to such meeting, (2) by or at the direction of the Board of Directors or (3) by any stockholder of record of the Corporation who was a stockholder of record at the time of the giving of the notice provided for in the following paragraph, who is entitled to vote at the meeting and who has complied with the notice procedures set forth in this Section 2.7.

B. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to paragraph (A)(3) of this Section 2.7, (1) the

stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, (2) such business must be a proper matter for stockholder action under the Delaware General Corporation Law, (3) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the Corporation with a Solicitation Notice, as that term is defined in subclause (c)(iii) of this paragraph, such stockholder or beneficial owner must, in the case of a proposal, have delivered prior to the meeting a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered prior to the meeting a proxy statement and form of proxy to holders of a percentage of the Corporation's voting shares reasonably believed by such stockholder or beneficial holder to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice and (4) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this section. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than forty-five (45) or more than seventy-five (75) days prior to the first anniversary (the "Anniversary") of the date on which the Corporation first mailed its proxy materials for the preceding year's annual meeting of stockholders; provided, however, that if no proxy materials were mailed by the Corporation in connection with the preceding year's annual meeting, or if the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not later than the close of business on the later of (x) the 90th day prior to such annual meeting or (y) the 10th day following the day on which public announcement of the date of such meeting is first made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person as would be required to be disclosed in solicitations of proxies for the election of such nominees as directors pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and such person's written consent to serve as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of such business, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class and number of shares of the Corporation that are owned beneficially and of record by such stockholder and such beneficial owner, and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of the Corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the Corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "Solicitation Notice").

C. Notwithstanding anything in the second sentence of paragraph (B) of this Section 2.7 to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement naming all of the nominees

for director or specifying the size of the increased Board made by the Corporation at least fifty-five (55) days prior to the Anniversary, a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

D. Only persons nominated in accordance with the procedures set forth in this Section 2.7 shall be eligible to serve as directors and only such business shall be conducted at an annual meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.7. The chair of the meeting shall have the power and the duty to determine whether a nomination or any business proposed to be brought before the meeting has been made in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposed business or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

E. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or (2) by any stockholder of record of the Corporation who is a stockholder of record at the time of giving of notice provided for in this paragraph, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.7. Nominations by stockholders of persons for election to the Board of Directors may be made at such a special meeting of stockholders if the stockholder's notice required by paragraph (B) of this Section 2.7 shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting.

F. For purposes of this Section 2.7, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

G. Notwithstanding the foregoing provisions of this Section 2.7, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth in this Section 2.7. Nothing in this Section 2.7 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 2.8 Procedure for Election of Directors . Election of directors at all meetings of the stockholders at which directors are to be elected shall be by written ballot, and, except as otherwise set forth in the Certificate of Incorporation with respect to the right of the holders of any series of Preferred

Stock or any other series or class of stock to elect additional directors under specified circumstances, a plurality of the votes cast thereat shall elect directors. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, all matters other than the election of directors submitted to the stockholders at any meeting shall be decided by a majority of the votes cast affirmatively or negatively.

Section 2.9 Inspectors of Elections:

A. The Board of Directors by resolution may, and to the extent required by law, shall appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives of the Corporation, to act at the meeting and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act, or if all inspectors or alternates who have been appointed are unable to act, at a meeting of stockholders, the chairman of the meeting may, and to the extent required by law, shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by the Delaware General Corporation Law.

Section 2.10 Conduct of Meetings .

A. The Chief Executive Officer shall preside at all meetings of the stockholders. In the absence of the Chief Executive Officer, the Chairman of the Board shall preside at a meeting of the stockholders. In the absence of the Chief Executive Officer or the Chairman of the Board, the President shall preside at a meeting of the stockholders. In the absence of each of the Chief Executive Officer, the Chairman of the Board and the President, the Secretary shall preside at a meeting of the stockholders. In the anticipated absence of all officers designated to preside over the meetings of stockholders, the Board of Directors may designate an individual to preside over a meeting of the stockholders.

B. The chairman of the meeting shall fix and announce at the meeting the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting. The chairman shall have the power to adjourn the meeting to another place, if any, date and time.

C. The Board of Directors may, to the extent not prohibited by law, adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may to the extent not prohibited by law include, without limitation, the

following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof and (v) limitations on the time allotted to questions or comments by participants. Unless, and to the extent, determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 2.11 No Consent of Stockholders in Lieu of Meeting . Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

## ARTICLE III

## BOARD OF DIRECTORS

Section 3.1 General Powers . The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by the Certificate of Incorporation or by these Bylaws, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

Section 3.2 Number, Tenure and Qualifications . Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the Whole Board **.** The Board of Directors, other than those who may be elected by the holders of any series of Preferred Stock under specified circumstances, shall be divided into three classes pursuant to the Certificate of Incorporation. Each director shall serve for a term ending on the third annual meeting of stockholders following the annual meeting of stockholders at which such director was elected, except as otherwise provided in the Certificate of Incorporation. The Board of Directors is authorized to assign members of the Board already in office to such classes as it may determine at the time the classification of the Board of Directors becomes effective.

Section 3.3 Regular Meetings . The Board of Directors may, by resolution, provide the time and place for the holding of regular meetings of the Board of Directors. A notice of each regular meeting shall not be required.

Section 3.4 Special Meetings . Special meetings of the Board of Directors shall be called at the request of the Chairman of the

Board, the Chief Executive Officer or a majority of the Board of Directors. The person or persons authorized to call special meetings of the Board of Directors may fix the place and time of the meetings.

Section 3.5 Action By Unanimous Consent of Directors . The Board of Directors may take action without the necessity of a meeting by unanimous consent of directors. Such consent may be in writing or given by electronic transmission, as such term is defined in the Delaware General Corporation Law, and the writing or electronic transmission shall be filed with the minutes of the Board of Directors.

Section 3.6 Notice . Notice of any special meeting shall be given to each director at his business or residence in writing, or by telegram, facsimile transmission, telephone communication or electronic transmission (provided, with respect to electronic transmission, that the director has consented to receive the form of transmission at the address to which it is directed). If mailed, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five (5) days before such meeting. If by telegram, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company at least twenty-four (24) hours before such meeting. If by facsimile transmission or other electronic transmission, such notice shall be transmitted at least twenty-four (24) hours before such meeting. If by telephone, the notice shall be given at least twelve (12) hours prior to the time set for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting, except for amendments to these Bylaws as provided under Section 8.1 of Article VIII hereof. A meeting may be held at any time without notice if all the directors are present (except as otherwise provided by law) or if those not present waive notice of the meeting in writing or by electronic transmission, either before or after such meeting.

Section 3.7 Conference Telephone Meetings . Members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

Section 3.8 Quorum . A whole number of directors equal to at least a majority of the Whole Board shall constitute a quorum for the transaction of business, but if at any meeting of the Board of Directors there shall be less than a quorum present, a majority of the directors present may adjourn the meeting from time to time without further notice. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.9 Vacancies . Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal

from office or other cause shall, unless otherwise required by law or by resolution of the Board of Directors, be filled only by a majority vote of the directors then in office, though less than a quorum (and not by stockholders), and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been chosen expires or until such director's successor shall have been duly elected and qualified. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

Section 3.10 Committees .

A. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; provided, however, that no committee shall have power or authority in reference to the following matters: (1) approving, adopting or recommending to stockholders any action or matter required by law to be submitted to stockholders for approval or (2) adopting, amending or repealing any Bylaw.

B. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to these Bylaws.

Section 3.11 Removal . Subject to the rights of the holders of any series of Preferred Stock then outstanding, any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

## ARTICLE IV

## OFFICERS

Section 4.1 Elected Officers . The elected officers of the Corporation shall be a Chairman of the Board, a Chief Executive Officer, a President, a Secretary, a Treasurer, and such other officers as the Board of Directors from time to time may deem proper. The Chairman of the Board shall be chosen from the directors. All officers chosen by the Board of Directors shall each have such powers and duties

as generally pertain to their respective offices, subject to the specific provisions of this Article IV. Such officers shall also have powers and duties as from time to time may be conferred by the Board of Directors or by any committee thereof.

Section 4.2 Election and Term of Office . The elected officers of the Corporation shall be elected annually by the Board of Directors at the regular meeting of the Board of Directors held after each annual meeting of the stockholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. Subject to Section 4.8 of these Bylaws, each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign.

Section 4.3 Chairman of the Board . The Chairman of the Board shall preside at all meetings of the Board.

Section 4.4 Chief Executive Officer . The Chief Executive Officer shall be the general manager of the Corporation, subject to the control of the Board of Directors, and as such shall, subject to Section 2.10 (A) hereof, preside at all meetings of stockholders, shall have general supervision of the affairs of the Corporation, shall sign or countersign or authorize another officer to sign all certificates, contracts, and other instruments of the Corporation as authorized by the Board of Directors, shall make reports to the Board of Directors and stockholders, and shall perform all such other duties as are incident to such office or are properly required by the Board of Directors.

Section 4.5 President . The President shall be the chief operating officer of the corporation and shall be subject to the general supervision, direction, and control of the Chief Executive Officer unless the Board of Directors provides otherwise.

Section 4.6 Secretary . The Secretary shall give, or cause to be given, notice of all meetings of stockholders and directors and all other notices required by law or by these Bylaws, and in case of his absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the Chairman of the Board, the Chief Executive Officer, the President or by the Board of Directors, upon whose request the meeting is called as provided in these Bylaws. The Secretary shall record all the proceedings of the meetings of the Board of Directors, any committees thereof and the stockholders of the Corporation in a book to be kept for that purpose, and shall perform such other duties as may be assigned to the Secretary by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President. He shall have custody of the seal of the Corporation and shall affix the same to all instruments requiring it, when authorized by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President, and attest to the same.

Section 4.7 Treasurer . The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate receipts and disbursements in books belonging to the Corporation. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such

depositaries as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors the Chairman of the Board, the Chief Executive Officer or the President, taking proper vouchers for such disbursements. The Treasurer shall render to the Chairman of the Board, the Chief Executive Officer, the President and the Board of Directors, whenever requested, an account of all his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond for the faithful discharge of his duties in such amount and with such surety as the Board of Directors shall prescribe.

Section 4.8 Removal . Any officer elected by the Board of Directors may be removed by the Board of Directors at any time, with or without cause. No elected officer shall have any contractual rights against the Corporation for compensation by virtue of such election beyond the date of the election of his successor, his death, his resignation or his removal, whichever event shall first occur, except as otherwise provided in an employment contract or an employee plan.

Section 4.9 Vacancies . A newly created office and a vacancy in any office because of death, resignation, or removal may be filled by the Board of Directors for the unexpired portion of the term at any meeting of the Board of Directors.

## ARTICLE V

## STOCK CERTIFICATES AND TRANSFERS

Section 5.1 Stock Certificates and Transfers .

A. Unless the Board of Directors has determined by resolution that some or all classes or series of stock shall be uncertificated shares, the interest of each stockholder of the Corporation shall be evidenced by certificates for shares of stock. The shares of the stock of the Corporation shall be transferred on the books of the Corporation by the holder thereof in person or by his attorney, upon surrender for cancellation of certificates for the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, and with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require.

B. Every holder of stock represented by certificates shall be entitled to have a certificate signed by the Chairman or Vice Chairman of the Board of Directors, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

## ARTICLE VI

## INDEMNIFICATION

Section 6.1 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, trustee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), where the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, trustee or agent or in any other capacity while servicing as a director, officer, employee, trustee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee, trustee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided , however , that, except as provided in Section 6.3 hereof with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 6.2 Right to Advancement of Expenses . In addition to the right to indemnification conferred in Section 6.1, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any proceeding for which such right to indemnification is applicable in advance of its final disposition (hereinafter an "advancement of expenses"); provided , however , that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise.

Section 6.3 Right of Indemnitee to Bring Suit . The rights to indemnification and to the advancement of expenses conferred in Section 6.1 and Section 6.2, respectively, shall be contract rights. If a claim under Section 6.1 or Section 6.2 is not paid in full by the Corporation within sixty days

after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (A) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (B) in any suit by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section 6.3 or otherwise shall be on the Corporation.

Section 6.4 Non-Exclusivity of Rights . The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under the Certificate of Incorporation, these Amended and Restated Bylaws, or any statute, agreement, vote of stockholders or directors or otherwise.

Section 6.5 Insurance . The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

Section 6.6 Amendment of Rights . Any amendment, alteration or repeal of this Article VI that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

Section 6.7 Indemnification of Employees and Agents of the Corporation . The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and to the advancement of expenses, to any employee or agent of the Corporation to the fullest extent of the provisions of this Section with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

## ARTICLE VII

## MISCELLANEOUS PROVISIONS

Section 7.1 Fiscal Year . The fiscal year of the Corporation shall begin on the first day of January and end on the thirty-first day of December of each year.

Section 7.2 Dividends . The Board of Directors may from time to time declare, and the Corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by law and its Certificate of Incorporation.

Section 7.3 Seal . The corporate seal shall have inscribed the name of the Corporation thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 7.4 Waiver of Notice . Whenever any notice is required to be given to any stockholder or director of the Corporation under the provisions of the Delaware General Corporation Law, the Certificate of Incorporation or the Bylaws, a waiver thereof in writing, signed by the person or persons entitled to such notice, or a waiver by electronic transmission, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the stockholders or the Board of Directors need be specified in any waiver of notice of such meeting. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

Section 7.5 Audits . The accounts, books and records of the Corporation shall be audited upon the conclusion of each fiscal year by an independent certified public accountant selected by the Board of Directors, and it shall be the duty of the Board of Directors to cause such audit to be made annually.

Section 7.6 Resignations . Any director or any officer, whether elected or appointed, may resign at any time by serving written notice of such resignation on the Chairman of the Board, the Chief Executive Officer or the Secretary, or by submitting such resignation by electronic transmission (as such term is defined in the Delaware General Corporation Law), and such resignation shall be deemed to be effective

as of the close of business on the date said notice is received by the Chairman of the Board, the Chief Executive Officer, or the Secretary or at such later date as is stated therein. No formal action shall be required of the Board of Directors or the stockholders to make any such resignation effective.

Section 7.7 Contracts . Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, any contracts or other instruments may be executed and delivered in the name and on the behalf of the Corporation by such officer or officers of the Corporation as the Board of Directors may from time to time direct. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the Chief Executive Officer, the President or any Vice President may execute bonds, contracts, deeds, leases and other instruments to be made or executed for or on behalf of the Corporation. Subject to any restrictions imposed by the Board of Directors or the Chairman of the Board, the Chief Executive Officer, the President or any Vice President of the Corporation may delegate contractual powers to others under his jurisdiction, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 7.8 Proxies . Unless otherwise provided by resolution adopted by the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President or any Vice President may from time to time appoint any attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation or other entity, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock and other securities of such other corporation or other entity, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation or other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

## ARTICLE VIII

## AMENDMENTS

Section 8.1 Amendments . Subject to the provisions of the Certificate of Incorporation (including the rights of the holders of any series of Preferred Stock then outstanding), these Bylaws may be adopted, amended or repealed (a) by a resolution adopted by a majority of the Whole Board or (b) by the stockholders as prescribed by law; provided, however, that, in addition to any vote of the stockholders prescribed by law, the affirmative vote of the holders of at least two-thirds of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of these Bylaws.

**CERTIFICATE OF SECRETARY OF**

**SYNACOR, INC.**

The undersigned, , hereby certifies that he is the duly elected and acting Secretary of Synacor, Inc., a Delaware corporation (the "Corporation"), and that the Bylaws attached hereto constitute the Bylaws of said Corporation as duly adopted by the Directors on , .

**IN WITNESS WHEREOF** , the undersigned has hereunto subscribed his name this day of , .

_____ ,
Secretary

**Exhibit 4.3**

**SYNACOR, INC.**

**THIRD AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT**

**OCTOBER 19, 2006**

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# THIRD AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

THIS THIRD AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT (the " Agreement ") is made as of the 19th day of October, 2006, by and among Synacor, Inc., a Delaware corporation (the " Company "), the holders of Series C Preferred Stock of the Company (the " Series C Preferred Stock ") listed on the Schedule of Series C Investors attached as Schedule A hereto (the " Series C Investors "), the holders of Series B Preferred Stock of the Company (the " Series B Preferred Stock ") listed on the Schedule of Series B Investors attached as Schedule B hereto (the " Series B Investors "), the holders of Series A-1 Preferred Stock of the Company (the " Series A-1 Preferred Stock ") listed on the Schedule of Series A-1 Investors attached as Schedule C hereto (the " Series A-1 Investors "), the holders of Series A Preferred Stock of the Company (the " Series A Preferred Stock " and, together with the Series C Preferred Stock, the Series B Preferred Stock and the Series A-1 Preferred Stock, the " Preferred Stock ") listed on the Schedule of Series A Investors attached as Schedule D hereto (the " Series A Investors " and, together with the Series C Investors, the Series B Investors and the Series A-1 Investors, the " Investors "), the holders of Common Stock listed on Schedule E hereto, each of which is herein referred to as a " Common Holder " and the lenders of the Company listed on Schedule F hereto, each of which is herein referred to as a " Lender ." The Company, the Investors, the Common Holders and the Lenders are individually each referred to herein as a " Party " and are collectively referred to herein as the " Parties ."

## RECITALS

**WHEREAS** , the Company and the Series C Investors have entered into that certain Series C Preferred Stock Purchase Agreement of even date herewith (the " Series C Agreement ") which provides for, among other things, the purchase by the Series C Investors of shares of Series C Preferred Stock;

**WHEREAS** , in order to induce the Series C Investors to purchase Series C Preferred Stock and invest funds in the Company pursuant to the Series C Agreement, the Investors, the Common Holders, the Lenders and the Company hereby agree that this Agreement shall govern the rights of the Investors, the Common Holders and the Lenders to cause the Company to register shares of Common Stock issued or issuable to them and certain other matters as set forth herein;

**WHEREAS** , the Company, certain of the Investors, the Common Holders and the Lenders are parties to that certain Second Amended and Restated Investors' Rights Agreement dated as of October 1, 2004 (the " Prior Agreement ");

**WHEREAS** , Section 3.7 of the Prior Agreement provides (i) generally that the Prior Agreement may be amended, and any provision therein waived, with the consent of the Company and the holders of a majority of the Registrable Securities (as such term is defined in the Prior Agreement), provided that such majority shall include Intel Capital (as defined therein); (ii) that the Prior Agreement may be amended, and any provision therein waived, with the written consent of the holders of a majority in interest of the Common Holders and Lenders if such amendment or waiver adversely affects the obligations and/or rights of the Common

Holders and/or Lenders; (iii) that the provisions of Section 2.1 and 2.3 of the Prior Agreement may be waived only with the written consent of the Company and the holders of a majority of the Registrable Securities that are held by the qualifying Investors and Lenders and (iv) that the provisions of Section 2.4 of the Prior Agreement may be amended or waived only with the written consent of the Company and the holders of a majority of the Registrable Securities held by the Major Investors;

**WHEREAS** , the parties to the Prior Agreement necessary to amend the Prior Agreement have resolved to do so, and such parties hereby agree that this Agreement shall amend and restate the Prior Agreement in its entirety and to accept the rights created pursuant hereto in lieu of the rights created under the Prior Agreement;

**NOW, THEREFORE** , in consideration of the mutual promises and covenants set forth herein, the Parties hereby agree that the Prior Agreement shall be superseded and replaced in its entirety by this Agreement, and the Parties hereto further agree as follows:

1. Registration Rights . The Company covenants and agrees as follows:

1.1 Definitions . For purposes of this Section 1:

(a) The term " Act " means the Securities Act of 1933, as amended.

(b) The term " Form S-3 " means such form under the Act as in effect on the date hereof or any registration form under the Act subsequently adopted by the SEC that permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

(c) The term " Holder " means any person owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 1.11 hereof; provided , however , that the Common Holders and Lenders shall not be deemed to be Holders for purposes of Sections 1.2, 1.4, 1.12 (except to the extent that Section 1.12 relates to a registration under Section 1.3 hereof) and 3.7.

(d) The term " Initial Offering " means the Company's first firm commitment underwritten public offering of its Common Stock under the Act.

(e) The term " 1934 Act " means the Securities Exchange Act of 1934, as amended.

(f) The terms " register ," " registered ," and " registration " refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Act, and the declaration or ordering of effectiveness of such registration statement or document.

(g) The term " Registrable Securities " means (i) the shares of Common Stock issuable or issued upon conversion of the Preferred Stock, (ii) the shares of Common Stock issued to the Common Holders or Investors; provided , however , that such shares

of Common Stock shall not be deemed Registrable Securities for the purposes of Sections 1.2, 1.4, 1.12 (except to the extent that Section 1.12 relates to a registration under Section 1.3 hereof) and 3.7, (iii) the shares of Common Stock issued to the Lenders upon the exercise of warrants (the " Lender Warrants ") issued pursuant to that certain Note and Warrant Purchase Agreement, dated as of November 18, 2002, by and among the Company and the Lenders (the " Lenders Agreement "); provided , however , that such shares of Common Stock shall not be deemed Registrable Securities for the purposes of Sections 1.2, 1.4, 1.12 (except to the extent that Section 1.12 relates to a registration under Section 1.3 hereof) and 3.7 and (iv) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange for, or in replacement of, the shares referenced in (i), (ii) and (iii) above, excluding in all cases, however, any Registrable Securities sold by a person in a transaction in which his rights under this Section 1 are not assigned.

(h) The number of shares of " Registrable Securities " outstanding shall be determined by the number of shares of Common Stock outstanding that are, and the number of shares of Common Stock issuable pursuant to then exercisable or convertible securities that are, Registrable Securities.

(i) The term " Rule 144 " shall mean Rule 144 under the Act.

(j) The term " Rule 144(k) " shall mean subsection (k) of Rule 144 under the Act.

(k) The term " SEC " shall mean the Securities and Exchange Commission.

1.2 Request for Registration .

(a) Subject to the conditions of this Section 1.2, if the Company shall receive at any time after the earlier of (i) January 31, 2009 or (ii) six (6) months after the effective date of the Initial Offering, a written request from the Holders of thirty-five percent (35%) or more of the Registrable Securities then outstanding (for purposes of this Section 1.2, the " Initiating Holders ") that the Company file a registration statement under the Act covering the registration of Registrable Securities with an anticipated aggregate offering price of at least $10,000,000, then the Company shall, within twenty (20) days of the receipt thereof, give written notice of such request to all Holders, and subject to the limitations of this Section 1.2, use all commercially reasonable efforts to effect, as soon as practicable, the registration under the Act of all Registrable Securities that the Holders request to be registered in a written request received by the Company within twenty (20) days of the mailing of the Company's notice pursuant to this Section 1.2(a).

(b) If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 1.2 and the Company shall include such information in the written notice referred to in Section 1.2(a). In such event the right of any Holder to include its Registrable Securities in such registration shall be conditioned

upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company (which underwriter or underwriters shall be reasonably acceptable to a majority in interest of the Initiating Holders). Notwithstanding any other provision of this Section 1.2, if the underwriter advises the Company that marketing factors require a limitation on the number of securities underwritten (including Registrable Securities), then the Company shall so advise all Holders of Registrable Securities that would otherwise be underwritten pursuant hereto, and the number of shares that may be included in the underwriting shall be allocated to the Holders of such Registrable Securities on a pro rata basis based on the number of Registrable Securities held by all such Holders (including the Initiating Holders). In no event shall any Registrable Securities be excluded from such underwriting unless all other securities are first excluded. Any Registrable Securities excluded or withdrawn from such underwriting shall be withdrawn from the registration.

(c) The Company shall not be required to effect a registration pursuant to this Section 1.2:

(i) in any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, unless the Company is already subject to service in such jurisdiction and except as may be required under the Act; or

(ii) after the Company has effected two (2) registrations pursuant to this Section 1.2, and such registrations have been declared or ordered effective; or

(iii) during the period starting with the date sixty (60) days prior to the Company's good faith estimate of the date of the filing of, and ending on a date one hundred eighty (180) days following the effective date of, a Company-initiated registration subject to Section 1.3 below, provided that the Company is actively employing in good faith all commercially reasonable efforts to cause such registration statement to become effective; or

(iv) if the Initiating Holders propose to dispose of Registrable Securities that may be registered on Form S-3 pursuant to Section 1.4 hereof; or

(v) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 1.2, a certificate signed by the Company's Chief Executive Officer or Chairman of the Board stating that in the good faith judgment of the Board of Directors of the Company (the " Board "), it would be seriously detrimental to the Company and its stockholders for such registration statement to be effected at such time, in which event the Company shall have the right to defer such filing for a period of not more than one hundred twenty (120) days after receipt of the request of the Initiating Holders, provided that such right shall be exercised by the Company not more than once in any twelve (12)-month period.

1.3 Company Registration .

(a) If (but without any obligation to do so) the Company proposes to register (including for this purpose a registration effected by the Company pursuant to Sections 1.2 or 1.4 hereof or for stockholders other than the Holders) any of its stock or other securities under the Act in connection with the public offering of such securities (other than a registration relating solely to the sale of securities of participants in a Company stock plan, a registration relating to a corporate reorganization or transaction under Rule 145 of the Act, a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities, or a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered), the Company shall, at such time, promptly give each Holder written notice of such registration. Upon the written request of each Holder given within twenty (20) days after mailing of such notice by the Company in accordance with Section 3.5 hereof, the Company shall, subject to the provisions of Section 1.3(c), use all commercially reasonable efforts to cause to be registered under the Act all of the Registrable Securities that each such Holder has requested to be registered.

(b) Right to Terminate Registration . The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 1.3 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The expenses of such withdrawn registration shall be borne by the Company in accordance with Section 1.7 hereof.

(c) Underwriting Requirements . In connection with any offering involving an underwriting of shares of the Company's capital stock, the Company shall not be required under this Section 1.3 to include any of the Holders' securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters selected by it (or by other persons entitled to select the underwriters) and enter into an underwriting agreement in customary form with such underwriters, and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Company. If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the amount of securities sold other than by the Company that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, that the underwriters determine in their sole discretion will not jeopardize the success of the offering. In no event shall any shares of Common Stock issuable or issued upon conversion of the Preferred Stock be excluded from such offering unless all other stockholders' securities are first excluded. In the event that the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be apportioned pro rata among the selling Holders based on the number of Registrable Securities held by all selling Holders or in such other proportions as shall mutually be agreed to by all such selling Holders. Notwithstanding the foregoing, in no event shall (i) the amount of securities of the selling Holders included in the offering be reduced below twenty-five percent (25%) of the total amount of securities included in such offering, unless such offering is the initial public offering of the

Company's securities, in which case the selling Holders may be excluded if the underwriters make the determination described above and no other stockholder's securities are included or (ii) any securities held by a Common Holder or a Lender be included in such offering if any Registrable Securities held by any Investor (and that such Investor has requested to be registered) are excluded from such offering. For purposes of the preceding sentence concerning apportionment, for any selling stockholder that is a Holder of Registrable Securities and that is a venture capital fund, partnership or corporation, the Affiliated venture capital funds, partners, retired partners and stockholders of such Holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single "selling Holder," and any pro rata reduction with respect to such "selling Holder" shall be based upon the aggregate amount of Registrable Securities owned by all such related entities and individuals.

1.4 Form S-3 Registration . In case the Company shall receive from the Holders of at least five percent (5%) of the Registrable Securities (for purposes of this Section 1.4, the " Initiating Holders ") a written request or requests that the Company effect a registration on Form S-3 and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company shall:

(a) within ten (10) days of the receipt thereof, give written notice of the proposed registration, and any related qualification or compliance, to all other Holders; and

(b) use all commercially reasonable efforts to effect, as soon as practicable, such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company, provided, however, that the Company shall not be obligated to effect any such registration, qualification or compliance, pursuant to this section 1.4:

(i) if Form S-3 is not available for such offering by the Holders;

(ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public (net of any underwriters' discounts or commissions) of less than $5,000,000;

(iii) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 1.4, a certificate signed by the Company's Chief Executive Officer or Chairman of the Board stating that in the good faith judgment of the Board, it would be seriously detrimental to the Company and its stockholders for such registration statement to be effected at such time, in which event the Company shall have the right to defer such filing for a period of not more than one hundred twenty (120) days after receipt of the

request of the Initiating Holders, provided that such right shall be exercised by the Company not more than once in any twelve (12)-month period;

(iv) during the period beginning sixty (60) days prior to the Company's good faith estimate of the date of the filing of, and ending on a date one hundred eighty (180) days following the effective date of, a Company-initiated registration statement, provided that the Company is actively employing in good faith all commercially reasonable efforts to cause such registration statement to become effective;

(v) if the Company has, within the six (6) month period preceding the date of such request, already effected the Initial Offering or one (1) registration on Form S-3 for the Holders pursuant to this Section 1.4; or

(vi) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance.

(c) If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 1.4 and the Company shall include such information in the written notice referred to in Section 1.4(a). The provisions of Section 1.2(b) shall be applicable to such request (with the substitution of Section 1.4 for references to Section 1.2).

(d) Subject to the foregoing, the Company shall file a registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the request or requests of the Initiating Holders. Registrations effected pursuant to this Section 1.4 shall not be counted as requests for registration effected pursuant to Sections 1.2.

1.5 Obligations of the Company . Whenever required under this Section 1 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use all commercially reasonable efforts to cause such registration statement to become effective, and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to ninety (90) days or, if earlier, until the distribution contemplated in the Registration Statement has been completed;

(b) prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Act with respect to the disposition of all securities covered by such registration statement;

(c) furnish to the Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Act,

and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them;

(d) use all commercially reasonable efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering;

(f) notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(g) cause all such Registrable Securities registered pursuant to this Section 1 to be listed on a national exchange or trading system and on each securities exchange and trading system on which similar securities issued by the Company are then listed;

(h) provide a transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(i) enter into such customary agreements, including but not limited to an underwriting agreement, in usual and customary form, and take all such other actions as the holders of a majority of the Registrable Securities being sold or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities, including, but not limited to, effecting a stock split or a combination of shares; and

(j) make available for inspection by any Holder of Registrable Securities or any underwriter in the event of any underwritten public offering, and any attorney, accountant or other agent retained by such Holder or underwriter, in each case upon receipt of a confidentiality agreement in a form acceptable to the Company, all financial and other records, corporate documents and properties of the Company, and shall use all commercially reasonable efforts to cause the Company's directors, officers, employees and independent accountants to supply all such information reasonably requested by any Holder, underwriter, attorney, accountant or agent in connection with the registration statement.

Notwithstanding the provisions of this Section 1, the Company shall be entitled to postpone or suspend, for a reasonable period of time, the filing, effectiveness or use of, or trading under, any registration statement if the Company shall determine that any such filing or the sale of any securities pursuant to such registration statement would:

(i) in the good faith judgment of the Board, materially impede, delay or interfere with any material pending or proposed financing, acquisition, corporate reorganization or other similar transaction involving the Company for which the Board has authorized negotiations;

(ii) in the good faith judgment of the Board, materially adversely impair the consummation of any pending or proposed material offering or sale of any class of securities by the Company; or

(iii) in the good faith judgment of the Board, require disclosure of material nonpublic information that, if disclosed at such time, would be materially harmful to the interests of the Company and its stockholders; provided , however , that during any such period all executive officers and directors of the Company are also prohibited from selling securities of the Company (or any security of any of the Company's subsidiaries or Affiliates).

In the event of the suspension of effectiveness of any registration statement pursuant to this Section 1.5, the applicable time period during which such registration statement is to remain effective shall be extended by that number of days equal to the number of days during which the effectiveness of such registration statement was suspended.

1.6 Information from Holder . It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 1 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be reasonably required to effect the registration of such Holder's Registrable Securities.

1.7 Expenses of Registration . All expenses other than underwriting discounts and commissions incurred in connection with registrations, filings or qualifications pursuant to Sections 1.2, 1.3 and 1.4, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements of (i) one counsel for the selling Holders other than Intel Capital Corporation (" Intel Capital ") and its Affiliates (not to exceed $10,000) and (ii) if Intel Capital is a selling Holder, one counsel for Intel Capital (not to exceed $10,000), shall be borne by the Company. Notwithstanding the foregoing, the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 1.2 or Section 1.4 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all participating Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration), unless, in the case of a registration requested under Section 1.2 and 1.4, the Holders of a majority of the Registrable Securities agree to forfeit their right to one demand registration pursuant to Section 1.2 and 1.4 and provided, however, that if at the time of such withdrawal, the Holders have learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness following disclosure by the Company of such material adverse change, then the Holders shall not be required to pay any of such expenses and shall retain their rights pursuant to Section 1.2 or 1.4. Notwithstanding

the foregoing, if the Company has already affected more than four (4) registrations pursuant to Section 1.4, then all expenses incurred in connection with any additional registrations requested pursuant to Section 1.4, including (without limitation) all registration, filing, qualification, printer's and accounting fees and the reasonable fees and disbursements of counsel for the selling Holder or Holders and counsel for the Company, shall be borne pro rata by the Holder or Holders participating in the Form S-3 Registration.

1.8 Delay of Registration . No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 1.

1.9 Indemnification . In the event any Registrable Securities are included in a registration statement under this Section 1:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the partners, officers, directors and stockholders of each Holder, legal counsel and accountants for each Holder, any underwriter (as defined in the Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Act or the 1934 Act, against any losses, claims, damages or liabilities (joint or several) to which they may become subject under the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a " Violation "): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act; the 1934 Act or any state securities laws, and the Company will reimburse each such Holder, underwriter, controlling person or other aforementioned person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the indemnity agreement contained in this subsection l.9(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation that occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder, underwriter, controlling person or other aforementioned person; provided further, however, that the foregoing indemnity agreement with respect to any preliminary prospectus shall not inure to the benefit of any Holder or underwriter or other aforementioned person, or any person controlling such Holder or underwriter, from whom the person asserting any such losses, claims, damages or liabilities purchased shares in the offering, if a copy of the most current prospectus was not sent or given by or on behalf of such Holder or underwriter or other aforementioned person to such person, if required by law so to have been delivered, at or prior to the written confirmation of the sale of

the shares to such person, and if the prospectus (as so amended or supplemented) would have cured the defect giving rise to such loss, claim, damage or liability.

(b) To the extent permitted by law, each selling Holder will indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the registration statement, each person, if any, who controls the Company within the meaning of the Act, legal counsel and accountants for the Company, any underwriter, any other Holder selling securities in such registration statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act, the 1934 Act or any state securities laws, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; and each such Holder will reimburse any person intended to be indemnified pursuant to this subsection l.9(b) for any legal or other expenses reasonably incurred by such person in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the indemnity agreement contained in this subsection l.9(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder (which consent shall not be unreasonably withheld), and provided that in no event shall any indemnity under this subsection l.9(b) exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 1.9 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 1.9, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if materially prejudicial to its ability to defend such action, shall relieve such indemnifying party of liability to the indemnified party under this Section 1.9 to the extent of such prejudice, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 1.9.

(d) If the indemnification provided for in this Section 1.9 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to herein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or

payable by such indemnified party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense, as well as any other relevant equitable considerations; provided, however, that no contribution by any Holder, when combined with any amounts paid by such Holder pursuant to Section 1.9(b), shall exceed the net proceeds from the offering received by such Holder. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) The obligations of the Company and Holders under this Section 1.9 shall survive the completion of any offering of Registrable Securities in a registration statement under this Section 1, and otherwise.

1.10 Reports Under the 1934 Act . With a view to making available to the Holders the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after the effective date of the Initial Offering;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Act and the 1934 Act; and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144 (at any time after ninety (90) days after the effective date of the first registration statement filed by the Company), the Act and the 1934 Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration or pursuant to such form.

1.11 Assignment of Registration Rights . The rights to cause the Company to register Registrable Securities pursuant to this Section 1 may be assigned (but only

with all related obligations) by a Holder to a transferee or assignee of such securities that (i) is a subsidiary, parent, partner, limited partner, retired partner, member, stockholder or Affiliate of a Holder, (ii) is a Holder's family member or trust for the benefit of an individual Holder, or (iii) after such assignment or transfer, holds at least 200,000 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock dividends, combinations and other recapitalizations), provided: (a) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; (b) such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement, including, without limitation, the provisions of Section 1.13 below; and (c) such assignment shall be effective only if immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Act.

1.12 Limitations on Subsequent Registration Rights . From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of a majority of the Registrable Securities, enter into any agreement with any holder or prospective holder of any securities of the Company that would allow such holder or prospective holder (a) to include such securities in any registration filed under Section 1.2, Section 1.3 or Section 1.4 hereof, unless under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the amount of the Registrable Securities of the Holders that are included or (b) to demand registration of their securities.

1.13 "Market Stand-Off" Agreement . Each Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the Company's Initial Offering and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (l80) days) (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock held immediately prior to the effectiveness of the Registration Statement for such offering, or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing provisions of this Section 1.13 shall apply only to the Company's initial public offering of equity securities, shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall only be applicable to the Holders if all officers and directors and greater than one percent (1%) stockholders of the Company enter into similar agreements. The underwriters in connection with the Company's Initial Offering are intended third party beneficiaries of this Section 1.13 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in the Company's Initial Offering that are consistent with this Section 1.13 or that are necessary to give further effect thereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply to

all Holders subject to such agreements pro rata based on the number of shares subject to such agreements.

In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the Registrable Securities of each Holder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period.

1.14 Termination of Registration Rights . No Holder shall be entitled to exercise any right provided for in this Section 1 (i) after four (4) years following the consummation of the Initial Offering or (ii) as to any Holder, such earlier time after the Initial Offering at which such Holder (A) can sell all shares held by it in compliance with Rule 144(k) or (B) all Registrable Securities held by such Holder (together with any Affiliate of the Holder with whom such Holder must aggregate its sales under Rule 144) can be sold in any one (1)-month period without registration in compliance with Rule 144.

2. Covenants of the Company .

2.1 Delivery of Financial Statements . The Company shall deliver to (i) each Investor (or transferee of an Investor) for so long as there are at least 1,000,000 shares of Preferred Stock issued and outstanding and (ii) to each individual Lender for so long as either the notes or warrants issued to such Lender pursuant to the Lenders Agreement remain outstanding:

(a) as soon as practicable, but in any event within one hundred twenty (120) days after the end of each fiscal year of the Company, an income statement for such fiscal year, a balance sheet of the Company and statement of stockholders' equity as of the end of such year, and a statement of cash flows for such year, such year-end financial reports to be in reasonable detail, prepared in accordance with generally accepted accounting principles, and audited and certified by independent public accountants of nationally recognized standing selected by the Company;

(b) within thirty (30) days of the end of each month, an unaudited income statement and statement of cash flows and balance sheet for and as of the end of such month, in reasonable detail;

(c) as soon as practicable, but in any event at least thirty (30) days prior to the end of each fiscal year, a budget and business plan for the next fiscal year, prepared on a monthly basis, including balance sheets, income statements and statements of cash flows for such months and, as soon as prepared, any other budgets or revised budgets prepared by the Company;

(d) such information, financial data and reports required by the Small Business Administration or the New York State Certified Capital Program (" CAPCO ") in order for any Lender or Investor to comply with applicable Small Business Investment Company or CAPCO regulations, as applicable;

(e) copies of all material filings with governmental agencies and press releases promptly after such filings or press releases are made; and

(f) such other information relating to the financial condition, business or corporate affairs of the Company as any Lender or Investor may from time to time request, provided, however, that the Company shall not be obligated under this subsection (f) or any other subsection of Section 2.1 to provide information that it deems in good faith to be a trade secret or similar confidential information, unless such Lender or Investor is already a party to a binding non-disclosure agreement with the Company.

2.2 Inspection . The Company shall permit each Investor, and each Lender whose note or notes issued pursuant to the Lenders Agreement remain outstanding (each, a " Note Lender "), at such party's expense, to visit and inspect the Company's properties, to examine its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times as may be requested by the Investor or Lender; provided , however , that the Company shall not be obligated pursuant to this Section 2.2 to provide access to any information that it reasonably considers to be a trade secret or similar confidential information, unless such Lender or Investor is already a party to a binding non-disclosure agreement with the Company.

2.3 Termination of Information and Inspection Covenants . The covenants set forth in Sections 2.1 and 2.2 shall terminate and be of no further force or effect when the sale of securities pursuant to a registration statement filed by the Company under the Act in connection with the firm commitment underwritten offering of its securities to the general public is consummated or when the Company first becomes subject to the periodic reporting requirements of Sections 12(g) or 15(d) of the 1934 Act, whichever event shall first occur.

2.4 Right of First Offer . Subject to the terms and conditions specified in this Section 2.4, the Company hereby grants to each (i) Investor who holds at least 250,000 shares of Preferred Stock, (ii) Note Lender who holds Lender Warrants exercisable for at least 250,000 shares of Common Stock and (iii) Common Holder who holds at least 250,000 shares of Common Stock (each a " Major Investor ") a right of first offer with respect to future sales by the Company of its Shares (as hereinafter defined). For purposes of this Section 2.4, the term " Major Investor " includes any general partners and Affiliates of a Major Investor. A Major Investor shall be entitled to apportion the right of first offer hereby granted it among itself and its partners and Affiliates in such proportions as it deems appropriate.

Each time the Company proposes to offer any shares of, or securities of any type whatsoever (including without limitation, options, warrants and convertible debt) that are or may become convertible into or exchangeable or exercisable for any shares of, any class of its capital stock whether common or preferred (" Shares "), the Company shall first make an offering of such Shares to each Major Investor in accordance with the following provisions:

(a) The Company shall deliver a notice in accordance with Section 3.5 (" Notice ") to the Major Investors stating (i) its bona fide intention to offer such Shares, (ii) the number of such Shares to be offered, and (iii) the price and terms upon which it proposes to offer such Shares.

(b) By written notification received by the Company within twenty (20) calendar days after receipt of the Notice, each Major Investor may elect to purchase

or obtain, at the price and on the terms specified in the Notice, up to that portion of such Shares that equals the proportion that the number of shares of Registrable Securities issued and held by such Major Investor (assuming full conversion and exercise of all convertible and exercisable Registrable Securities then outstanding) bears to the total number of shares of Common Stock of the Company then outstanding (assuming full conversion and exercise of all convertible and exercisable Registrable Securities then outstanding).

(c) If all Shares that Major Investors are entitled to obtain pursuant to subsection 2.4(b) are not elected to be obtained as provided in subsection 2.4(b) hereof, the Company may, during the ninety (90) day period following the expiration of the period provided in subsection 2.4(b) hereof, offer the remaining unsubscribed portion of such Shares to any person or persons at a price not less than that, and upon terms no more favorable to the offeree than those, specified in the Notice. If the Company does not enter into an agreement for the sale of the Shares within such period, or if such agreement is not consummated within sixty (60) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such Shares shall not be offered unless first reoffered to the Major Investors in accordance herewith.

(d) The right of first offer in this Section 2.4 shall not be applicable to (i) the issuance or sale of shares of Common Stock (or options therefor) to employees, directors, consultants and other service providers for the primary purpose of soliciting or retaining their services pursuant to stock plans or agreements approved by the Board; (ii) the issuance of securities pursuant to a bona fide, firmly underwritten public offering of shares of Common Stock, registered under the Act, (iii) the issuance of securities pursuant to the conversion or exercise of convertible or exercisable securities including, without limitation, the conversion of interest pursuant to that certain Note and Warrant Purchase Agreement dated November 18, 2002 and those certain promissory notes issued in connection therewith, (iv) the issuance of securities in connection with a bona fide business acquisition of the Company that constitutes a Liquidation Event (as defined in the Company's Fourth Amended and Restated Certificate of Incorporation, as amended (a " Liquidation Event ")), whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise, or the issuance of securities to sellers as purchase price in connection with acquisitions of other entities, (v) the issuance and sale of Series C Preferred Stock pursuant to the Series C Agreement, (vi) the issuance of stock, warrants or other securities or rights to persons or entities with which the Company has business relationships, provided such issuances are for other than primarily equity financing purposes and are approved by a majority of the Board or (vii) the issuance of securities that, with unanimous approval of the Board, are not offered to any existing stockholder of the Company. In addition to the foregoing, the right of first offer in this Section 2.4 shall not be applicable with respect to any Major Investor and any subsequent offering of Shares if (i) at the time of such offering, the Major Investor is not an "accredited investor," as that term is then defined in Rule 501(a) of the Act and (ii) such offering of Shares is otherwise being offered only to accredited investors.

(e) The rights provided in this Section 2.4 may not be assigned or transferred by any Major Investor; provided , however , that a Major Investor that is a venture capital fund may assign or transfer such rights to an Affiliated venture capital fund.

(f) The covenants set forth in this Section 2.4 shall terminate and be of no further force or effect upon the consummation of the sale of securities pursuant to a bona fide, firmly underwritten public offering of shares of common stock registered under the Act.

2.5 Key-Man Insurance . The Company shall maintain term life insurance on the lives of certain key employees of the Company, as determined by the Board, in the amount of $1,000,000 each. Such policies shall name the Company as loss payee and shall not be cancelable by the Company without prior approval of the Board.

2.6 Directors and Officers Insurance . The Company shall maintain in full force and effect from financially sound and reputable insurers directors and officers commission and liability insurance with coverage amounts determined by the Board of Directors. Such coverage amounts shall not be allowed to lapse or be reduced without the prior approval of a majority of the directors elected by the holders of Preferred Stock.

2.7 Meetings of the Board of Directors . The Company will ensure that meetings of its Board are held at least eight (8) times each year. The Company shall reimburse each director for reasonable travel expenses incurred in connection with attending meetings or other functions of the Board.

2.8 Composition of Board Committees . The Company agrees to cause the Board to establish or maintain a Compensation Committee and an Audit Committee. The Compensation Committee shall consist of four (4) individuals and the Audit Committee shall consist of three (3) individuals. Each of Crystal Internet Ventures, including Crystal Internet Venture Fund II (BVI), L.P. and Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P. (collectively, " Crystal "), Advantage Capital New York Partners I, L.P. (" Advantage ") and Pacven Walden Ventures IV, L.P. (" Walden ") shall be entitled to nominate at least one (1) representative to each such committee. North Atlantic Venture Fund III and North Atlantic SBIC IV, L.P. (collectively, " North Atlantic ") shall be entitled to nominate at least one (1) representative to the Compensation Committee. The right of Crystal, Advantage and Walden, respectively, to nominate designees to the Compensation and Audit Committees and the right of North Atlantic to nominate a designee to the Compensation Committee shall terminate upon the earlier of (i) the date on which Crystal, Advantage, Walden or North Atlantic, as applicable, does not hold at least fifteen percent (15%) of the shares of Common Stock initially issued to such Investor (including those shares of Common Stock issued or issuable upon conversion of the Preferred Stock) or (ii) approval by the Board of a transaction constituting a Liquidation Event.

2.9 Confidentiality Agreement . The Company shall require all employees and consultants with access to confidential information to execute and deliver a Confidentiality Agreement in substantially the form approved by the Board.

2.10 Termination of Certain Covenants . The covenants set forth in Sections 2.5, 2.6, 2.7 and 2.8 shall terminate and be of no further force or effect upon the consummation of the sale of securities pursuant to a bona fide, firmly underwritten public offering of shares of common stock registered under the Act.

2.11 New Issuance and Liquidation Event . Without the prior written consent of Intel Capital, the Company (i) shall not authorize or issue, or obligate itself to issue, or reclassify any equity security (including any other security convertible into or exercisable for any such equity security) having a preference over, or being on a parity with, the Company's Series B Preferred Stock, as designated in the Company's Fourth Amended and Restated Certificate of Incorporation, with respect to rights, preferences, privileges or restrictions, other than the good faith issuance of any authorized but unissued shares of Preferred Stock (including any security convertible into or exercisable for such shares of Preferred Stock) (for the avoidance of doubt, the shares issuable pursuant to that certain Note and Warrant Purchase Agreement dated November 18, 2002 shall not require Intel Capital's consent pursuant to this Section 2.11) and (ii) shall not consummate a Liquidation Event. Notwithstanding the prior sentence, the sale of shares of the Company's Preferred Stock in a bona fide financing transaction shall not be deemed a "Liquidation Event." The covenants set forth in this Section 2.11 shall terminate and be of no further force or effect upon the earlier to occur of (i) the transfer by Intel Capital of its Shares to a transferee that is not a partner or Affiliate of Intel Capital or (ii) the consummation of the sale of securities pursuant to an Initial Offering.

3. Miscellaneous .

3.1 Successors and Assigns . Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any shares of Registrable Securities). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

3.2 Governing Law . This Agreement shall be governed by and construed under the laws of the State of New York as applied to agreements among New York residents entered into and to be performed entirely within New York.

3.3 Counterparts . This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

3.4 Titles and Subtitles . The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

3.5 Notices . All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be

sent to the respective parties at the addresses set forth on the signature pages attached hereto (or at such other addresses as shall be specified by notice given in accordance with this Section 3.5).

3.6 Expenses . If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

3.7 Entire Agreement; Amendments and Waivers . This Agreement (including the Exhibits hereto, if any) constitutes the full and entire understanding and agreement among the parties with regard to the subjects hereof and thereof. Any term of this Agreement (other than Section 2.1, Section 2.2, Section 2.3 and Section 2.4) may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the holders of a majority of the Registrable Securities; provided that such majority shall include the consent of Intel Capital until such time that Intel Capital transfers its Shares to a transferee that is not a partner or Affiliate of Intel Capital; provided further , however , that in the event that such amendment or waiver adversely affects the obligations and/or rights of the Common Holders or Lenders in a different manner than the other Holders, such amendment or waiver shall also require the written consent of the holders of a majority in interest of the Common Holders or Lenders (as applicable). The provisions of Section 2.1 and Section 2.3 may be amended or waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the holders of a majority of the Registrable Securities that are held by the qualifying Investors and Lenders. The provisions of Section 2.2 and Section 2.3 may be amended or waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the holders of a majority of the Registrable Securities that are held by Investors and Note Lenders. The provisions of Section 2.4 may be amended or waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the holders of a majority of the Registrable Securities held by Major Investors. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Registrable Securities, each future holder of all such Registrable Securities, and the Company.

3.8 Severability . If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

3.9 Aggregation of Stock . All shares of Registrable Securities held or acquired by Affiliated Persons (including Affiliated venture capital funds) shall be aggregated together for the purpose of determining the availability of any rights under this Agreement. The terms " Affiliate " and " Affiliated " shall have the meanings set forth in the Series C Agreement.

3.10 Binding Effect . In addition to any restriction or transfer that may be imposed by any other agreement by which any Party hereto may be bound, this Agreement shall be binding upon the Parties, their respective heirs, successors, transferees and assigns.

3.11 Additional Investors . Notwithstanding Section 3.7, no consent or amendment shall be necessary to add additional Investors as signatories to this Agreement, provided that such Investors have purchased Series C Preferred Stock pursuant to the Series C Agreement. Schedule A to this Agreement shall be updated to reflect such additional Investors.

3.12 Arbitration . Any controversy between the parties hereto involving any claim arising out of or relating to the termination of this Agreement, will be submitted to and be settled by final and binding arbitration in New York, New York, in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association (the " AAA "), and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof; provided , however , that (i) this Section 3.12 shall not apply to Intel Capital and its Affiliates and (ii) this Section 3.12 shall apply to any transferee of Shares that is not a partner or Affiliate of Intel Capital. Such arbitration shall be conducted by three (3) arbitrators chosen by the Company and the Holders, or failing such agreement, an arbitrator experienced in the sale of similarly sized companies appointed by the AAA. There shall be limited discovery prior to the arbitration hearing as follows: (a) exchange of witness lists and copies of documentary evidence and documents relating to or arising out of the issues to be arbitrated, (b) depositions of all party witnesses, and (c) such other depositions as may be allowed by the arbitrators upon a showing of good cause. Depositions shall be conducted in accordance with the New York Code of Civil Procedure, the arbitrator(s) shall be required to provide in writing to the parties the basis for the award or order of such arbitrator (s), and a court reporter shall record all hearings, with such record constituting the official transcript of such proceedings.

3.13 Termination of Prior Agreement . Upon the effectiveness of this Agreement, the Prior Agreement shall terminate and be of no further force and effect, and shall be superseded and replaced in its entirety by this Agreement.

3.14 Waiver of Right of First Refusal . In connection with the issuance and sale by the Company of up to 2,740,407 shares of its Series C Preferred Stock pursuant to the Series C Agreement (the " Series C Financing "), the undersigned holders of a majority of the Registrable Securities held by Major Investors of the Company (as such terms are defined in the Prior Agreement), on behalf of themselves and all Major Investors, hereby unconditionally waive all rights of first offer and notice set forth in Section 2.4 of the Prior Agreement with respect to the Series C Financing.

3.15 Consent of Intel Capital . By executing this Agreement, Intel Capital hereby consents to the Series C Financing (including without limitation the authorization and issuance of the Series C Preferred Stock) pursuant to Section 2.11 of the Prior Agreement.

*(Remainder of page intentionally left blank)*

IN WITNESS WHEREOF, the parties have executed this Second Amended and Restated Investors' Rights Agreement as of the date first above written.

**COMPANY:**

SYNACOR, INC.

By _____
Ron Frankel
President

Address: 40 La Riviere Drive, Suite 300
Buffalo, NY 14202

**INVESTORS:**

INTEL CAPITAL CORPORATION

By _____
Name:
Title:

Address: c/o Intel Corporation
Attn: Intel Capital Portfolio Manager
2200 Mission College Blvd., M/S RN6-46
Santa Clara, CA 95052
Facsimile: (408) 765-6038

With a copy by e-mail to:
portfolio.manager@intel.com

**SIGNATURE PAGE TO THE THIRD AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT BY AND AMONG SYNACOR, INC. AND THE INVESTORS LISTED ON THE SIGNATURE PAGES HERETO.**

**INVESTORS:**

NORTH ATLANTIC VENTURE FUND III,
a Limited Partnership

By: North Atlantic Investors III, LLC,
its General Partner

By: _____
Name:
Title:

Address: _____
_____

NORTH ATLANTIC SBIC IV, L.P.

By: North Atlantic Investors SBIC IV, LLC,
its General Partner

By: _____
Name:
Title:

Address: _____
_____

**INVESTORS:**

MITSUI INCUBASE CORPORATION

By: _____
Name:
Title:

Address: _____

_____

Signature page to Synacor, Inc.
Third Amended and Restated Investors' Rights Agreement

**INVESTORS:**

ADVANTAGE CAPITAL NEW YORK
PARTNERS I, L.P.

By: Advantage Capital New York GP-I, LLC, Its
General Partner

By _____
M. Scott Murphy
Vice President

Address: 5 Warren Street, Suite 204
Glens Falls, NY 12801

ADVANTAGE CAPITAL NEW YORK
PARTNERS II, L.P.

By: Advantage Capital New York GP-II, LLC, Its
General Partner

By _____
M. Scott Murphy
Vice President

Address: 5 Warren Street, Suite 204
Glens Falls, NY 12801

**INVESTORS:**

ACCESS TECHNOLOGY CAPITAL, LLC

By _____
Name: Peter Thoren
Title: Vice President

Address: 730 Fifth Avenue, 20th Floor
New York, NY 10019

Signature page to Synacor, Inc.
Third Amended and Restated Investors' Rights Agreement

**INVESTORS AND LENDERS:**

RAND CAPITAL SBIC, L.P.

By: Rand Capital Management, LLC,
its General Partner

By _____
Name:
Title:

Address: 2200 Rand Building
Buffalo, NY 14203

BUFFALO AND ERIE COUNTY INDUSTRIAL
LAND DEVELOPMENT CORPORATION

By _____
Name:
Title:

Address: 275 Oak Street
Buffalo, NY 14203

**INVESTORS AND COMMON HOLDERS:**

CRYSTAL INTERNET VENTURE FUND II (BVI), L.P.

CRYSTAL INTERNET VENTURE FUND II (BVI), CRYSTAL VISION, L.P.

By: Crystal Venture II, Ltd.
Their: General Partner

By _____
Name:
Title:

Address: 1120 Chester Avenue, Suite 418
Cleveland, OH 44114

Signature page to Synacor, Inc.
Third Amended and Restated Investors' Rights Agreement

**INVESTORS AND COMMON HOLDERS:**

_____
Jeremy M. Jacobs, Jr.

Address: c/o Delaware North Co.
40 Fountain Plaza
Buffalo, NY 14202
Attn: Mike Gallagher

_____
JoRon Management LLC

Address: 50 Fountain Plaza
Suite 1320
Buffalo, NY 14202

Signature page to Synacor, Inc.
Third Amended and Restated Investors' Rights Agreement

**INVESTORS AND COMMON HOLDERS:**

PACVEN WALDEN VENTURES IV
ASSOCIATES FUND, L.P.

By _____
Name: Lip-Bu Tan
Title: Director

of Pacven Walden Management Co., Ltd.
as General Partner of Pacven Walden Management II, L.P.
as General Partner of Pacven Walden Ventures IV
Associates Fund, L.P.

PACVEN WALDEN VENTURES IV, L.P.

By _____
Name: Lip-Bu Tan
Title: Director

of Pacven Walden Management Co., Ltd.
as General Partner of Pacven Walden Management II, L.P.
as General Partner of Pacven Walden Ventures IV, L.P.

WIIG-TDF PARTNERS LLC

By _____

Name: Lip-Bu Tan
Title: Director

of WIIG Management Co., Ltd.
for and on behalf of the Fund Managers

WALDEN EDB PARTNERS II, L.P.

By _____
Name: Lip-Bu Tan
Title: Director

Address: One California Street, Suite 2800
San Francisco, CA 94111

**COMMON HOLDERS** :

_____
Print name: _____

_____
Print name: _____

_____
Print name: _____

Signature page to Synacor, Inc.
Second Amended and Restated Investors' Rights Agreement

**SCHEDULE A**

LIST OF SERIES C INVESTORS

Access Technology Capital, LLC
Advantage Capital New York Partners I, L.P.
Advantage Capital New York Partners II, L.P.
Crystal Internet Venture Fund II (BVI), L.P.
Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P.
Intel Capital Corporation
JoRon Management LLC
Jeremy M. Jacobs, Jr.
Mitsui Incubase Corporation
North Atlantic SBIC IV, L.P.
North Atlantic Venture Fund III
Rand Capital SBIC, L.P.
Pacven Walden Ventures IV Associates Fund, L.P.
Pacven Walden Ventures IV, L.P.
Walden EDB Partners II, L.P.
WIIG-TDF Partners LLC

**SCHEDULE B**

LIST OF SERIES B INVESTORS

Access Technology Capital, LLC
Advantage Capital New York Partners I, L.P.
Crystal Internet Venture Fund II (BVI), L.P.
Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P.
Intel Capital Corporation
Jeremy M. Jacobs, Jr.
JoRon Management LLC
Rand Capital SBIC, L.P.
Pacven Walden Ventures IV Associates Fund, L.P.
Pacven Walden Ventures IV, L.P.

**SCHEDULE C**

LIST OF SERIES A-1 INVESTORS

Advantage Capital New York Partners I, L.P.

**SCHEDULE D**

LIST OF SERIES A INVESTORS

Crystal Internet Venture Fund II (BVI), Ltd.
Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P.
JoRon Management LLC
Jeremy M. Jacobs, Jr.
Joseph J. Castiglia
Robert G. Weber
Fors Family Limited Partnership
Paul J. Harder
Stephen A. Nappo
Steven R. Kieffer
David M. Carroll
John Lally
Kevin Cornacchio
Charles Kelkenberg
David T. Hore
Robert Santa Maria
Herbert J. Heimerl, Jr.
Guy Berberich
Thomas F. Hanlon III
Paul Wiepert
Scott M. McCarthy
Samuel LaNasa
Chek Ventures LLC
Chek Ventures II LLC
Chek Ventures III LLC
Intel Capital Corporation
Pacven Walden Ventures IV Associates Fund, L.P.
Pacven Walden Ventures IV, L.P.
WIIG-TDF Partners LLC
Walden EDB Partners II, L.P.
Access Technology Capital, LLC
Mike Nappo
Don Wehrung
Sean Hus Var
Richard Lally
Kenneth Lally
Rand Capital SBIC, L.P.
Buffalo and Erie County Industrial Land Development Corporation

**SCHEDULE E**

LIST OF COMMON HOLDERS

@Visory LLC
Charles A. Anken & Sandra S. Olivieri
Gabriel Adiv
Darren Ascone
Frederick G. Attea
Dennis Ball
Ed Bujanowski
Malcolm Burnett
Ronald B. Cadby
Angelo J. Cammilleri
Rebecca Cammilleri
Michael Campanella
Barak Carmon
Blake Carver
George G. Chamoun
Chek Ventures LLC
Chek Ventures II LLC
Henry Cole
Kari Cole
Mike Collins
Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P.
Crystal Internet Venture Fund II (BVI), Ltd.
Larry Decker
Deeridge Investment Partnership
Anthony Diina
Tracy Fernandez
First Albany Corporation
Douglas Fish
Garage.com Investments I, L.P.
Garage Securities, Inc.
Michael Garofalo
Keith Gizzi
Drew Graham
Leota Knapp Hair
George Harris
Jesper Henriksen
Sean Hus Var
ICE Family Partnership
Janet Ingalsbe
Innovasia Venture Partners I Limited (BVI)
Jeremy M. Jacobs, Sr.
Jeremy M. Jacobs, Jr.

Craig W. Johnson
JoRon Management LLC
Rick Keisic
Rachel K. King
Kyle Kokanovich
Kandice Kraus
Ted Leiser
Brian Lipke
Brad Loftin
Mary K. Mahley
Randolph Marks
Kenneth McCreadie
John F. McMahon
Mary G. McMahon
Daniel J. Neaverth, Jr.
David Michael Neaverth
Darren Anthony Neaverth
Dean James Neaverth
Rory B. O'Connor
Pacven Walden Ventures IV Associates Fund, L.P.
Pacven Walden Ventures IV, L.P.
Sunita S. Pandit
Virginia R. Piotrowski
Ron Poole
Michael Prince
Brad Pritchard
ProSeed Capital Holdings CVA
Santi Rao
Redwood Management III LP
Redwood Ventures III LP
Danielle Restaino
Aimee Richardson
Howard Schomer
Cindy Schwartz
Phil Seibel
Francine Seifert
Gur Shomron
The Sidne J. Long Trust u/a/d 4-26-84
SMB Investment Partnership
Mike Snusz
Sarah Sorensen
Joseph Spychalski
Tom Stanton
David Stempkowski
The Sternheim Trust
Dave Tucker

Patti Strauss
VLG Investments 1998
Walden EDB Partners II LP
Linda Wancyzk
Robert Weiner
Alison Wentker
WIIG-TDF Partners LLC
Raymond Young
Gregory Zaepfel

**SCHEDULE F**

LIST OF LENDERS

Rand Capital SBIC, L.P.
Buffalo and Erie County Industrial Land Development Corporation

**Exhibit 4.4**

**THIRD AMENDED AND RESTATED**
**STOCK RESTRICTION, FIRST REFUSAL AND CO-SALE AGREEMENT**

This THIRD AMENDED AND RESTATED STOCK RESTRICTION, FIRST REFUSAL AND CO-SALE AGREEMENT (the " Agreement ") is made and entered into as of October 19, 2006, by and among Synacor, Inc., a Delaware corporation (the " Company "), the holders of Series C Preferred Stock of the Company (the " Series C Preferred Stock") listed on the Schedule of Series C Investors attached as Schedule A hereto (the " Series C Investors "), the holders of Series B Preferred Stock of the Company (the " Series B Preferred Stock ") listed on the Schedule of Series B Investors attached as Schedule B hereto (the " Series B Investors "), the holders of Series A-1 Preferred Stock of the Company (the " Series A-1 Preferred Stock ") listed on the Schedule of Series A-1 Investors attached as Schedule C hereto (the " Series A-1 Investors "), the holders of Series A Preferred Stock of the Company (the " Series A Preferred Stock " and, together with the Series C Preferred Stock, the Series B Preferred Stock and the Series A-1 Preferred Stock, the " Preferred Stock ") listed on the Schedule of Series A Investors attached as Schedule D hereto (the " Series A Investors " and, together with the Series C Investors, the Series B Investors and the Series A-1 Investors, the " Investors ") and the holders of Common Stock of the Company (the " Common Stock ") or warrants to purchase Common Stock of the Company (collectively, the " Common Holders ") listed on the Schedule of Common Holders attached as Schedule E hereto. The Company, the Common Holders and the Investors are individually each referred to herein as a " Party " and are collectively referred to herein as the " Parties ." The Company's Board of Directors is referred to herein as the " Board ."

WITNESSETH :

WHEREAS, the Company and the Series C Investors have entered into that certain Series C Preferred Stock Purchase Agreement of even date herewith (the " Purchase Agreement "), which provides for, among other things, the purchase by the Series C Investors of shares of Series C Preferred Stock;

WHEREAS, the execution and delivery of this Agreement is a condition to the closing of the transactions contemplated by the Purchase Agreement;

WHEREAS, the Company, certain of the Investors and the Common Holders are parties to that certain Second Amended and Restated Stock Restriction, First Refusal and Co-Sale Agreement dated as of October 1, 2004 (the " Prior Agreement ");

WHEREAS, Section 10 of the Prior Agreement provides that the Prior Agreement may be amended only with the written consent of the Company and Investors (as defined therein) holding at least two thirds of the Common Stock (as defined therein) issued or issuable upon conversion of the Preferred Stock (as defined therein), such majority to include the consent of Intel Capital Corporation; and

WHEREAS, the parties to the Prior Agreement necessary to amend such Prior Agreement have resolved to do so, and such parties hereby agree that this Agreement shall

amend and restate the Prior Agreement in its entirety and to accept the rights created pursuant hereto in lieu of the rights created under the Prior Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions .

(a) Affiliate . For purposes of this Agreement, the terms " Affiliate " and " Affiliated " shall have the meanings set forth in the Purchase Agreement.

(b) Delivery . For purposes of this Agreement, the term " Delivery " shall have the meaning set forth in Section 6 below.

(c) Equity Securities . For purposes of this Agreement, the term " Equity Securities " shall mean (i) any shares of Common Stock, or options or warrants exercisable for Common Stock, now or hereafter owned or held by a Common Holder or an Investor (or a transferee in accordance with Section 2.4 herein), (ii) any shares of Preferred Stock now or hereafter owned or held by a Common Holder or an Investor (or a transferee in accordance with Section 2.4 herein) or (iii) shares of any series of preferred stock created after the date hereof and securities of any type whatsoever that are, or may become, convertible into or exchangeable into or exercisable for shares of Common Stock or Preferred Stock.

(d) Holders . For purposes of this Agreement, the term " Holders " shall mean the Investors or persons who have acquired shares from any of such persons or their transferees or assignees in accordance with the provisions of this Agreement.

(e) Transfer . For purposes of this Agreement, the term " Transfer " shall include any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by bequest, devise or descent, or other transfer or disposition of any kind, including, but not limited to, transfers pursuant to divorce or legal separation, transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary, involuntarily or by operation of law, directly or indirectly, of any of the Equity Securities.

(f) Release Date . For the purposes of this Agreement, the term " Release Date " shall mean November 18, 2007.

2. Agreements Among the Company, the Investors and the Common Holders .

2.1 Rights of First Refusal .

(a) Transfer Notice . If at any time a Common Holder or Investor proposes to Transfer Equity Securities (a " Selling Stockholder "), then the Selling Stockholder shall promptly give the Company written notice of the Selling Stockholder's intention to make the Transfer (the " Transfer Notice "). The Transfer Notice shall include (i) a description of the

Equity Securities to be transferred (the " Offered Shares "), (ii) the name(s) and address(es) of the prospective transferee(s), (iii) the consideration to be paid and (iv) the material terms and conditions upon which the proposed Transfer is to be made. The Company shall promptly forward the Transfer Notice to each Holder. The Transfer Notice shall certify that the Selling Stockholder has received a firm offer from the prospective transferee(s) and in good faith believes a binding agreement for the Transfer is obtainable on the terms set forth in the Transfer Notice. The Transfer Notice shall also include a copy of any written proposal, term sheet or letter of intent or other agreement relating to the proposed Transfer. In the event that the Transfer is being made pursuant to the provisions of Section 2.4, the Transfer Notice shall state under which specific subsection the Transfer is being made.

(b) Company's Right of First Refusal . The Company shall have an option for a period of ten (10) days from Delivery of the Transfer Notice to elect to purchase the Offered Shares at the same price and subject to the same material terms and conditions as described in the Transfer Notice. The Company may exercise such purchase option and purchase all or any portion of the Offered Shares by notifying the Selling Stockholder in writing before expiration of such ten (10) day period as to the number of such shares that it wishes to purchase. If the Company gives the Selling Stockholder notice that it desires to purchase such shares, then payment for the Offered Shares shall be by check or wire transfer, against delivery of the Offered Shares to be purchased at a place agreed upon between the parties and at the time of the scheduled closing therefor, which shall be no later than forty-five (45) days after Delivery to the Company of the Transfer Notice, unless the Transfer Notice contemplated a later closing with the prospective third-party transferee(s) or unless the value of the purchase price has not yet been established pursuant to Section 2.1(e). If the Company fails to purchase any or all of the Offered Shares by exercising the option granted in this Section 2.1(b) within the period provided, the remaining Offered Shares shall be subject to the options granted to the Holders pursuant to subsection 2.1(d).

(c) Additional Transfer Notice . Subject to the Company's option set forth in Section 2.1(b), if at any time the Selling Stockholder proposes a Transfer, then, within five (5) days after the Company has declined to purchase all, or a portion, of the Offered Shares or the Company's option to so purchase the Offered Shares has expired, the Selling Stockholder shall give each Holder an " Additional Transfer Notice " that shall include all of the information and certifications required in a Transfer Notice and shall additionally identify the Offered Shares that the Company has declined to purchase (the " Remaining Shares ") and briefly describe the Holders' rights of first refusal and co-sale rights with respect to the proposed Transfer.

(d) Holder's Right of First Refusal .

(i) Each Holder shall have an option for a period of fifteen (15) days from Delivery of the Additional Transfer Notice from the Selling Stockholder set forth in Section 2.1(c) to elect to purchase its pro rata share of the Remaining Shares at the same price and subject to the same material terms and conditions as described in the Additional Transfer Notice. Each Holder may exercise such purchase option and thereby purchase all or any portion of his, her or its respective pro rata shares (with any re-allotments as provided below) of the Remaining Shares (a " Participating Holder ") by notifying the Selling Stockholder in writing, before the expiration of the fifteen (15) day period, as to the number of such shares which he, she

or it wishes to purchase (including any re-allotment). Each Holder's pro rata share of the Remaining Shares shall be a fraction of the Remaining Shares, of which the number of shares of Preferred Stock owned by such Holder on the date of the Transfer Notice shall be the numerator and the total number of shares of Preferred Stock held by all Holders on the date of the Transfer Notice shall be the denominator. Each Holder shall have a right of re-allotment such that, if any other Holder fails to exercise the right to purchase its full pro rata share of the Remaining Shares, the Fully Participating Holders (as defined below) may exercise an additional right to purchase, on a pro rata basis, the Remaining Shares not previously purchased.

(ii) In the event any Holder elects not to purchase its pro rata share of the Remaining Shares available pursuant to its option under subsection 2.1(d)(i) within the time period set forth therein, then the Selling Stockholder shall promptly give written notice (the " Overallotment Notice ") to each Participating Holder that has elected to purchase all of its pro rata share of the Remaining Shares (each a " Fully Participating Holder "), which notice shall set forth the number of Remaining Shares not purchased by the other Holders, and shall offer the Fully Participating Holders the right to acquire such unsubscribed shares. Each Fully Participating Holder shall have five (5) days after Delivery of the Overallotment Notice to deliver a written notice to the Selling Stockholder (the " Participating Holders Overallotment Notice ") of its election to purchase its pro rata share of the unsubscribed shares on the same terms and conditions as set forth in the Additional Transfer Notice and indicating the maximum number of the unsubscribed shares that it will purchase in the event that any other Fully Participating Holder elects not to purchase its pro rata share of the unsubscribed shares. For purposes of this subsection 2.1(d)(ii), the numerator shall be the same as that used in subsection 2.1(d)(i) above and the denominator shall be the total number of shares of Preferred Stock owned by all Fully Participating Holders on the date of the Transfer Notice. Each Participating Holder shall be entitled to apportion the Remaining Shares to be purchased among its partners and Affiliates (including, in the case of a venture capital fund, other venture capital funds Affiliated with such fund), provided that such Participating Holder notifies the Selling Stockholder of each such allocation.

(e) Payment .

(i) The Participating Holders shall effect the purchase of the Offered Shares with payment by check or wire transfer, against delivery of the Offered Shares to be purchased at a place agreed upon between the parties and at the time of the scheduled closing therefor, which shall be no later than forty-five (45) days after Delivery to the Company of the Transfer Notice, unless the Transfer Notice contemplated a later closing with the prospective third-party transferee(s) or unless the value of the purchase price has not yet been established pursuant to this subsection 2.1(e).

(ii) Should the purchase price specified in the Transfer Notice or Additional Transfer Notice be payable in property other than cash or evidences of indebtedness, the Company (and the Participating Holders) shall have the right to pay the purchase price in the form of cash equal in amount to the fair market value of such property. If the Selling Stockholder and the Company (or the Participating Holders) cannot agree on such fair market value within ten (10) days after Delivery to the Company of the Transfer Notice (or the Delivery of the Additional Transfer Notice to the Holders), the valuation shall be made by an

appraiser of recognized standing selected by the Selling Stockholder and the Company (or the Participating Holders) or, if they cannot agree on an appraiser within twenty (20) days after Delivery to the Company of the Transfer Notice (or the Delivery of the Additional Transfer Notice to the Holders), each shall select an appraiser of recognized standing and those appraisers shall designate a third appraiser of recognized standing, whose appraisal shall be determinative of such value. The cost of such appraisal shall be shared equally by the Selling Stockholder and the Company (and the Participating Holders), with half of the cost borne by the Company and the Participating Holders pro rata by each, based on the number of shares such parties have expressed an interest in purchasing pursuant to this Section 2. If the time for the closing of the Company's purchase or the Participating Holders' purchase has expired but the determination of the value of the purchase price offered by the prospective transferee(s) has not been finalized, then such closing shall be held on or prior to the fifth business day after such valuation shall have been made pursuant to this subsection.

2.2 Right of Co-Sale .

(a) To the extent the Company and the Holders do not exercise their respective rights of first refusal as to all of the Offered Shares or the Remaining Shares pursuant to Section 2.1, then each Holder (a " Selling Holder " for purposes of this Section 2.2) that notifies the Selling Stockholder in writing within twenty (20) days after Delivery of the Transfer Notice referred to in subsection 2.1(c), shall have the right to participate in such sale of Equity Securities on the same terms and conditions as specified in the Transfer Notice. Such Selling Holder's notice to the Selling Stockholder shall indicate the number of shares of capital stock of the Company that the Selling Holder wishes to sell under his, her or its right to participate. To the extent one or more of the Holders exercise such right of participation in accordance with the terms and conditions set forth below, the number of shares of Equity Securities that the Selling Stockholder may sell in the Transfer shall be correspondingly reduced.

(b) Each Selling Holder may sell all or any part of that number of shares of capital stock of the Company equal to the product obtained by multiplying (i) the aggregate number of shares of Equity Securities covered by the Transfer Notice that have not been subscribed for pursuant to Section 2.1 by (ii) a fraction, the numerator of which is the number of shares of Preferred Stock owned by the Selling Holder on the date of the Transfer Notice and the denominator of which is the total number of Equity Securities owned by the Selling Stockholder and all of the Selling Holders on the date of the Transfer Notice.

(c) Each Selling Holder shall effect its participation in the sale by promptly delivering to the Selling Stockholder for transfer to the prospective purchaser one or more certificates, properly endorsed for transfer, which represent:

(i) the type and number of shares of capital stock of the Company that such Selling Holder elects to sell; or

(ii) that number of shares of capital stock of the Company that are at such time convertible into the number of shares of Common Stock that such Selling Holder elects to sell; provided , however , that if the prospective third-party purchaser objects to the delivery of shares of capital stock of the Company in lieu of Common Stock, such Selling Holder

shall convert such shares of capital stock of the Company into Common Stock and deliver Common Stock as provided in this Section 2.2. The Company agrees to make any such conversion concurrent with the actual transfer of such shares to the purchaser and contingent on such transfer.

(d) The stock certificate or certificates that the Selling Holder delivers to the Selling Stockholder pursuant to subsection 2.2(c) shall be transferred to the prospective purchaser in consummation of the sale of the Equity Securities pursuant to the terms and conditions specified in the Transfer Notice, and the Selling Stockholder shall concurrently therewith remit to such Selling Holder that portion of the sale proceeds to which such Selling Holder is entitled by reason of its participation in such sale. To the extent that any prospective purchaser or purchasers prohibits such assignment or otherwise refuses to purchase shares or other securities from a Selling Holder exercising its rights of co-sale hereunder, the Selling Stockholder shall not sell to such prospective purchaser or purchasers any Equity Securities unless and until, simultaneously with such sale, the Selling Stockholder shall purchase such shares or other securities from such Selling Holder for the same consideration and on the same terms and conditions as the proposed transfer described in the Transfer Notice.

2.3 Non-Exercise of Rights . To the extent that the Company and the Holders have not exercised their rights to purchase the Offered Shares or the Remaining Shares within the time periods specified in Section 2.1 and the Holders have not exercised their rights to participate in the sale of the Remaining Shares within the time periods specified in Section 2.2, the Selling Stockholder shall have a period of thirty (30) days from the expiration of such rights in which to sell the Offered Shares or the Remaining Shares, as the case may be, upon terms and conditions (including the purchase price) no more favorable than those specified in the Transfer Notice, to the third-party transferee(s) identified in the Transfer Notice. The third-party transferee(s) shall acquire the Offered Shares and the Remaining Shares free and clear of subsequent rights of first refusal and co-sale rights under this Agreement. In the event the Selling Stockholder does not consummate the sale or disposition of the Offered Shares and Remaining Shares within the thirty (30) day period from the expiration of these rights, the Company's first refusal rights and the Holders' first refusal rights and co-sale rights shall continue to be applicable to any subsequent disposition of the Offered Shares or the Remaining Shares by the Selling Stockholder until such right lapses in accordance with the terms of this Agreement. Furthermore, the exercise or non-exercise of the rights of the Company and the Holders under this Section 2 to purchase Equity Securities from the Selling Stockholder or participate in sales of Equity Securities by the Selling Stockholder shall not adversely affect their rights to make subsequent purchases from the Selling Stockholder of Equity Securities or subsequently participate in sales of Equity Securities by the Selling Stockholder.

2.4 Limitations of Rights of First Refusal and Co-Sale . Notwithstanding the provisions of Section 2.1 and 2.2 of this Agreement, the first refusal rights of the Company and the first refusal rights and co-sale rights of the Holders shall not apply to (a) the Transfer of Equity Securities to any spouse or member of the Common Holder's or Investor's immediate family, or to a custodian, trustee (including a trustee of a voting trust), executor, or other fiduciary for the account of the Common Holder's or Investor's spouse or members of the Common Holder's or Investor's immediate family, or to a trust for the Common Holder's or Investor's own self, or a charitable remainder trust, (b) any Transfer between an entity and its

partners and Affiliates (including, in the case of a venture capital fund, other venture capital funds Affiliated with such fund), (c) any sale of Equity Securities to the public pursuant to a registration statement filed with, and declared effective by, the Securities and Exchange Commission under the Securities Act of 1933, as amended or (d) the Transfer of any Equity Securities owned or otherwise held by Intel Capital Corporation (" Intel Capital ") or its Affiliates; provided , however , that in the event of any transfer made pursuant to one of the exemptions provided by clauses (a), (b), (c) or (d), (i) the Common Holder or Investor shall inform the Investors of such Transfer prior to effecting it and (ii) each such transferee or assignee, prior to the completion of the Transfer, shall have executed documents assuming the obligations of the Common Holder or Investor under this Agreement with respect to the transferred Equity Securities. Such transferred Equity Securities shall remain " Equity Securities " hereunder, and such pledgee, transferee or donee shall be treated as the "Common Holder or Investor" for purposes of this Agreement.

2.5 Prohibited Transfers .

(a) Except as otherwise provided in this Agreement, each Common Holder and Investor will not sell, assign, transfer, pledge, hypothecate or otherwise encumber or dispose of in any way, all of any part of or any interest in the Equity Securities. Any sale, assignment, transfer, pledge, hypothecation or other encumbrance or disposition of Equity Securities not made in conformance with this Agreement shall be null and void, shall not be recorded on the books of the Company and shall not be recognized by the Company.

(b) In the event the Common Holder or Investor should sell any Equity Securities in contravention of the co-sale rights of the Holders under Section 2.2 (a " Prohibited Transfer "), the Holders, in addition to such other remedies as may be available at law, in equity or hereunder, shall have the put option provided below under subsection (c), and the Common Holder and Investor shall be bound by the applicable provisions of such option.

(c) In the event of a Prohibited Transfer, each Holder shall have the right to sell to the Common Holder and Investor the type and number of shares of Equity Securities equal to the number of shares each Holder would have been entitled to transfer to the third-party transferee(s) under Section 2.2 hereof had the Prohibited Transfer been effected pursuant to and in compliance with the terms hereof. Such sale shall be made on the following terms and conditions:

(i) The price per share at which the shares are to be sold to the Common Holder and Investor shall be equal to the price per share paid by the third-party transferee(s) to the Common Holder and Investor in the Prohibited Transfer. The Common Holder and Investor shall also reimburse each Holder for any and all fees and expenses, including legal fees and expenses, incurred pursuant to the exercise or the attempted exercise of the Holder's rights under Section 2.2.

(ii) Within ninety (90) days after the later of the date on which the Holder (A) receives notice of the Prohibited Transfer or (B) otherwise becomes aware of the Prohibited Transfer, each Holder shall, if exercising the option created hereby, deliver to the

Common Holder and Investor the certificate or certificates representing shares to be sold, each certificate to be properly endorsed for transfer.

(iii) The Common Holder and Investor shall, upon receipt of the certificate or certificates for the shares to be sold by a Holder pursuant to this Section 2.5, pay the aggregate purchase price therefor and the amount of reimbursable fees and expenses, as specified in subsection 2.5(c)(i), in cash or by other means acceptable to the Holder.

(d) Except as provided in Sections 2.4 and 2.6 hereof, no Common Holder or Investor shall transfer shares of Common Stock, or options or warrants exerciseable for shares of Common Stock, until the Release Date. Following the Release Date all Transfers of shares of Common Stock, or options or warrants exercisable for shares of Common Stock, shall be subject to the first refusal rights of the Company and the first refusal and co-sale rights of the Holders set forth in Sections 2.1 and 2.2 hereof.

2.6 Mandatory Offer to Sell .

(a) In the event that any Common Holder (i) dies or otherwise ceases to exist, (ii) is declared incompetent by a court of competent jurisdiction, (iii) files a petition (or a petition is filed against such Common Holder) for relief under applicable bankruptcy or insolvency law, and such petition is not dismissed within sixty (60) days of filing, (iv) is dissolved or liquidated, (v) effects a transfer for the benefit of creditors of such Common Holder generally, or (vi) is obligated to transfer any shares of Common Stock of the Company in connection with a divorce or dissolution, or is party to any property settlement or separation agreement wherein shares of Common Stock of the Company are awarded the former or separated spouse or domestic partner of such Common Holder who is not already a stockholder of the Company (each of subsections 2.6(a)(i) through (vi) shall be referred to herein as a " Triggering Event "), then all shares of Common Stock held by such Common Holder, or a transferee in accordance with Section 2.4 herein, shall be deemed to be offered for sale to the Company at a price per share determined pursuant to subsection 2.6(b) below; provided , however , that this Section 2.6 shall not apply to (A) in the event such Common Holder dies, those shares of Common Stock held by such Common Holder that would otherwise be transferred pursuant to Section 2.4 hereof, (B) in the event that a Common Holder is declared incompetent, those shares of Common Stock held by such Common Holder that can be voted by a transferee in accordance with Section 2.4 hereof, and (C) in connection with a divorce or separation, those shares of Common Stock not transferred in connection therewith.

(b) With respect to any shares of Common Stock to be transferred pursuant to Section 2.6(a) above the purchase price per share shall determined by an appraiser of recognized standing selected by the Board. The Company shall notify such Common Holder, or the permitted transferee thereof, of the purchase price so determined within thirty (30) days after receipt by the Company of written notice of any Triggering Event.

(c) The right of the Company to purchase any shares of Common Stock pursuant to this Section 2.6 may be assigned by the Board, in whole or in part, to the Investors, on a pro rata basis, or to other stockholders of the Company if no Investor elects to accept such assignment.

3. Assignments and Transfers; No Third-Party Beneficiaries . This Agreement and the rights and obligations of the Parties hereunder shall inure to the benefit of, and be binding upon, their respective successors, assigns and legal representatives, but shall not otherwise be for the benefit of any third party. The rights of the Holders hereunder are only assignable (i) to any other Holder or (ii) to a partner or Affiliate of such Holder; provided that except as otherwise provided in Section 2, each Common Holder and Investor will not sell, assign, transfer, pledge, hypothecate or otherwise encumber or dispose of in any way, all of any part of or any interest in the Equity Securities.

4. Legend . Each existing or replacement certificate for the Company's shares now owned or hereafter acquired shall bear the following legend upon its face:

> "THE SALE, PLEDGE, HYPOTHECATION, ASSIGNMENT OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN STOCK RESTRICTION, FIRST REFUSAL AND CO-SALE AGREEMENT BY AND AMONG THE STOCKHOLDER, THE CORPORATION AND CERTAIN HOLDERS OF STOCK OF THE CORPORATION. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE CORPORATION."

5. Effect of Change in Company's Capital Structure . If, from time to time, the Company pays a stock dividend or effects a stock split or other change in the character or amount of any of the outstanding stock of the Company, then in such event any and all new, substituted or additional securities to which the Common Holder and Investor is entitled by reason of such Common Holder's and Investor's ownership of Equity Securities shall be immediately subject to the rights and obligations set forth in this Agreement with the same force and effect as the stock subject to such rights immediately before such event.

6. Notices . All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. The occurrence of the events set forth in subsections (i) through (iv) above shall constitute " Delivery " of notice. All communications shall be sent to the respective parties at the addresses set forth on the signature pages attached hereto (or at such other addresses as shall be specified by notice given in accordance with this Section 6).

7. Further Instruments and Actions . The Parties agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement. Each Common Holder and Investor agrees to cooperate affirmatively with the Company, and to the extent reasonably requested by the Company, the Holders, to enforce rights and obligations pursuant hereto.

8. Term . This Agreement shall terminate and be of no further force or effect upon the earliest to occur of (a) the consummation of the Company's sale of its Common Stock or other securities pursuant to a registration statement on Form S-1 or Form SB-2 under the Securities Act of 1933, as amended, the aggregate proceeds of which is not less than $25,000,000 or (b) the consummation of a Liquidation Event, as that term is defined in the Company's Fourth Amended and Restated Certificate of Incorporation (as amended from time to time).

9. Entire Agreement . This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all other agreements between or among any of the parties with respect to the subject matter hereof. This Agreement shall be interpreted under the laws of the State of New York without reference to New York conflicts of law provisions. The Prior Agreement is hereby amended and restated in its entirety and shall be of no further force or effect.

10. Amendments and Waivers . This Agreement may be terminated, any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of (i) the Company, and (ii) Investors holding at least two thirds of the Common Stock issuable or issued upon conversion of the Preferred Stock; provided , however , that such majority shall include the consent of Intel Capital until such time that Intel Capital transfers its Shares to a transferee that is not a partner or Affiliate of Intel Capital; provided further , however , that in the event such termination, amendment or waiver adversely affects the rights and/or obligations of the Common Holders in a different manner than the Holders, such termination, amendment or waiver shall also require the written consent of the holders of at least a majority of the Common Stock then held by the Common Holders. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each Party and their respective successors and assigns.

11. Severability . If one or more provisions of this Agreement is held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

12. Attorney's Fees . In the event that any dispute among the parties to this Agreement should result in litigation, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

13. Aggregation of Stock . For the purposes of determining the availability of any rights under this Agreement, the holdings of any transferee and assignee of an individual or a partnership who is a spouse, ancestor, lineal descendant or siblings of such individual or partners or retired partners of such partnership or Affiliates of such partnership (including spouses and ancestors, lineal descendants and siblings of such partners or spouses who acquire Common Stock by gift, will or intestate succession) shall be aggregated together with the individual or

partnership, as the case may be, for the purpose of exercising any rights or taking any action under this Agreement. In addition, all holdings of Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

14. Binding Effect . In addition to any restriction or transfer that may be imposed by any other agreement by which any Party hereto may be bound, this Agreement shall be binding upon the Parties, their respective heirs, successors, transferees and assigns.

15. Additional Investors . Notwithstanding Section 10 hereof, no consent shall be necessary to (i) add additional Investors as signatories to this Agreement, provided that such Investors have purchased shares of Series C Preferred Stock pursuant to the Purchase Agreement or received Equity Securities pursuant to Section 2.4 hereof or (ii) add additional Common Holders as signatories to this Agreement. The Company shall not issue Common Stock to any Person if, immediately after the issuance of such Common Stock (or if such Common Stock is issued upon conversion or exercise of another security convertible into, or exercisable for, such Common Stock, immediately after the issuance of such other security), such Person would hold more than one percent (1%) of the Company's Common Stock (assuming the conversion of all outstanding Preferred Stock and the exercise of all outstanding warrants and options), unless (a) such Person becomes a signatory to this Agreement, (b) such Common Stock is otherwise subject to a right of first refusal in favor of the Company (including a right of first refusal under stock option or stock purchase plans or agreements used in connection therewith) or (c) Investors holding at least a majority of the Common Stock issued or issuable upon conversion of the Preferred Stock otherwise consent in writing. The schedules to this Agreement shall be updated to reflect such additional Investors and Common Holders.

16. Counterparts . This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

( *Remainder of page intentionally left blank* )

**IN WITNESS WHEREOF** , the parties hereto have executed this Third Amended and Restated Stock Restriction, First Refusal and Co-Sale Agreement as of the date first written above.

**COMPANY:**

SYNACOR, INC.

By _____
Ron Frankel
President

Address: 40 La Riviere Drive, Suite 300
Buffalo, NY 14202

**INVESTORS:**

INTEL CAPITAL CORPORATION
By _____
Name:
Title:

Address: c/o Intel Corporation
Attn: Intel Capital Portfolio Manager
2200 Mission College Blvd., M/S RN6-46
Santa Clara, CA 95052
Facsimile: (408) 765-6038
With a copy by e-mail to:
portfolio.manager@intel.com

**SIGNATURE PAGE TO THE THIRD AMENDED AND RESTATED STOCK RESTRICTION, FIRST REFUSAL AND CO-SALE AGREEMENT BY AND AMONG SYNACOR, INC. AND THE INVESTORS LISTED ON THE SIGNATURE PAGES HERETO.**

**INVESTORS:**

NORTH ATLANTIC VENTURE FUND III,
a Limited Partnership

By: North Atlantic Investors III, LLC,
its General Partner

By: _____
Name:
Title:

Address: _____
_____

NORTH ATLANTIC SBIC IV, L.P.

By: North Atlantic Investors SBIC IV, LLC,
its General Partner

By: _____
Name:
Title:

Address: _____
_____

**INVESTORS:**

MITSUI INCUBASE CORPORATION

By: _____
Name:
Title:

Address: _____

_____

**INVESTORS:**

ADVANTAGE CAPITAL NEW YORK
PARTNERS I, L.P.
By: Advantage Capital New York GP-I, LLC,
Its General Partner

By _____
M. Scott Murphy
Vice President

Address: 5 Warren Street, Suite 204
Glens Falls, NY 12801

ADVANTAGE CAPITAL NEW YORK
PARTNERS II, L.P.

By: Advantage Capital New York GP-II,
LLC, Its General Partner

By _____
M. Scott Murphy
Vice President

Address: 5 Warren Street, Suite 204
Glens Falls, NY 12801

**INVESTORS:**

ACCESS TECHNOLOGY CAPITAL, LLC

By _____
Name: Peter Thoren
Title: Vice President

Address: 730 Fifth Avenue, 20th Floor
New York, NY 10019

**SIGNATURE PAGE TO SYNACOR, INC.**
**THIRD AMENDED AND RESTATED STOCK RESTRICTION,**
**FIRST REFUSAL AND CO-SALE AGREEMENT**

**INVESTORS AND COMMON STOCK WARRANT HOLDERS:**

RAND CAPITAL SBIC, L.P.

By: Rand Capital Management, LLC,
its General Partner

By _____
Name:
Title:

Address: 2200 Rand Building
Buffalo, NY 14203

BUFFALO AND ERIE COUNTY
INDUSTRIAL LAND DEVELOPMENT
CORPORATION

By _____
Name:
Title:

Address: 275 Oak Street
Buffalo, NY 14203

**INVESTORS AND COMMON HOLDERS:**

CRYSTAL INTERNET VENTURE FUND II (BVI), L.P.

CRYSTAL INTERNET VENTURE FUND II (BVI), CRYSTAL VISION, L.P.

By: Crystal Venture II, Ltd.
Their: General Partner

By _____
Name:
Title:

Address: 1120 Chester Avenue, Suite 418
Cleveland, OH 44114

**INVESTORS AND COMMON HOLDERS:**

_____
Jeremy M. Jacobs, Jr.

Address: c/o Delaware North Co.
40 Fountain Plaza
Buffalo, NY 14202
Attn: Mike Gallagher

_____
JoRon Management LLC

Address: 50 Fountain Plaza
Suite 1320
Buffalo, NY 14202

**INVESTORS AND COMMON HOLDERS:**

PACVEN WALDEN VENTURES IV
ASSOCIATES FUND, L.P.

By _____
Name: Lip-Bu Tan
Title: Director

of Pacven Walden Management Co., Ltd.
as General Partner of Pacven Walden Management II, L.P.
as General Partner of Pacven Walden Ventures IV
Associates Fund, L.P.

PACVEN WALDEN VENTURES IV, L.P.

By _____
Name: Lip-Bu Tan
Title: Director

of Pacven Walden Management Co., Ltd.
as General Partner of Pacven Walden Management II, L.P.
as General Partner of Pacven Walden Ventures IV, L.P.

WIIG-TDF PARTNERS LLC

By _____
Name: Lip-Bu Tan
Title: Director

of WIIG Management Co., Ltd.
for and on behalf of the Fund Managers

WALDEN EDB PARTNERS II, L.P.

By _____
Name: Lip-Bu Tan
Title: Director

Address: One California Street, Suite 2800
San Francisco, CA 94111

**COMMON HOLDERS:**

_____
**Print name:** _____

_____
**Print name:** _____

_____
**Print name:** _____

**Schedule A**

Schedule of Series C Investors

Access Technology Capital, LLC
Advantage Capital New York Partners I, L.P.
Advantage Capital New York Partners II, L.P.
Crystal Internet Venture Fund II (BVI), L.P.
Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P.
Intel Capital Corporation
JoRon Management LLC
Jeremy M. Jacobs, Jr.
Mitsui Incubase Corporation
North Atlantic SBIC IV, L.P.
North Atlantic Venture Fund III, a Limited Partnership
Pacven Walden Ventures IV Associates Fund, L.P.
Pacven Walden Ventures IV, L.P.
Rand Capital SBIC, L.P.
WIIG-TDF Partners LLC
Walden EDB Partners II, L.P.

**Schedule B**

Schedule of Series B Investors

Access Technology Capital, LLC
Advantage Capital New York Partners I, L.P.
Crystal Internet Venture Fund II (BVI), L.P.
Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P.
Intel Capital Corporation
Jeremy M. Jacobs, Jr.
JoRon Management LLC
Rand Capital SBIC, L.P.
Pacven Walden Ventures IV Associates Fund, L.P.
Pacven Walden Ventures IV, L.P.

**Schedule C**

Schedule of Series A-1 Investors

Advantage Capital New York Partners I, L.P.

**Schedule D**

Schedule of Series A Investors

Crystal Internet Venture Fund II (BVI), Ltd.
Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P.
JoRon Management LLC
Jeremy M. Jacobs, Jr.
Joseph J. Castiglia
Robert G. Weber
Fors Family Limited Partnership
Paul J. Harder
Stephen A. Nappo
Steven R. Kieffer
David M. Carroll
John Lally
Kevin Cornacchio
Charles Kelkenberg
David T. Hore
Robert Santa Maria
Herbert J. Heimerl, Jr.
Guy Berberich
Thomas F. Hanlon III
Paul Wiepert
Scott M. McCarthy
Samuel LaNasa
Chek Ventures LLC
Chek Ventures II LLC
Chek Ventures III LLC
Intel Capital Corporation
Pacven Walden Ventures IV Associates Fund, L.P.
Pacven Walden Ventures IV, L.P.
WIIG-TDF Partners LLC
Walden EDB Partners II, L.P.
Access Technology Capital, LLC
Mike Nappo
Don Wehrung
Sean Hus Var
Richard Lally
Kenneth Lally
Rand Capital SBIC, L.P.
Buffalo and Erie County Industrial Land Development Corporation

**Schedule E**

Common Holders

@Visory LLC
Charles A. Anken & Sandra S. Olivieri
Gabriel Adiv
Darren Ascone
Frederick G. Attea
Dennis Ball
Ed Bujanowski
Malcolm Burnett
Ronald B. Cadby
Angelo J. Cammilleri
Rebecca Cammilleri
Michael Campanella
Barak Carmon
Blake Carver
George G. Chamoun
Chek Ventures LLC
Chek Ventures II LLC
Henry Cole
Kari Cole
Mike Collins
Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P.
Crystal Internet Venture Fund II (BVI), Ltd.
Larry Decker
Deeridge Investment Partnership
Anthony Diina
Tracy Fernandez
First Albany Corporation
Douglas Fish
Garage.com Investments I, L.P.
Garage Securities, Inc.
Michael Garofalo
Keith Gizzi
Drew Graham
Leota Knapp Hair
George Harris
Jesper Henriksen
Sean Hus Var
ICE Family Partnership
Janet Ingalsbe
Innovasia Venture Partners I Limited (BVI)
Jeremy M. Jacobs, Sr.
Jeremy M. Jacobs, Jr.

Craig W. Johnson
JoRon Management LLC
Rick Keisic
Rachel K. King
Kyle Kokanovich
Kandice Kraus
Ted Leiser
Brian Lipke
Brad Loftin
Mary K. Mahley
Randolph Marks
Kenneth McCreadie
John F. McMahon
Mary G. McMahon
Daniel J. Neaverth, Jr.
David Michael Neaverth
Darren Anthony Neaverth
Dean James Neaverth
Rory B. O'Connor
Pacven Walden Ventures IV Associates Fund, L.P.
Pacven Walden Ventures IV, L.P.
Sunita S. Pandit
Virginia R. Piotrowski
Ron Poole
Michael Prince
Brad Pritchard
ProSeed Capital Holdings CVA
Santi Rao
Redwood Management III LP
Redwood Ventures III LP
Danielle Restaino
Aimee Richardson
Howard Schomer
Cindy Schwartz
Phil Seibel
Francine Seifert
Gur Shomron
The Sidne J. Long Trust u/a/d 4-26-84
SMB Investment Partnership
Mike Snusz
Sarah Sorensen
Joseph Spychalski
Tom Stanton
David Stempkowski
The Sternheim Trust
Dave Tucker

Patti Strauss
VLG Investments 1998
Walden EDB Partners II LP
Linda Wancyzk
Robert Weiner
Alison Wentker
WIIG-TDF Partners LLC
Raymond Young
Gregory Zaepfel

Common Stock Warrant Holders

Rand Capital SBIC, L.P.
Buffalo and Erie County Industrial Land Development Corporation

**Exhibit 4.5**

# THIRD AMENDED AND RESTATED VOTING AGREEMENT

THIS THIRD AMENDED AND RESTATED VOTING AGREEMENT (the " Agreement ") is made and entered into as of October 19, 2006, by and among Synacor, Inc., a Delaware corporation (the " Company "), the holders of the Company's Series C Preferred Stock (sometimes referred to herein as the " Series C Preferred Stock ") listed on the Schedule of Series C Investors attached as Schedule A hereto (the " Series C Investors "), the holders of the Company's Series B Preferred Stock (sometimes referred to herein as the " Series B Preferred Stock ") listed on the Schedule of Series B Investors attached as Schedule B hereto (the " Series B Investors "), the holders of the Company's Series A-1 Preferred Stock (sometimes referred to herein as the " Series A-1 Preferred Stock ") listed on the Schedule of Series A-1 Investors attached as Schedule C hereto (the " Series A-1 Investors "), the holders of the Company's Series A Preferred Stock (sometimes referred to herein as the " Series A Preferred Stock " and, together with the Series C Preferred Stock, Series B Preferred Stock and Series A-1 Preferred Stock, the " Preferred Stock ") listed on the Schedule of Series A Investors attached as Schedule D hereto (the " Series A Investors " and, together with the Series C Investors, Series B Investors and Series A-1 Investors, the " Investors "), the lenders of the Company (the " Lenders ") listed on the Schedule of Lenders attached as Schedule E hereto and the holders of Common Stock of the Company (the " Common Stock ") or warrants to purchase Common Stock of the Company (the " Common Holders ") listed on the Schedule of Common Holders attached as Schedule F hereto. The Company, the Lenders, the Common Holders and the Investors are individually each referred to herein as a " Party " and are collectively referred to herein as the " Parties ." The Company's Board of Directors is referred to herein as the " Board ."

WITNESSETH :

WHEREAS, the Company and the Series C Investors have entered into that certain Series C Preferred Stock Purchase Agreement of even date herewith (the " Purchase Agreement "), which provides for, among other things, the purchase by the Series C Investors of shares of Series C Preferred Stock;

WHEREAS, the execution and delivery of this Agreement is a condition to the closing of the transactions contemplated by the Purchase Agreement;

WHEREAS, the Company's Fourth Amended and Restated Certificate of Incorporation, as may be amended from time to time (the " Certificate of Incorporation "), provides that (a) holders of shares of Common Stock, voting together as a single class, shall elect one (1) member of the Board (the " Common Director "), (b) holders of shares of Series A Preferred Stock, voting together as a single class, shall elect two (2) members of the Board (the " Series A Directors "), (c) the holders of shares of Series B Preferred Stock, voting together as a single class, shall elect one (1) member of the Board (the " Series B Director "), (d) the holders of shares of Series C Preferred Stock, voting together as a single class, shall elect one (1) member of the Board (the " Series C Director " and, together with the Series A Directors and Series B Director, the " Preferred Directors ") and (e) the holders of shares of Common Stock and the

holders of shares of Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect any remaining members of the Board;

WHEREAS, the Company, certain of the Investors, the Common Holders and the Lenders are parties to that certain Second Amended and Restated Voting Agreement dated as of October 1, 2004 (the " Prior Agreement ");

WHEREAS, Section 17 of the Prior Agreement provides that generally the Prior Agreement may be amended with the written consent of the holders of two thirds of the then outstanding Preferred Stock (as defined therein);

WHEREAS, the parties to the Prior Agreement necessary to amend the Prior Agreement have resolved to do so, and such parties hereby agree that this Agreement shall amend and restate the Prior Agreement in its entirety and to accept the rights created pursuant hereto in lieu of the rights created under the Prior Agreement; and

WHEREAS, to induce the Series C Investors to enter into the Purchase Agreement and purchase shares of Series C Preferred Stock thereunder, the Company and the other Parties hereto desire to enter into this Agreement with such Series C Investors;

NOW, THEREFORE, in consideration of the foregoing premises and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Agreement to Vote . Each Investor, as a holder of Preferred Stock, hereby agrees on behalf of itself and any transferee or assignee of any such shares of the Preferred Stock, to hold all of the shares of Preferred Stock registered in its name and any other voting securities of the Company subsequently acquired by such Investor (and any securities of the Company issued with respect to, upon conversion of, or in exchange or substitution for such securities) (hereinafter collectively referred to as the " Investor Shares ") subject to, and to vote the Investor Shares at a regular or special meeting of stockholders (or by written consent) in accordance with, the provisions of this Agreement. Each Common Holder, as a holder of Common Stock of the Company, hereby agrees on behalf of itself and any transferee or assignee of any such shares of Common Stock, to hold all of such shares of Common Stock and any other securities of the Company acquired by such Common Holder in the future (and any securities of the Company issued with respect to, upon conversion of, or in exchange or substitution for such securities) (the " Common Shares ") subject to, and to vote the Common Shares at a regular or special meeting of stockholders (or by written consent) in accordance with, the provisions of this Agreement.

2. Board Size . The holders of Investor Shares and Common Shares shall vote at a regular or special meeting of stockholders (or by written consent) such shares that they own (or as to which they have voting power) to ensure that the size of the Board shall be set and remain at seven (7) directors; provided , however , that such Board size may be subsequently

increased or decreased upon the approval of a majority of the Board and that such majority must include all of the Preferred Directors.

3. Election of Directors .

(a) In any election of directors of the Company to elect the Common Director, the Parties holding shares of Common Stock shall each vote at any regular or special meeting of stockholders (or by written consent) such number of shares of Common Stock then owned by them (or as to which they then have voting power) as may be necessary to elect one (1) director nominated by the holders of a majority of the then outstanding shares of Common Stock, who shall be the Company's then current chief executive officer.

(b) In any election of directors of the Company to elect the Series A Directors, the Parties holding shares of Series A Preferred Stock shall each vote at any regular or special meeting of stockholders (or by written consent) such number of shares of Series A Preferred Stock then owned by them (or as to which they then have voting power) as may be necessary to elect (i) one (1) director nominated by Crystal Internet Venture Fund II (BVI), L.P. and Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P. (collectively, " Crystal "), voting together, (the " Crystal Nominee ") and (ii) one (1) director nominated by Pacven Walden Ventures IV, L.P. (" Walden ") (the " Walden Nominee ") for so long as any shares of Series A Preferred Stock remain outstanding. If the foregoing condition has not been met, one or more replacement directors shall be appointed by the majority consent of the remaining directors.

(c) In any election of directors of the Company to elect the Series B Director, the Parties holding shares of Series B Preferred Stock shall each vote at any regular or special meeting of stockholders (or by written consent) such number of shares of Series B Preferred Stock then owned by them (or as to which they then have voting power) as may be necessary to elect one (1) director nominated by Advantage Capital New York Partners I, L.P. and Advantage Capital New York Partners II, L.P. (collectively, " Advantage ") (the " Advantage Nominee ") for so long as any shares of Series B Preferred Stock remain outstanding. If the foregoing condition has not been met, one or more replacement directors shall be appointed by the majority consent of the remaining directors.

(d) In any election of directors of the Company to elect the Series C Director, the Parties holding shares of Series C Preferred Stock shall each vote at any regular or special meeting of stockholders (or by written consent) such number of Shares of Series C Preferred Stock then owned by them (or as to which they then have voting power) as may be necessary to elect one (1) director nominated by North Atlantic Venture Fund III and North Atlantic SBIC IV, L.P. (collectively, " North Atlantic "), voting together, (the " North Atlantic Nominee ") for so long as (x) any shares of the Series C Preferred Stock remain outstanding and (y) North Atlantic and its Affiliates are the record holder, in aggregate, of at least 20% of the outstanding Series C Preferred Stock. If the foregoing condition has not been met, one or more replacement directors shall be appointed by the majority consent of the remaining directors. For purposes of this Agreement, the terms " Affiliate " and " Affiliated " shall have the meanings set forth in the Purchase Agreement.

(e) In any election of any remaining members of the Board, the Investors and the Common Holders shall each vote at any regular or special meeting of stockholders (or by written consent) such number of voting securities of the Company then owned by them (or as to which they then have voting power) as may be necessary to elect directors nominated by the Common Director and approved by a majority of the Preferred Directors (the " Industry Directors ").

4. Observer Rights . For so long as George G. Chamoun is an employee of the Company, Mr. Chamoun shall be entitled to attend each meeting of the Board in a nonvoting, observer capacity. For so long as they hold shares of Common Stock or Preferred Stock, each of Buffalo and Erie County Industrial Land Development Corporation (" BECILDC "), Rand Capital SBIC, L.P. (" Rand "), Access Technology Capital, LLC (" Access ") and Mitsui Incubase Corporation (" Mitsui ") shall be entitled to designate one (1) representative (the " BECILDC Observer ", the " Rand Observer ", the " Access Observer " and the " Mitsui Observer ", respectively, and together with Mr. Chamoun, the " Observers ") to attend each meeting of the Board in a nonvoting, observer capacity. The Company shall send to the Observers the notice of the time and place of such meeting in the same manner and at the same time as it shall send such notice to the Board. The Company shall also provide the Observers with copies of all reports, minutes and consents at the time and in the manner as they are provided to the Board and the Observers shall have access to the same information as members of the Board, provided that the Observers shall hold in confidence and trust all information provided to, or obtained by, him or her pursuant to this Section 4; and provided further , that the Company reserves the right to withhold any information and to exclude any or all of the Observers from any meeting or portion thereof if (i) access to such information or attendance at such meeting (A) could adversely affect the attorney-client privilege between the Company and its counsel or (B) would result in disclosure of trade secrets to any of the Observers or (ii) any of the Observers is a direct competitor to the Company.

5. Removal . Any director of the Company may be removed from the board in the manner allowed by law and the Certificate of Incorporation, as amended, and the Company's Bylaws, but with respect to a director designated pursuant to subsections 3(a), 3(b), 3(c) or 3(d) above, only upon the vote or written consent of the stockholders or directors, as applicable, entitled to nominate such director.

6. Majority Electing . In the event that (a)(i) an acquisition of the Company by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that would result in the transfer of fifty percent (50%) or more of the outstanding voting power of the Company or in which the stockholders of the Company immediately prior to such transaction would own, as a result of such transaction, less than a majority of the voting securities, in the same relative proportions, of the successor or surviving corporation immediately thereafter; or (ii) a sale of all or substantially all of the assets of this corporation (such events described in subsections (i) and (ii) are referred to herein as a " Sale of the Company ") is approved by a majority of the Board and the holders of at least sixty percent (60%) of the outstanding shares of Preferred Stock (voting together as a single class on an as-converted basis) and (b) the net proceeds of such Sale of the Company are

to be distributed to stockholders of the Company in accordance with the Certificate of Incorporation, as amended, then each Investor, Common Holder and Lender hereby agrees with respect to all options, warrants or securities of the Company, which it owns or with respect to which it otherwise exercises voting or dispositive authority; provided , however , that (i) the requirements of this Section 6 shall not apply to any securities of the Company owned by Intel Capital Corporation (" Intel Capital ") or its Affiliates (including all securities over which Intel Capital otherwise exercises voting or dispositive authority) and (ii) the requirements of this Section 6 shall apply to any transferee of Shares (defined below) that is not a partner or Affiliate of Intel Capital:

(a) in the event such transaction is to be brought to a vote at a stockholder meeting, after receiving proper notice of any meeting of stockholders of the Company to vote on the approval of a Sale of the Company, to be present, in person or by proxy, as a holder of shares of voting securities, at all such meetings and be counted for the purposes of determining the presence of a quorum at such meetings;

(b) to vote (in person, by proxy or by action by written consent, as applicable) all shares of the capital stock of the Company as to which it has beneficial ownership in favor of such Sale of the Company and in opposition of any and all other proposals that could reasonably be expected to delay or impair the ability of the Company to consummate such Sale of the Company;

(c) to refrain from exercising any dissenters' rights or rights of appraisal under applicable law at any time with respect to such Sale of the Company;

(d) to execute and deliver all related documentation and take such other action in support of the Sale of the Company as shall reasonably be requested by the Company;

(e) if the Sale of the Company is structured as a sale of equity securities by the stockholders of the Company, to sell the Investor Shares and Common Shares then owned by it on the terms and conditions of such Sale of the Company; and

(f) except for this Agreement, neither any of the parties hereto nor any Affiliates thereof shall deposit any shares of capital stock beneficially owned by such person in a voting trust or subject any such shares of capital stock to any arrangement or agreement with respect to the voting of such shares of capital stock.

"Shares" is defined as any shares of, or securities convertible into or exchangeable for any shares of, any class of the capital stock of the Company.

7. Legend on Share Certificates . Each certificate representing any Common Shares and Investor Shares shall be endorsed by the Company with a legend reading substantially as follows:

"THE SHARES EVIDENCED HEREBY ARE SUBJECT TO A VOTING AGREEMENT (A COPY OF WHICH MAY BE OBTAINED UPON WRITTEN REQUEST FROM THE ISSUER), AND BY ACCEPTING ANY INTEREST IN SUCH SHARES THE PERSON ACCEPTING SUCH INTEREST SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SAID VOTING AGREEMENT."

8. Covenants of the Company . The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all of the provisions of this Agreement and in the taking of all such actions as may be necessary, appropriate or reasonably requested by the holders of a majority of the outstanding voting securities held by the Parties hereto assuming conversion of all outstanding securities in order to protect the rights of the Parties hereunder against impairment.

9. No Liability for Election of Recommended Directors . None of the Company, the Common Holders, the Lenders, the Investors, nor any officer, director, stockholder, partner, employee or agent of such Party, makes any representation or warranty as to the fitness or competence of the nominee of any Party hereunder to serve on the Company's Board by virtue of such Party's execution of this Agreement or by the act of such Party in voting for such nominee pursuant to this Agreement.

10. Grant of Proxy . Each Party except Intel Capital with respect to Section 6 only hereby grants to the Board a proxy coupled with an interest in all Investor Shares and Common Shares owned by such Party which proxy is irrevocable until (i) this Agreement terminates pursuant to its terms or (ii) this Section 10 is amended to remove such grant of proxy in accordance with Section 17 hereof, to vote all such Investor Shares and Common Shares in the manner provided in Sections 2, 3 and 6 hereof.

11. Specific Enforcement . It is agreed and understood that monetary damages would not adequately compensate an injured Party for the breach of this Agreement by any Party, that this Agreement shall be specifically enforceable, and that any breach or threatened breach of this Agreement shall be the proper subject of a temporary or permanent injunction or restraining order. Further, each Party hereto waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach.

12. Execution by the Company . The Company, by its execution in the space provided below, agrees that it will cause the certificates issued after the date hereof evidencing the shares of Common Stock and Preferred Stock to bear the legend required by Section 7 herein, and it shall supply, free of charge, a copy of this Agreement to any holder of a certificate evidencing shares of capital stock of the Company upon written request from such holder to the Company at its principal office. The Parties hereto do hereby agree that the failure to cause the certificates evidencing the shares of Common Stock and Preferred Stock to bear the legend required by Section 7 herein and/or failure of the Company to supply, free of charge, a copy of this Agreement as provided under this Section 12 shall not affect the validity or enforcement of this Agreement.

13. Captions . The captions, headings and arrangements used in this Agreement are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

14. Notices . All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the addresses set forth on the signature pages attached hereto (or at such other addresses as shall be specified by notice given in accordance with this Section 14).

15. Term . This Agreement shall terminate and be of no further force or effect upon (a) the consummation of a Qualified Public Offering (as such term is defined in the Certificate of Incorporation, as amended), (b) the consummation of a Liquidation Event (as defined in the Certificate of Incorporation), or (c) the written consent of the holders of a majority of the then outstanding Common Shares, the majority in interest of the Lenders and the holders of two-thirds of the then outstanding Investor Shares.

16. Manner of Voting . The voting of shares pursuant to this Agreement may be effected in person, by proxy, by written consent, or in any other manner permitted by applicable law.

17. Amendments and Waivers . Any term hereof may be amended and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) with the written consent of (i) the Company and (ii) the holders of two thirds of the then outstanding Preferred Stock (voting as a single class and on an as converted to Common Stock basis); provided , however , that in the event such amendment or waiver would adversely affect the rights and/or obligations of the Common Holders in a different manner than the Investors and Lenders, such amendment or waiver shall also require the written consent of the holders of at least a majority of the Common Stock then held by the Common Holders; provided further , however , that in the event any amendment or waiver of Section 4, Section 15 or Section 17 adversely affects the rights and/or obligations of BECILDC, Rand, Access or Mitsui, such amendment or waiver shall also require the written consent of such stockholder so adversely affected (as applicable). Notwithstanding the foregoing, (a) the provisions of Section 3(a), Section 15 and Section 17 may be amended and the observance of any term thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the holders of a majority of the Common Shares, (b) the provisions of Section 2, Section 3(b)(i), Section 15 and Section 17 may be amended and the observance of any term thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of Crystal; (c) the provisions of Section 2, Section 3(b)(ii), Section 15 and Section 17 may be amended and the observance of any term thereof may be waived (either generally or in a

particular instance and either retroactively or prospectively) only with the written consent of Walden, (d) the provisions of Section 2, Section 3(c), Section 15 and Section 17 may be amended and the observance of any term thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of Advantage, (e) the provisions of Section 2, Section 3(d), Section 15 and Section 17 may be amended and the observance of any term thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of North Atlantic and (f) the provisions of Section 3(e), Section 15 and Section 17 may be amended and the observance of any term thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the holders of a majority of the shares of Preferred Stock and Common Stock held by the Investors and the Common Holders, respectively, voting as a single class and on an as converted to Common Stock basis. Any amendment or waiver so effected shall be binding upon the Parties hereto. Notwithstanding the foregoing, the provisions of Section 6 may not be amended (either generally or in a particular instance and either retroactively or prospectively) to affect any securities of the Company owned by Intel Capital (including all securities over which Intel Capital otherwise exercises voting or dispositive authority) without the written consent of Intel Capital; provided , however , that such consent shall not be required following the transfer by Intel Capital of its Shares to a transferee that is not a partner or Affiliate of Intel Capital.

18. Stock Splits, Stock Dividends, etc . In the event of any issuance of shares of the Company's voting securities hereafter to any of the Parties hereto (including, without limitation, in connection with any stock split, stock dividend, recapitalization, reorganization, or the like), such shares shall become subject to this Agreement and shall be endorsed with the legend set forth in Section 7.

19. Severability . Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

20. Binding Effect . In addition to any restriction or transfer that may be imposed by any other agreement by which any Party hereto may be bound, this Agreement shall be binding upon the Parties, their respective heirs, successors, transferees and assigns and to such additional individuals or entities that may become stockholders of the Company and that desire to become Parties hereto; provided that for any such transfer to be deemed effective, the transferee shall have executed and delivered an Adoption Agreement substantially in the form attached hereto as Exhibit A . Upon the execution and delivery of an Adoption Agreement by any transferee reasonably acceptable to the Company, such transferee shall be deemed to be a Party hereto as if such transferee's signature appeared on the signature pages hereto. By their execution hereof or any Adoption Agreement, each of the Parties hereto appoints the Company as its attorney-in-fact for the purpose of executing any Adoption Agreement which may be required to be delivered hereunder.

21. Additional Investors . Notwithstanding Section 17, no consent or amendment shall be necessary to (i) add additional Investors as signatories to this Agreement, provided that such Investors have purchased Series C Preferred Stock pursuant to the Purchase Agreement or (ii) add additional Common Holders as signatories to this Agreement. Except for issuances of Common Stock upon the exercise of options and warrants outstanding on the date hereof, the Company shall not issue Common Stock to any Person unless such Person becomes a signatory to this Agreement or unless Investors holding at least a majority of the Common Stock issued or issuable upon conversion of the Preferred Stock otherwise consent in writing. The schedules to this Agreement shall be updated to reflect such additional Investors and Common Holders.

22. Governing Law . This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflicts of law principles thereof.

23. Entire Agreement . This Agreement is intended to be the sole agreement of the Parties as it relates to this subject matter and does hereby supersede all other agreements of the Parties relating to the subject matter hereof. The Prior Agreement is hereby amended and restated its entirety and shall be of no further force or effect.

24. Counterparts . This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

25. Arbitration . Any controversy between the Parties hereto involving any claim arising out of or relating to the termination of this Agreement, will be submitted to and be settled by final and binding arbitration in New York, New York, in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association (the " AAA "), and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof; provided , however , that (i) this Section 25 shall not apply to Intel Capital and its Affiliates and (ii) this Section 25 shall be binding upon any transferee of Shares that is not a partner or Affiliate of Intel Capital. Such arbitration shall be conducted by three (3) arbitrators chosen by the Company, the Investors, and the Common Holders, or failing such agreement, an arbitrator experienced in the sale of similarly sized companies appointed by the AAA. There shall be limited discovery prior to the arbitration hearing as follows: (a) exchange of witness lists and copies of documentary evidence and documents relating to or arising out of the issues to be arbitrated, (b) depositions of all party witnesses, and (c) such other depositions as may be allowed by the arbitrators upon a showing of good cause. Depositions shall be conducted in accordance with the New York Code of Civil Procedure, the arbitrator(s) shall be required to provide in writing to the Parties the basis for the award or order of such arbitrator(s), and a court reporter shall record all hearings, with such record constituting the official transcript of such proceedings.

( *Remainder of page intentionally left blank* )

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**COMPANY:**

SYNACOR, INC.

By _____
Ron Frankel
President

Address: 40 La Riviere Drive, Suite 300
Buffalo, NY 14202

**INVESTORS:**

INTEL CAPITAL CORPORATION

By _____
Name:
Title:

Address: c/o Intel Corporation
Attn: Intel Capital Portfolio Manager
2200 Mission College Blvd., M/S RN6-46
Santa Clara, CA 95052
Facsimile: (408) 765-6038

With a copy by e-mail to:
portfolio.manager@intel.com

**SIGNATURE PAGE TO THE THIRD AMENDED AND RESTATED VOTING AGREEMENT BY AND AMONG SYNACOR, INC. AND THE INVESTORS LISTED ON THE SIGNATURE PAGES HERETO.**

**INVESTORS:**

NORTH ATLANTIC VENTURE FUND III,
a Limited Partnership

By: North Atlantic Investors III, LLC,
its General Partner

By: _____
Name:
Title:

Address: _____
_____

NORTH ATLANTIC SBIC IV, L.P.

By: North Atlantic Investors SBIC IV, LLC,
its General Partner

By: _____
Name:
Title:

Address: _____
_____

**INVESTORS:**

MITSUI INCUBASE CORPORATION

By: _____
Name:
Title:

Address: _____
_____

**INVESTORS:**

ADVANTAGE CAPITAL NEW YORK PARTNERS I, L.P.

By: Advantage Capital New York GP-I, LLC, Its General Partner

By _____
M. Scott Murphy
Vice President

Address: 5 Warren Street, Suite 204
Glens Falls, NY 12801

ADVANTAGE CAPITAL NEW YORK PARTNERS II, L.P.

By: Advantage Capital New York GP-II, LLC, Its General Partner

By _____
M. Scott Murphy
Vice President

Address: 5 Warren Street, Suite 204
Glens Falls, NY 12801

**INVESTORS:**

ACCESS TECHNOLOGY CAPITAL, LLC

By _____
Name: Peter Thoren
Title: Executive Vice President

Address: 730 Fifth Avenue, 20th Floor
New York, NY 10019

**INVESTORS AND LENDERS:**

RAND CAPITAL SBIC, L.P.

By: Rand Capital Management, LLC,
its General Partner

By _____
Name:
Title:

Address: 2200 Rand Building
Buffalo, NY 14203

BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION

By _____
Name:
Title:

Address: 275 Oak Street
Buffalo, NY 14203

**INVESTORS AND COMMON HOLDERS:**

CRYSTAL INTERNET VENTURE FUND II (BVI), L.P.

CRYSTAL INTERNET VENTURE FUND II (BVI), CRYSTAL VISION, L.P.

By: Crystal Venture II, Ltd.
Their: General Partner

By _____
Name:
Title:

Address: 1120 Chester Avenue, Suite 418
Cleveland, OH 44114

**INVESTORS AND COMMON HOLDERS:**

_____

Jeremy M. Jacobs, Jr.

Address: c/o Delaware North Co.
40 Fountain Plaza
Buffalo, NY 14202
Attn: Mike Gallagher

_____

JoRon Management LLC

Address: 50 Fountain Plaza
Suite 1320
Buffalo, NY 14202

**INVESTORS AND COMMON HOLDERS:**

PACVEN WALDEN VENTURES IV ASSOCIATES FUND, L.P.

By _____
Name: Lip-Bu Tan
Title: Director

of Pacven Walden Management Co., Ltd.
as General Partner of Pacven Walden Management II, L.P.
as General Partner of Pacven Walden Ventures IV
Associates Fund, L.P.

PACVEN WALDEN VENTURES IV, L.P.

By _____
Name: Lip-Bu Tan
Title: Director

of Pacven Walden Management Co., Ltd.
as General Partner of Pacven Walden Management II, L.P.
as General Partner of Pacven Walden Ventures IV, L.P.

WIIG-TDF PARTNERS LLC

By _____

Name: Lip-Bu Tan
Title: Director

of WIIG Management Co., Ltd.
for and on behalf of the Fund Managers

WALDEN EDB PARTNERS II, L.P.

By _____
Name: Lip-Bu Tan
Title: Director

Address: One California Street, Suite 2800
San Francisco, CA 94111

**COMMON HOLDERS:**

_____
Print name: _____

_____
Print name: _____

_____
Print name: _____

**SCHEDULE A**

LIST OF SERIES C INVESTORS

Access Technology Capital, LLC
Advantage Capital New York Partners I, L.P.
Advantage Capital New York Partners II, L.P.
Crystal Internet Venture Fund II (BVI), L.P.
Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P.
Intel Capital Corporation
JoRon Management LLC
Jeremy M. Jacobs, Jr.
Mitsui Incubase Corporation
North Atlantic SBIC IV, L.P.
North Atlantic Venture Fund III
Rand Capital SBIC, L.P.
Pacven Walden Ventures IV Associates Fund, L.P.
Pacven Walden Ventures IV, L.P.
Walden EDB Partners II, L.P.
WIIG-TDF Partners LLC

**SCHEDULE A**

LIST OF SERIES B INVESTORS

Access Technology Capital, LLC
Advantage Capital New York Partners I, L.P.
Crystal Internet Venture Fund II (BVI), L.P.
Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P.
Intel Capital Corporation
Jeremy M. Jacobs, Jr.
JoRon Management LLC
Rand Capital SBIC, L.P.
Pacven Walden Ventures IV Associates Fund, L.P.
Pacven Walden Ventures IV, L.P.

**SCHEDULE C**

LIST OF SERIES A-1 INVESTORS

Advantage Capital New York Partners I, L.P.

**SCHEDULE D**

LIST OF SERIES A INVESTORS

Crystal Internet Venture Fund II (BVI), Ltd.
Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P.
JoRon Management LLC
Jeremy M. Jacobs, Jr.
Joseph J. Castiglia
Robert G. Weber
Fors Family Limited Partnership
Paul J. Harder
Stephen A. Nappo
Steven R. Kieffer
David M. Carroll
John Lally
Kevin Cornacchio
Charles Kelkenberg
David T. Hore
Robert Santa Maria
Herbert J. Heimerl, Jr.
Guy Berberich
Thomas F. Hanlon III
Paul Wiepert
Scott M. McCarthy
Samuel LaNasa
Chek Ventures LLC
Chek Ventures II LLC
Chek Ventures III LLC
Intel Capital Corporation
Pacven Walden Ventures IV Associates Fund, L.P.
Pacven Walden Ventures IV, L.P.
WIIG-TDF Partners LLC
Walden EDB Partners II, L.P.
Access Technology Capital, LLC
Mike Nappo
Don Wehrung
Sean Hus Var
Richard Lally
Kenneth Lally
Rand Capital SBIC, L.P.
Buffalo and Erie County Industrial Land Development Corporation

**SCHEDULE E**

LIST OF LENDERS

Rand Capital SBIC, L.P.
Buffalo and Erie County Industrial Land Development Corporation

**SCHEDULE F**

LIST OF COMMON HOLDERS
(updated April 19, 2007)

@Visory LLC
Charles A. Anken & Sandra S. Olivieri
Gabriel Adiv
Darren Ascone
Frederick G. Attea
Dennis Ball
Eric Blachno
Ed Bujanowski
Malcolm Burnett
Ronald B. Cadby
Angelo J. Cammilleri
Rebecca Cammilleri
Michael Campanella
Barak Carmon
Blake Carver
George G. Chamoun
Chek Ventures LLC
Chek Ventures II LLC
Henry Cole
Kari Cole
Mike Collins
Crystal Internet Venture Fund II (BVI), Crystal Vision, L.P.
Crystal Internet Venture Fund II (BVI), Ltd.
Larry Decker
Deeridge Investment Partnership
Anthony Diina
Tracy Fernandez
First Albany Corporation
Douglas Fish
Garage.com Investments I, L.P.
Garage Securities, Inc.
Michael Garofalo
Keith Gizzi
Drew Graham
Leota Knapp Hair
George Harris
Jesper Henriksen
Sean Hus Var
ICE Family Partnership
Janet Ingalsbe
Innovasia Venture Partners I Limited (BVI)

Jeremy M. Jacobs, Sr.
Jeremy M. Jacobs, Jr.
Craig W. Johnson
JoRon Management LLC
Rick Keisic
Rachel K. King
Kyle Kokanovich
Kandice Kraus
Ted Leiser
Brian Lipke
Brad Loftin
Mary K. Mahley
Randolph Marks
Kenneth McCreadie
John F. McMahon
Mary G. McMahon
Daniel J. Neaverth, Jr.
David Michael Neaverth
Darren Anthony Neaverth
Dean James Neaverth
Rory B. O'Connor
Pacven Walden Ventures IV Associates Fund, L.P.
Pacven Walden Ventures IV, L.P.
Sunita S. Pandit
Virginia R. Piotrowski
Ron Poole
Michael Prince
Brad Pritchard
ProSeed Capital Holdings CVA
Santi Rao
Redwood Management III LP
Redwood Ventures III LP
Danielle Restaino
Aimee Richardson
Howard Schomer
Cindy Schwartz
Phil Seibel
Francine Seifert
Gur Shomron
The Sidne J. Long Trust u/a/d 4-26-84
SMB Investment Partnership
Mike Snusz
Sarah Sorensen
Joseph Spychalski
Tom Stanton
David Stempkowski

The Sternheim Trust
Dave Tucker
Patti Strauss
VLG Investments 1998
Walden EDB Partners II LP
Linda Wancyzk
Robert Weiner
Alison Wentker
WIIG-TDF Partners LLC
Raymond Young
Gregory Zaepfel

Common Stock Warrant Holders

Rand Capital SBIC, L.P.
Buffalo and Erie County Industrial Land Development Corporation

**EXHIBIT A**

ADOPTION AGREEMENT

This Adoption Agreement ("Adoption Agreement") is executed by the undersigned (the " Transferee ") pursuant to the terms of that certain Third Amended and Retated Voting Agreement dated as of October , 2006 (the " Agreement ") by and among the Company and certain of its Stockholders. Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Agreement. By the execution of this Adoption Agreement, the Transferee agrees as follows:

(a) Acknowledgment . Transferee acknowledges that Transferee is acquiring certain shares of the capital stock of the Company (the " Stock "), subject to the terms and conditions of the Agreement.

(b) Agreement . Transferee (i) agrees that the Stock acquired by Transferee shall be bound by and subject to the terms of the Agreement, and (ii) hereby adopts the Agreement with the same force and effect as if Transferee were originally a Party thereto.

(c) Notice . Any notice required or permitted by the Agreement shall be given to Transferee at the address listed beside Transferee's signature below.

EXECUTED AND DATED this day of , .

TRANSFEREE:

By _____
Name and Title

Address: _____
Fax: _____

Accepted and Agreed:

SYNACOR, INC.

By _____
Name:
Title:

**Exhibit 10.1**

**SYNACOR, INC.**

**INDEMNIFICATION AGREEMENT**

This Indemnification Agreement (" Agreement ") is made as of , 2007 by and between Synacor, Inc., a Delaware corporation (the " Company "), and ("Indemnitee").

RECITALS

WHEREAS, highly competent persons have become more reluctant to serve publicly held corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Amended and Restated Certificate of Incorporation of the Company (the " Charter ") and the Amended and Restated Bylaws of the Company (the " Bylaws ") authorize indemnification of the officers, directors and employees of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (" DGCL "). The Charter, Bylaws and DGCL provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification;

WHEREAS, the Board of Directors of the Company (the " Board ") has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the indemnification provided in the Charter and Bylaws and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee is concerned that the protection available under the Charter, Bylaws and DGCL and any insurance may not be adequate to protect Indemnitee, and in consideration of serving as a director, officer or employee (as applicable), desires to be assured of adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that Indemnitee be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Services to the Company . Indemnitee agrees to serve as a director, officer or employee (as applicable) of the Company. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee. The foregoing notwithstanding, this Agreement shall continue in force after Indemnitee's services to the Company have ceased.

Section 2. Definitions

As used in this Agreement:

(a) " Corporate Status " describes the status of a person who is or was a director, officer, employee, trustee or agent of the Company or of any other corporation, partnership or joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Company.

(b) " Enterprise " shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, employee, trustee, agent or fiduciary.

(c) " Expenses " shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedes bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(d) " Independent Counsel " means a law firm, or a partner (or, if applicable, member) of such a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay

the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(e) The term " Proceeding " shall include any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of Indemnitee's Corporate Status, by reason of any action taken by him or of any action on his part while acting in such capacity, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement; provided, however, that, other than a Proceeding initiated by Indemnitee to enforce his or her rights under this Agreement, the term "Proceeding" shall include a Proceeding (or part thereof) initiated by Indemnitee only if such Proceeding (or part thereof) was authorized by the Board of Directors.

Section 3. Indemnity in Third-Party Proceedings . The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal proceeding, had no reasonable cause to believe that his conduct was unlawful. Indemnitee shall not enter into any settlement in connection with a Proceeding without 10 days prior notice to the Company.

Section 4. Indemnity in Proceedings by or in the Right of the Company . The Company shall indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that the Delaware Court of Chancery (the " Delaware Court ") or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification for such expenses as the Delaware Court or such other court shall deem proper.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful . Notwithstanding any other provisions of this Agreement, to the extent that Indemnitee is a party to, or a participant in, and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against (a) all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter and (b) any claim, issue or matter related to any such successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 6. Indemnification For Expenses of a Witness . Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Additional Indemnification .

(a) Notwithstanding any limitation in Sections 3, 4, or 5 hereof, the Company shall indemnify Indemnitee to the fullest extent permitted by law if Indemnitee is a party to, or threatened to be made a party to, any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee in connection with the Proceeding.

(b) For purposes of Section 7(a), the meaning of the phrase “to the fullest extent permitted by law” shall include, but not be limited to:

(i) to the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL, and

(ii) to the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors, employees or agents.

Section 8. Exclusions . Notwithstanding any provision in this Agreement to the contrary, the Company shall not be obligated under this Agreement to make any indemnity with respect to any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision.

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act, as amended, or similar provisions of state statutory law or common law; or

(c) for which payment is prohibited by applicable law.

Section 9. Advances of Expenses . The Company shall advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made within 10 days after the receipt by the Company of a statement or statements requesting such advances (which shall include invoices received by Indemnitee in connection with such Expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditures made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice) from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's ability to repay the expenses and without regard to Indemnitee's ultimate entitlement to indemnification under the other provisions of this Agreement. Advances shall include any and all reasonable Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. The Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement which shall constitute an undertaking providing that the Indemnitee undertakes to the fullest extent required by law to repay the advance if and to the extent that it is ultimately determined by final judicial decision from which there is no further right to appeal that Indemnitee is not entitled to be indemnified by the Company. This Section 9 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 8. The right to advances under this paragraph shall in all events continue until final disposition of any Proceeding, including any appeal therefrom.

Section 10. Procedure for Notification and Defense of Claim .

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request therefor.

(b) The Company will be entitled to participate in the Proceeding at its own expense.

Section 11. Procedure Upon Application for Indemnification .

(a) Upon written request by Indemnitee for indemnification pursuant to Section 10(a), a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case by Independent Counsel chosen in accordance Section 11(b) below in a written opinion to the Board, a copy of which shall be delivered to Indemnitee, and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made as soon as practicable after such determination. Indemnitee shall cooperate with the Independent Counsel making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such counsel upon

reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the Independent Counsel shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(b) The Independent Counsel shall be selected by Indemnitee. The Company may, within 10 days after written notice of such selection, deliver to the Indemnitee a written objection to such selection; provided , however , that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof, and the final disposition of the Proceeding, no Independent Counsel shall have been selected and not objected to, the Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Company to the selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 11(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 13(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 12. Presumptions and Effect of Certain Proceedings .

(a) In making a determination with respect to entitlement to indemnification hereunder, the Independent Counsel making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 10(a) of this Agreement, and the Company shall have the burden of proof to overcome that presumption in connection with the making by the Independent Counsel of any determination contrary to that presumption. Neither the failure of the Company or of Independent Counsel to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company or by Independent Counsel that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of guilty or nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself

adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or the Board or counsel selected by any committee of the Board or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser, investment banker or other expert selected with reasonable care by the Company or the Board or any committee of the Board. The provisions of this Section 12(c) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(d) The knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 13. Remedies of Indemnitee .

(a) Subject to Section 13(e), in the event that (i) a determination is made pursuant to Section 11 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 9 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 11(a) of this Agreement within 30 days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 or the last sentence of Section 11 (a) of this Agreement within 10 days after receipt by the Company of a written request therefor, or (v) payment of indemnification pursuant to Section 3, 4 or 7 of this Agreement is not made within 10 days after a determination has been made that Indemnitee is entitled to indemnification, Indemnitee shall be entitled to an adjudication by a court of his entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 13(a); provided , however , that the foregoing clause shall not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5 of this Agreement. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 11(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 13 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced

pursuant to this Section 13 the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) If a determination shall have been made pursuant to Section 11(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 13, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 13 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within 10 days after receipt by the Company of a written request therefor) advance, to the extent not prohibited by law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be, in the suit for which indemnification or advances is being sought.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding, including any appeal therein.

Section 14. Non-exclusivity; Survival of Rights; Insurance; Subrogation .

(a) The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Charter, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Company or of any other Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

Section 15. Duration of Agreement . This Agreement shall continue until and terminate upon the later of: (a) 10 years after the date that Indemnitee shall have ceased to serve as a director, officer or employee (as applicable) of the Company or (b) 1 year after the final termination of any Proceeding then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 13 of this Agreement relating thereto. This Agreement shall be binding upon the Company and its successors and assigns and shall inure to the benefit of Indemnitee and his spouse, heirs, executors, administrators, and personal or legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part of the business and/or assets of the Company, by written agreement in form and substance satisfactory to the Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

Section 16. Severability . If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality

and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 17. Enforcement .

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director, officer or employee (as applicable) of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer or employee (as applicable) of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided , however , that this Agreement is a supplement to and in furtherance of the Charter of the Company, the Bylaws of the Company and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 18. Modification and Waiver . No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

Section 19. Notice by Indemnitee . Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise.

Section 20. Notices . All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnitee, at such address as Indemnitee shall provide to the Company.

(b) If to the Company to:

Synacor, Inc.
40 La Riviere Drive, Suite 300
Buffalo, NY 14202
Attention: Chief Financial Officer

or to any other address as may have been furnished to Indemnitee by the Company.

Section 21. Contribution . To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 22. Applicable Law and Consent to Jurisdiction . This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 13(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court, and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, Incorporating Services, Ltd., Dover, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 23. Identical Counterparts . This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 24. Miscellaneous . The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

SYNACOR, INC.

By: _____
Name:
Title:

INDEMNITEE:

By: _____
Name:

**Exhibit 10.2.1**

**Synacor, Inc.**

**2000 STOCK PLAN**

1. **Purposes of the Plan .** The purposes of this 2000 Stock Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees and Consultants and to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant of an option and subject to the applicable provisions of Section 422 of the Code and the regulations promulgated thereunder. Stock Purchase Rights may also be granted under the Plan.

2. **Definitions .** As used herein, the following definitions shall apply:

(a) **" Administrator "** means the Board or its Committee appointed pursuant to Section 4 of the Plan.

(b) **" Affiliate "** means an entity other than a Subsidiary (as defined below) which, together with the Company, is under common control of a third person or entity.

(c) **" Applicable Laws "** means the legal requirements relating to the administration of stock option and restricted stock purchase plans under applicable U.S. New York corporate laws, U.S. federal and applicable state securities laws, the Code, any Stock Exchange rules or regulations and the applicable laws of any other country or jurisdiction where Options or Stock Purchase Rights are granted under the Plan, as such laws, rules, regulations and requirements shall be in place from time to time.

(d) **" Board "** means the Board of Directors of the Company.

(e) **" Cause "** for termination of a Participant's Continuous Service Status will exist if the Participant is terminated for any of the following reasons: (i) Participant's willful failure substantially to perform his or her duties and responsibilities to the Company or deliberate violation of a Company policy; (ii) Participant's commission of any act of fraud, embezzlement, dishonesty or any other willful misconduct that has caused or is reasonably expected to result in material injury to the Company; (iii) unauthorized use or disclosure by Participant of any proprietary information or trade secrets of the Company or any other party to whom the Participant owes an obligation of nondisclosure as a result of his or her relationship with the Company; or (iv) Participant's willful breach of any of his or her obligations under any written agreement or covenant with the Company. The determination as to whether a Participant is being terminated for Cause shall be made in good faith by the Company and shall be final and binding on the Participant. The foregoing definition does not in any way limit the Company's ability to terminate a Participant's employment or consulting relationship at any time as provided in Section 5(d) below, and the term "Company" will be interpreted to include any Subsidiary, Parent, Affiliate or successor thereto, if appropriate.

(f) **“ Change of Control ”** means a sale of all or substantially all of the Company’s assets, or any merger or consolidation of the Company with or into another corporation other than a merger or consolidation in which the holders of more than 50% of the shares of capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by the voting securities remaining outstanding or by their being converted into voting securities of the surviving entity) more than 50% of the total voting power represented by the voting securities of the Company, or such surviving entity, outstanding immediately after such transaction.

(g) **“ Code ”** means the Internal Revenue Code of 1986, as amended.

(h) **“ Committee ”** means one or more committees or subcommittees of the Board appointed by the Board to administer the Plan in accordance with Section 4 below.

(i) **“ Common Stock ”** means the Common Stock of the Company.

(j) **“ Company ”** means Synacor, Inc. a New York corporation.

(k) **“ Consultant ”** means any person, including an advisor, who is engaged by the Company or any Parent, Subsidiary or Affiliate to render services and is compensated for such services, and any director of the Company whether compensated for such services or not.

(l) **“ Continuous Service Status ”** means the absence of any interruption or termination of service as an Employee or Consultant. Continuous Service Status as an Employee or Consultant shall not be considered interrupted in the case of: (i) sick leave; (ii) military leave; (iii) any other leave of absence approved by the Administrator, provided that such leave is for a period of not more than ninety (90) days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to Company policy adopted from time to time; or (iv) in the case of transfers between locations of the Company or between the Company, its Parents, Subsidiaries, Affiliates or their respective successors. A change in status from an Employee to a Consultant or from a Consultant to an Employee will not constitute an interruption of Continuous Service Status.

(m) **“ Corporate Transaction ”** means a sale of all or substantially all of the Company’s assets, or a merger, consolidation or other capital reorganization of the Company with or into another corporation and includes a Change of Control.

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

(o) **“ Employee ”** means any person employed by the Company or any Parent, Subsidiary or Affiliate, with the status of employment determined based upon such factors as are deemed appropriate by the Administrator in its discretion, subject to any requirements of the Code or the Applicable Laws. The payment by the Company of a director’s fee to a Director shall not be sufficient to constitute “employment” of such Director by the Company.

(p) **“ Exchange Act ”** means the Securities Exchange Act of 1934, as amended.

(q) **“ Fair Market Value ”** means, as of any date, the fair market value of the Common Stock, as determined by the Administrator in good faith on such basis as it deems appropriate and applied consistently with respect to Participants. Whenever possible, the determination of Fair Market Value shall be based upon the closing price for the Shares as reported in the Wall Street Journal for the applicable date.

(r) **“ Incentive Stock Option ”** means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code, as designated in the applicable Option Agreement.

(s) **“ Involuntary Termination ”** means termination of a Participant’s Continuous Service Status under the following circumstances: (i) termination without Cause by the Company or a Subsidiary, Parent, Affiliate or successor thereto, as appropriate; or (ii) voluntary termination by the Participant within 30 days following (A) a material reduction in the Participant’s job responsibilities, provided that neither a mere change in title alone nor reassignment following a Change of Control to a position that is substantially similar to the position held prior to the Change of Control shall constitute a material reduction in job responsibilities; (B) relocation by the Company or a Subsidiary, Parent, Affiliate or successor thereto, as appropriate, of the Participant’s work site to a facility or location more than 50 miles from the Participant’s principal work site for the Company at the time of the Change of Control; or (C) a reduction in Participant’s then-current base salary by at least 10%, provided that an across-the-board reduction in the salary level of all other employees or consultants in positions similar to the Participant’s by the same percentage amount as part of a general salary level reduction shall not constitute such a salary reduction.

(t) **“ Listed Security ”** means any security of the Company that is listed or approved for listing on a national securities exchange or designated or approved for designation as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.

(u) **“ Named Executive ”** means any individual who, on the last day of the Company’s fiscal year, is the chief executive officer of the Company (or is acting in such capacity) or among the four most highly compensated officers of the Company (other than the chief executive officer). Such officer status shall be determined pursuant to the executive compensation disclosure rules under the Exchange Act.

(v) **“ Nonstatutory Stock Option ”** means an Option not intended to qualify as an Incentive Stock Option, as designated in the applicable Option Agreement.

(w) **“ Option ”** means a stock option granted pursuant to the Plan.

(x) **“ Option Agreement ”** means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of an Option granted under the Plan and includes any documents attached to or incorporated into such Option Agreement, including, but not limited to, a notice of stock option grant and a form of exercise notice.

(y) **“ Option Exchange Program ”** means a program approved by the Administrator whereby outstanding Options are exchanged for Options with a lower exercise price or are amended to decrease the exercise price as a result of a decline in the Fair Market Value of the Common Stock.

(z) **“ Optioned Stock ”** means the Common Stock subject to an Option.

(aa) **“ Optionee ”** means an Employee or Consultant who receives an Option.

(bb) **“ Parent ”** means a “parent corporation,” whether now or hereafter existing, as defined in Section 424(e) of the Code, or any successor provision.

(cc) **“ Participant ”** means any holder of one or more Options or Stock Purchase Rights, or the Shares issuable or issued upon exercise of such awards, under the Plan.

(dd) **“ Plan ”** means this 2000 Stock Plan.

(ee) **“ Reporting Person ”** means an officer, Director, or greater than ten percent stockholder of the Company within the meaning of Rule 16a-2 under the Exchange Act, who is required to file reports pursuant to Rule 16a-3 under the Exchange Act.

(ff) **“ Restricted Stock ”** means Shares of Common Stock acquired pursuant to a grant of a Stock Purchase Right under Section 11 below.

(gg) **“ Restricted Stock Purchase Agreement ”** means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of a Stock Purchase Right granted under the Plan and includes any documents attached to such agreement.

(hh) **“ Rule 16b-3 ”** means Rule 16b-3 promulgated under the Exchange Act, as amended from time to time, or any successor provision.

(ii) **“ Share ”** means a share of the Common Stock, as adjusted in accordance with Section 14 of the Plan.

(jj) **“ Stock Exchange ”** means any stock exchange or consolidated stock price reporting system on which prices for the Common Stock are quoted at any given time.

(kk) **“ Stock Purchase Right ”** means the right to purchase Common Stock pursuant to Section 11 below.

(ll) **“ Subsidiary ”** means a “subsidiary corporation,” whether now or hereafter existing, as defined in Section 424(f) of the Code, or any successor provision.

(mm) **“ Ten Percent Holder ”** means a person who owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary.

3. **Stock Subject to the Plan .** Subject to the provisions of Section 14 of the Plan, the maximum aggregate number of Shares that may be sold under the Plan is 5,515,757 Shares of Common Stock. The Shares may be authorized, but unissued, or reacquired Common Stock. If an award should expire or become unexercisable for any reason without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares that were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan. In addition, any Shares of Common Stock which are retained by the Company upon exercise of an award in order to satisfy the exercise or purchase price for such award or any withholding taxes due with respect to such exercise or purchase shall be treated as not issued and shall continue to be available under the Plan. Shares issued under the Plan and later repurchased by the Company pursuant to any repurchase right which the Company may have shall not be available for future grant under the Plan.

4. **Administration of the Plan .**

(a) **General .** The Plan shall be administered by the Board or a Committee, or a combination thereof, as determined by the Board. The Plan may be administered by different administrative bodies with respect to different classes of Participants and, if permitted by the Applicable Laws, the Board may authorize one or more officers to make awards under the Plan.

(b) **Committee Composition .** If a Committee has been appointed pursuant to this Section 4, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of any Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies (however caused) and remove all members of a Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws and, in the case of a Committee administering the Plan in accordance with the requirements of Rule 16b-3 or Section 162(m) of the Code, to the extent permitted or required by such provisions.

(c) **Powers of the Administrator .** Subject to the provisions of the Plan and in the case of a Committee, the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

(i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2[ **(q)** ] of the Plan, provided that such determination shall be applied consistently with respect to Participants under the Plan;

(ii) to select the Employees and Consultants to whom Options and Stock Purchase Rights may from time to time be granted;

(iii) to determine whether and to what extent Options and Stock Purchase Rights are granted;

(iv) to determine the number of Shares of Common Stock to be covered by each award granted;

(v) to approve the form(s) of agreement(s) used under the Plan;

(vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder, which terms and conditions include but are not limited to the exercise or purchase price, the time or times when awards may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option, Optioned Stock, Stock Purchase Right or Restricted Stock, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vii) to determine whether and under what circumstances an Option may be settled in cash under Section 10(c) instead of Common Stock;

(viii) to reduce the exercise price of any Option to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option has declined since the date the Option was granted.

(ix) to implement an Option Exchange Program on such terms and conditions as the Administrator in its discretion deems appropriate, provided that no amendment or adjustment to an Option that would materially and adversely affect the rights of any Optionee shall be made without the prior written consent of the Optionee;

(x) to adjust the vesting of an Option held by an Employee or Consultant as a result of a change in the terms or conditions under which such person is providing services to the Company;

(xi) to construe and interpret the terms of the Plan and awards granted under the Plan, which constructions, interpretations and decisions shall be final and binding on all Participants; and

(xii) in order to fulfill the purposes of the Plan and without amending the Plan, to modify grants of Options or Stock Purchase Rights to Participants who are foreign nationals or employed outside of the United States in order to recognize differences in local law, tax policies or customs.

5. **Eligibility .**

(a) **Recipients of Grants .** Nonstatutory Stock Options and Stock Purchase Rights may be granted to Employees and Consultants. Incentive Stock Options may be granted only to Employees, provided that Employees of Affiliates shall not be eligible to receive Incentive Stock Options.

(b) **Type of Option .** Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option.

(c) **ISO $100,000 Limitation .** Notwithstanding any designation under Section 5(b), to the extent that the aggregate Fair Market Value of Shares with respect to which

Options designated as Incentive Stock Options are exercisable for the first time by any Optionee during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds $100,000, such excess Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 5(c), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares subject to an Incentive Stock Option shall be determined as of the date of the grant of such Option.

(d) **No Employment Rights .** The Plan shall not confer upon any Participant any right with respect to continuation of an employment or consulting relationship with the Company, nor shall it interfere in any way with such Participant's right or the Company's right to terminate his or her employment or consulting relationship at any time, with or without Cause.

6. **Term of Plan .** The Plan shall become effective upon its adoption by the Board of Directors. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 16 of the Plan.

7. **Term of Option .** The term of each Option shall be the term stated in the Option Agreement; provided that the term shall be no more than ten years from the date of grant thereof or such shorter term as may be provided in the Option Agreement and provided further that, in the case of an Incentive Stock Option granted to a person who at the time of such grant is a Ten Percent Holder, the term of the Option shall be five years from the date of grant thereof or such shorter term as may be provided in the Option Agreement.

8. **Limitation on Grants to Employees .** Subject to adjustment as provided in Section 14 below, the maximum number of Shares that may be subject to Options and Stock Purchase Rights granted to any one Employee under this Plan for any fiscal year of the Company shall be 700,000 shares, provided that this Section 8 shall apply only after such time, if any, as the Common Stock becomes a Listed Security.

9. **Option Exercise Price and Consideration** .

(a) **Exercise Price .** The per Share exercise price for the Shares to be issued pursuant to exercise of an Option shall be such price as is determined by the Administrator and set forth in the Option Agreement, but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who at the time of grant is a Ten Percent Holder, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant; or

(B) granted to any other Employee, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option

(A) granted prior to the date, if any, on which the Common Stock becomes a Listed Security to a person who is at the time of grant is a Ten Percent Holder, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant if required by the Applicable Laws and, if not so required, shall be such price as is determined by the Administrator;

(B) granted prior to the date, if any, on which the Common Stock becomes a Listed Security to any other eligible person, the per Share exercise price shall be no less than 85% of the Fair Market Value per Share on the date of grant if required by the Applicable Laws and, if not so required, shall be such price as is determined by the Administrator; or

(C) granted on or after the date, if any, on which the Common Stock becomes a Listed Security to any eligible person, the per share Exercise Price shall be such price as determined by the Administrator provided that if such eligible person is, at the time of the grant of such Option, a Named Executive of the Company, the per share Exercise Price shall be no less than 100% of the Fair Market Value on the date of grant if such Option is intended to qualify as performance-based compensation under Section 162(m) of the Code.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above pursuant to a merger or other corporate transaction.

(b) **Permissible Consideration .** The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant) and may consist entirely of (1) cash; (2) check; (3) delivery of Optionee's promissory note with such recourse, interest, security and redemption provisions as the Administrator determines to be appropriate (subject to the provisions of Section 505(e) and (f) of the New York Business Corporation Law); (4) cancellation of indebtedness; (5) other Shares that have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which the Option is exercised, provided that in the case of Shares acquired, directly or indirectly, from the Company, such Shares must have been owned by the Optionee for more than six months on the date of surrender (or such other period as may be required to avoid the Company's incurring an adverse accounting charge); (6) delivery of a properly executed exercise notice together with such other documentation as the Administrator and a securities broker approved by the Company shall require to effect exercise of the Option and prompt delivery to the Company of the sale or loan proceeds required to pay the exercise price and any applicable withholding taxes; or (7) any combination of the foregoing methods of payment. In making its determination as to the type of consideration to accept, the Administrator shall consider if acceptance of such consideration may be reasonably expected to benefit the Company and the Administrator may, in its sole discretion, refuse to accept a particular form of consideration at the time of any Option exercise.

10. **Exercise of Option** .

(a) **General .**

(i) **Exercisability .** Any Option granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator, consistent with the term of the Plan and reflected in the Option Agreement, including vesting requirements and/or performance criteria with respect to the Company and/or the Optionee; provided however that, if required by the Applicable Laws, any Option granted prior to the date, if any, upon which the Common Stock becomes a Listed Security shall become exercisable at the rate of at least 20% per year over five years from the date the Option is granted. In the event that any of the Shares issued upon exercise of an Option (which exercise occurs prior to the date, if any, upon which the Common Stock becomes a Listed Security) should be subject to a right of repurchase in the Company's favor, such repurchase right shall, if required by the Applicable Laws, lapse at the rate of at least 20% per year over five years from the date the Option is granted. Notwithstanding the above, in the case of an Option granted to an officer, Director or Consultant of the Company or any Parent, Subsidiary or Affiliate of the Company, the Option may become fully exercisable, or a repurchase right, if any, in favor of the Company shall lapse, at any time or during any period established by the Administrator. The Administrator shall have the discretion to determine whether and to what extent the vesting of Options shall be tolled during any unpaid leave of absence; provided, however, that in the absence of such determination, vesting of Options shall be tolled during any such leave.

(ii) **Minimum Exercise Requirements .** An Option may not be exercised for a fraction of a Share. The Administrator may require that an Option be exercised as to a minimum number of Shares, provided that such requirement shall not prevent an Optionee from exercising the full number of Shares as to which the Option is then exercisable.

(iii) **Procedures for and Results of Exercise .** An Option shall be deemed exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option by the person entitled to exercise the Option and the Company has received full payment for the Shares with respect to which the Option is exercised. Full payment may, as authorized by the Administrator, consist of any consideration and method of payment allowable under Section 9(b) of the Plan, provided that the Administrator may, in its sole discretion, refuse to accept any form of consideration at the time of any Option exercise.

Exercise of an Option in any manner shall result in a decrease in the number of Shares that thereafter may be available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(iv) **Rights as Stockholder .** Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 14 of the Plan.

(b) **Termination of Employment or Consulting Relationship .** Except as otherwise set forth in this Section 10(b), the Administrator shall establish and set forth in the applicable Option Agreement the terms and conditions upon which an Option shall remain exercisable, if at all, following termination of an Optionee's Continuous Service Status, which provisions may be waived or modified by the Administrator at any time. To the extent that the Optionee is not entitled to exercise an Option at the date of his or her termination of Continuous Service Status, or if the Optionee (or other person entitled to exercise the Option) does not exercise the Option to the extent so entitled within the time specified in the Option Agreement or below (as applicable), the Option shall terminate and the Optioned Stock underlying the unexercised portion of the Option shall revert to the Plan. In no event may any Option be exercised after the expiration of the Option term as set forth in the Option Agreement (and subject to Section 7).

The following provisions (1) shall apply to the extent an Option Agreement does not specify the terms and conditions upon which an Option shall terminate upon termination of an Optionee's Continuous Service Status, and (2) establish the minimum post-termination exercise periods that may be set forth in an Option Agreement:

(i) **Termination other than Upon Disability or Death .** In the event of termination of an Optionee's Continuous Service Status, such Optionee may exercise an Option for 30 days following such termination to the extent the Optionee was entitled to exercise it at the date of such termination. No termination shall be deemed to occur and this Section 10(b)(i) shall not apply if (i) the Optionee is a Consultant who becomes an Employee, or (ii) the Optionee is an Employee who becomes a Consultant.

(ii) **Disability of Optionee .** In the event of termination of an Optionee's Continuous Service Status as a result of his or her disability (including a disability within the meaning of Section 22(e)(3) of the Code), such Optionee may exercise an Option at any time within twelve months following such termination to the extent the Optionee was entitled to exercise it at the date of such termination.

(iii) **Death of Optionee .** In the event of the death of an Optionee during the period of Continuous Service Status since the date of grant of the Option, or within thirty days following termination of Optionee's Continuous Service Status, the Option may be exercised by Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance at any time within six months following the date of death, but only to the extent of the right to exercise that had accrued at the date of death or, if earlier, the date the Optionee's Continuous Service Status terminated.

(c) **Buyout Provisions .** The Administrator may at any time offer to buy out for a payment in cash or Shares an Option previously granted under the Plan based on such terms and conditions as the Administrator shall establish and communicate to the Optionee at the time that such offer is made.

11. **Stock Purchase Rights .**

(a) **Rights to Purchase .** When the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing of the terms, conditions and restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid, and the time within which such person must accept such offer. In the case of a Stock Purchase Right granted prior to the date, if any, on which the Common Stock becomes a Listed Security and if required by the Applicable Laws at that time, the purchase price of Shares subject to such Stock Purchase Rights shall not be less than 85% of the Fair Market Value of the Shares as of the date of the offer, or, in the case of a Ten Percent Holder, the price shall not be less than 100% of the Fair Market Value of the Shares as of the date of the offer. If the Applicable Laws do not impose the requirements set forth in the preceding sentence and with respect to any Stock Purchase Rights granted after the date, if any, on which the Common Stock becomes a Listed Security, the purchase price of Shares subject to Stock Purchase Rights shall be as determined by the Administrator. The offer to purchase Shares subject to Stock Purchase Rights shall be accepted by execution of a Restricted Stock Purchase Agreement in the form determined by the Administrator.

(b) **Repurchase Option .**

(i) **General .** Unless the Administrator determines otherwise, the Restricted Stock Purchase Agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's employment with the Company for any reason (including death or disability). The purchase price for Shares repurchased pursuant to the Restricted Stock Purchase Agreement shall be the original purchase price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at such rate as the Administrator may determine, provided that with respect to a Stock Purchase Right granted prior to the date, if any, on which the Common Stock becomes a Listed Security to a purchaser who is not an officer, Director or Consultant of the Company or of any Parent or Subsidiary of the Company, it shall lapse at a minimum rate of 20% per year if required by the Applicable Laws.

(ii) **Termination .** In the event of termination of a Participant's Continuous Service Status, the Company shall have the right to repurchase from the Participant vested Shares issued upon exercise of a Stock Purchase Right granted to any person prior to the date, if any, upon which the Common stock becomes a Listed Security upon the following terms: (A) the repurchase must be made within 90 days of termination of the Participant's Continuous Service Status at the Fair Market Value of the Shares as of the date of termination, (B) consideration for the repurchase consists of cash or cancellation of purchase money indebtedness, and (C) the repurchase right terminates upon the effective date of the Company's initial public offering of its Common Stock. Nothing in this Section 11(b)(ii) shall in any way limit the Company's right to purchase unvested Shares as set forth in the applicable Restricted Stock Purchase Agreement.

(c) **Other Provisions .** The Restricted Stock Purchase Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be

determined by the Administrator in its sole discretion. In addition, the provisions of Restricted Stock Purchase Agreements need not be the same with respect to each purchaser.

(d) **Rights as a Stockholder .** Once the Stock Purchase Right is exercised, the purchaser shall have the rights equivalent to those of a stockholder, and shall be a stockholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 14 of the Plan.

12. **Taxes .**

(a) As a condition of the exercise of an Option or Stock Purchase Right granted under the Plan, the Participant (or in the case of the Participant's death, the person exercising the Option or Stock Purchase Right) shall make such arrangements as the Administrator may require for the satisfaction of any applicable federal, state, local or foreign withholding tax obligations that may arise in connection with the exercise of the Option or Stock Purchase Right and the issuance of Shares. The Company shall not be required to issue any Shares under the Plan until such obligations are satisfied. If the Administrator allows the withholding or surrender of Shares to satisfy a Participant's tax withholding obligations under this Section 12 (whether pursuant to Section 12(c), (d) or (e), or otherwise), the Administrator shall not allow Shares to be withheld in an amount that exceeds the minimum statutory withholding rates for federal and state tax purposes, including payroll taxes.

(b) In the case of an Employee and in the absence of any other arrangement, the Employee shall be deemed to have directed the Company to withhold or collect from his or her compensation an amount sufficient to satisfy such tax obligations from the next payroll payment otherwise payable after the date of an exercise of the Option or Stock Purchase Right.

(c) This Section 12(c) shall apply only after the date, if any, upon which the Common Stock becomes a Listed Security. In the case of Participant other than an Employee (or in the case of an Employee where the next payroll payment is not sufficient to satisfy such tax obligations, with respect to any remaining tax obligations), in the absence of any other arrangement and to the extent permitted under the Applicable Laws, the Participant shall be deemed to have elected to have the Company withhold from the Shares to be issued upon exercise of the Option or Stock Purchase Right that number of Shares having a Fair Market Value determined as of the applicable Tax Date (as defined below) equal to the amount required to be withheld. For purposes of this Section 12, the Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined under the Applicable Laws (the " Tax Date ").

(d) If permitted by the Administrator, in its discretion, a Participant may satisfy his or her tax withholding obligations upon exercise of an Option or Stock Purchase Right by surrendering to the Company Shares that have a Fair Market Value determined as of the applicable Tax Date equal to the amount required to be withheld. In the case of shares previously acquired from the Company that are surrendered under this Section 12(d), such Shares must have

been owned by the Participant for more than six (6) months on the date of surrender (or such other period of time as is required for the Company to avoid adverse accounting charges).

(e) Any election or deemed election by a Participant to have Shares withheld to satisfy tax withholding obligations under Section 12(c) or (d) above shall be irrevocable as to the particular Shares as to which the election is made and shall be subject to the consent or disapproval of the Administrator. Any election by a Participant under Section 12(d) above must be made on or prior to the applicable Tax Date.

(f) In the event an election to have Shares withheld is made by a Participant and the Tax Date is deferred under Section 83 of the Code because no election is filed under Section 83(b) of the Code, the Participant shall receive the full number of Shares with respect to which the Option or Stock Purchase Right is exercised but such Participant shall be unconditionally obligated to tender back to the Company the proper number of Shares on the Tax Date.

13. **Non-Transferability of Options and Stock Purchase Rights .**

(a) **General.** Except as set forth in this Section 13, Options and Stock Purchase Rights may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution. The designation of a beneficiary by an Optionee will not constitute a transfer. An Option or Stock Purchase Right may be exercised, during the lifetime of the holder of an Option or Stock Purchase Right, only by such holder or a transferee permitted by this Section 13.

(b) **Limited Transferability Rights .** Notwithstanding anything else in this Section 13, prior to the date, if any, on which the Common Stock becomes a Listed Security, the Administrator may in its discretion grant Nonstatutory Stock Options that may be transferred by instrument to an inter vivos or testamentary trust in which the Options are to be passed to beneficiaries upon the death of the trustor (settlor) or by gift to "Immediate Family" (as defined below), on such terms and conditions as the Administrator deems appropriate. Following the date, if any, on which the Common Stock becomes a Listed Security, the Administrator may in its discretion grant transferable Nonstatutory Stock Options pursuant to Option Agreements specifying the manner in which such Nonstatutory Stock Options are transferable. " Immediate Family " means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and shall include adoptive relationships.

14. **Adjustments Upon Changes in Capitalization, Merger or Certain Other Transactions .**

(a) **Changes in Capitalization .** Subject to any required action by the stockholders of the Company, the number of Shares of Common Stock covered by each outstanding Option or Stock Purchase Right, the numbers of Shares set forth in Sections 3(a) and 8 above, and the number of Shares of Common Stock that have been authorized for issuance under the Plan but as to which no Options or Stock Purchase Rights have yet been granted or that

have been returned to the Plan upon cancellation or expiration of an Option or Stock Purchase Right, as well as the price per Share of Common Stock covered by each such outstanding Option or Stock Purchase Right, shall be proportionately adjusted for any increase or decrease in the number of issued Shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination, recapitalization or reclassification of the Common Stock, or any other increase or decrease in the number of issued Shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares of Common Stock subject to an Option or Stock Purchase Right.

(b) **Dissolution or Liquidation .** In the event of the dissolution or liquidation of the Company, each Option and Stock Purchase Right will terminate immediately prior to the consummation of such action, unless otherwise determined by the Administrator.

(c) **Corporate Transaction .** In the event of a Corporate Transaction, each outstanding Option or Stock Purchase Right shall be assumed or an equivalent option or right shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation (the " Successor Corporation "), unless the Successor Corporation does not agree to assume the award or to substitute an equivalent option or right, in which case such Option or Stock Purchase Right shall terminate upon the consummation of the transaction.

Notwithstanding the above, in the event (i) of a Change of Control following the date, if any, on which the Common Stock becomes a Listed Security, and (ii) a Participant holding an Option or Stock Purchase Right assumed or substituted by the Successor Corporation in the Change of Control, or holding Restricted Stock issued upon exercise of an Option or Stock Purchase Right with respect to which the Successor Corporation has succeeded to a repurchase right as a result of the Change of Control, is Involuntarily Terminated by the Successor Corporation without Cause in connection with, or within 24 months following consummation of, the transaction, then any assumed or substituted Option or Stock Purchase Right held by the terminated Participant at the time of termination shall accelerate and become exercisable as to the number of Shares that would otherwise have vested and been exercisable as of the date 24 months following from the date of termination, and any repurchase right applicable to any Shares shall lapse as to the number of Shares as to which the repurchase right would otherwise have lapsed as of the date 24 months following from the date of termination, in each case assuming the Participant remained in Continuous Service Status for such 24 month period. The acceleration of vesting and lapse of repurchase rights provided for in the previous sentence shall occur immediately prior to the effective date of the Participant's termination.

For purposes of this Section 14(c), an Option or a Stock Purchase Right shall be considered assumed, without limitation, if, at the time of issuance of the stock or other consideration upon a Corporate Transaction or a Change of Control, as the case may be, each holder of an Option or Stock Purchase Right would be entitled to receive upon exercise of the

award the same number and kind of shares of stock or the same amount of property, cash or securities as such holder would have been entitled to receive upon the occurrence of the transaction if the holder had been, immediately prior to such transaction, the holder of the number of Shares of Common Stock covered by the award at such time (after giving effect to any adjustments in the number of Shares covered by the Option or Stock Purchase Right as provided for in this Section 14); provided that if such consideration received in the transaction is not solely common stock of the Successor Corporation, the Administrator may, with the consent of the Successor Corporation, provide for the consideration to be received upon exercise of the award to be solely common stock of the Successor Corporation equal to the Fair Market Value of the per Share consideration received by holders of Common Stock in the transaction.

(d) **Limitation on Payments .** In the event that the vesting acceleration or lapse of a repurchase right provided for in Section 14(c) above (x) constitutes "parachute payments" within the meaning of Section 280G of the Code, and (y) but for this Section 14(d) would be subject to the excise tax imposed by Section 4999 of the Code (or any corresponding provisions of state income tax law), then such vesting acceleration or lapse of a repurchase right shall be either

(A) delivered in full, or

(B) delivered as to such lesser extent which would result in no portion of such severance benefits being subject to excise tax under Code Section 4999, whichever amount, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Code Section 4999, results in the receipt by the Participant on an after-tax basis of the greater amount of acceleration or lapse of repurchase rights benefits, notwithstanding that all or some portion of such benefits may be taxable under Code Section 4999. Any determination required under this Section 14 (d) shall be made in writing by the Company's independent accountants, whose determination shall be conclusive and binding for all purposes on the Company and any affected Participant. In the event that (A) above applies, then the Participant shall be responsible for any excise taxes imposed with respect to such benefits. In the event that (B) above applies, then each benefit provided hereunder shall be proportionately reduced to the extent necessary to avoid imposition of such excise taxes.

(e) **Certain Distributions .** In the event of any distribution to the Company's stockholders of securities of any other entity or other assets (other than dividends payable in cash or stock of the Company) without receipt of consideration by the Company, the Administrator may, in its discretion, appropriately adjust the price per Share of Common Stock covered by each outstanding Option or Stock Purchase Right to reflect the effect of such distribution.

15. **Time of Granting Options and Stock Purchase Rights .** The date of grant of an Option or Stock Purchase Right shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or Stock Purchase Right, or such other date as is determined by the Administrator, provided that in the case of any Incentive Stock Option, the grant date shall be the later of the date on which the Administrator makes the determination granting such Incentive Stock Option or the date of commencement of the Optionee's employment relationship with the Company. Notice of the determination shall be given to each

Employee or Consultant to whom an Option or Stock Purchase Right is so granted within a reasonable time after the date of such grant.

16. **Amendment and Termination of the Plan .**

(a) **Authority to Amend or Terminate .** The Board may at any time amend, alter, suspend or discontinue the Plan, but no amendment, alteration, suspension or discontinuation (other than an adjustment pursuant to Section 14 above) shall be made that would materially and adversely affect the rights of any Optionee or holder of Stock Purchase Rights under any outstanding grant, without his or her consent. In addition, to the extent necessary and desirable to comply with the Applicable Laws, the Company shall obtain stockholder approval of any Plan amendment in such a manner and to such a degree as required.

(b) **Effect of Amendment or Termination .** No amendment or termination of the Plan shall materially and adversely affect Options or Stock Purchase Rights already granted, unless mutually agreed otherwise between the Optionee or holder of the Stock Purchase Rights and the Administrator, which agreement must be in writing and signed by the Optionee or holder and the Company.

17. **Conditions Upon Issuance of Shares .** Notwithstanding any other provision of the Plan or any agreement entered into by the Company pursuant to the Plan, the Company shall not be obligated, and shall have no liability for failure, to issue or deliver any Shares under the Plan unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. As a condition to the exercise of an Option or Stock Purchase Right, the Company may require the person exercising the award to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by law.

18. **Reservation of Shares .** The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

19. **Agreements .** Options and Stock Purchase Rights shall be evidenced by Option Agreements and Restricted Stock Purchase Agreements, respectively, in such form(s) as the Administrator shall from time to time approve.

20. **Stockholder Approval .** If required by the Applicable Laws, continuance of the Plan shall be subject to approval by the stockholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such stockholder approval shall be obtained in the manner and to the degree required under the Applicable Laws.

21. **Information and Documents to Optionees and Purchasers .** Prior to the date, if any, upon which the Common Stock becomes a Listed Security and if required by the Applicable Laws, the Company shall provide financial statements at least annually to each Optionee and to each individual who acquired Shares pursuant to the Plan, during the period such Optionee or

purchaser has one or more Options or Stock Purchase Rights outstanding, and in the case of an individual who acquired Shares pursuant to the Plan, during the period such individual owns such Shares. The Company shall not be required to provide such information if the issuance of Options or Stock Purchase Rights under the Plan is limited to key employees whose duties in connection with the Company assure their access to equivalent information.

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**Exhibit 10.2.2**

**AMENDMENT TO THE**
**CHEK, INC.**
**2000 STOCK PLAN**

The Chek, Inc. 2000 Stock Plan (the " Plan ") was adopted on December 5, 2000. Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 3 of the Plan shall be amended in its entirety to read as follows:

"3. **Stock Subject to the Plan .** Subject to the provisions of Section 14 of the Plan, the maximum aggregate number of Shares that may be sold under the Plan is 2,377,255 Shares of Common Stock. The Shares may be authorized, but unissued, or reacquired Common Stock. If an award should expire or become unexercisable for any reason without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares that were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan. In addition, any Shares of Common Stock which are retained by the Company upon exercise of an award in order to satisfy the exercise or purchase price for such award or any withholding taxes due with respect to such exercise or purchase shall be treated as not issued and shall continue to be available under the Plan. Shares issued under the Plan and later repurchased by the Company pursuant to any repurchase right which the Company may have shall not be available for future grant under the Plan."

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|---|---|
| Adopted by the Company's Board of Directors: | September 30, 2004 |
| Adopted by the Company's Stockholders: | September 30, 2004 |

**Exhibit 10.2.3**

**AMENDMENT TO THE**
**SYNACOR, INC.**
**2000 STOCK PLAN**

The Synacor, Inc. 2000 Stock Plan was adopted on December 5, 2000, as amended on November 18, 2002 and September 30, 2004 (the " Plan "). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 3 of the Plan shall be amended in its entirety to read as follows:

"3. **Stock Subject to the Plan .** Subject to the provisions of Section 14 of the Plan, the maximum aggregate number of Shares that may be sold under the Plan is 2,677,255 Shares of Common Stock. The Shares may be authorized, but unissued, or reacquired Common Stock. If an award should expire or become unexercisable for any reason without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares that were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan. In addition, any Shares of Common Stock which are retained by the Company upon exercise of an award in order to satisfy the exercise or purchase price for such award or any withholding taxes due with respect to such exercise or purchase shall be treated as not issued and shall continue to be available under the Plan. Shares issued under the Plan and later repurchased by the Company pursuant to any repurchase right which the Company may have shall not be available for future grant under the Plan."

Except as expressly amended hereby, the Plan shall remain unchanged and in full force and effect and is hereby ratified and confirmed.

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| Adopted by the Company's Board of Directors: | May 3, 2006 |
| Adopted by the Company's Stockholders: | June 9, 2006 |

**Exhibit 10.2.4**

**AMENDMENT TO THE**
**CHEK, INC.**
**2000 STOCK PLAN**

The Chek, Inc. 2000 Stock Plan (the " Plan ") was adopted on December 5, 2000. Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 3 of the Plan shall be amended in its entirety to read as follows:

"3. **Stock Subject to the Plan .** Subject to the provisions of Section 14 of the Plan, the maximum aggregate number of Shares that may be sold under the Plan is 3,075,185 Shares of Common Stock. The Shares may be authorized, but unissued, or reacquired Common Stock. If an award should expire or become unexercisable for any reason without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares that were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan. In addition, any Shares of Common Stock which are retained by the Company upon exercise of an award in order to satisfy the exercise or purchase price for such award or any withholding taxes due with respect to such exercise or purchase shall be treated as not issued and shall continue to be available under the Plan. Shares issued under the Plan and later repurchased by the Company pursuant to any repurchase right which the Company may have shall not be available for future grant under the Plan."

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|---|---|
| Adopted by the Company's Board of Directors: | October 17, 2006 |
| Adopted by the Company's Stockholders: | October 19, 2006 |

**Exhibit 10.2.5**

**AMENDMENT TO THE**
**SYNACOR, INC. (F/K/A CHEK, INC.)**
**2000 STOCK PLAN**

The 2000 Stock Plan (the " Plan ") was adopted on December 5, 2000. Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 3 of the Plan shall be amended in its entirety to read as follows:

"3. **Stock Subject to the Plan .** Subject to the provisions of Section 14 of the Plan, the maximum aggregate number of Shares that may be sold under the Plan is 6,979,554 Shares of Common Stock. The Shares may be authorized, but unissued, or reacquired Common Stock. If an award should expire or become unexercisable for any reason without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares that were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan. In addition, any Shares of Common Stock which are retained by the Company upon exercise of an award in order to satisfy the exercise or purchase price for such award or any withholding taxes due with respect to such exercise or purchase shall be treated as not issued and shall continue to be available under the Plan. Shares issued under the Plan and later repurchased by the Company pursuant to any repurchase right which the Company may have shall not be available for future grant under the Plan."

Except as expressly amended hereby, the Plan shall remain unchanged and in full force and effect and is hereby ratified and confirmed.

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|---|---|
| Adopted by the Company's Board of Directors: | July 28, 2008 |
| Adopted by the Company's Stockholders: | July 31, 2008 |

**Exhibit 10.3.1**

# SYNACOR, INC.

## 2006 STOCK PLAN

## ADOPTED ON DECEMBER 5, 2006

## TABLE OF CONTENTS

# SYNACOR, INC. 2006 STOCK PLAN

## SECTION 1. ESTABLISHMENT AND PURPOSE.

The purpose of the Plan is to offer selected persons an opportunity to acquire a proprietary interest in the success of the Company, or to increase such interest, by purchasing Shares of the Company's Stock. The Plan provides both for the direct award or sale of Shares and for the grant of Options to purchase Shares. Options granted under the Plan may include Nonstatutory Options as well as ISOs intended to qualify under Section 422 of the Code.

Capitalized terms are defined in Section 12.

## SECTION 2. ADMINISTRATION.

**(a) Committees of the Board of Directors.**

The Plan may be administered by one or more Committees. Each Committee shall consist of one or more members of the Board of Directors who have been appointed by the Board of Directors. Each Committee shall have such authority and be responsible for such functions as the Board of Directors has assigned to it. If no Committee has been appointed, the entire Board of Directors shall administer the Plan. Any reference to the Board of Directors in the Plan shall be construed as a reference to the Committee (if any) to whom the Board of Directors has assigned a particular function.

**(b) Authority of the Board of Directors.**

Subject to the provisions of the Plan, the Board of Directors shall have full authority and discretion to take any actions it deems necessary or advisable for the administration of the Plan. All decisions, interpretations and other actions of the Board of Directors shall be final and binding on all Purchasers, all Optionees and all persons deriving their rights from a Purchaser or Optionee.

## SECTION 3. ELIGIBILITY.

**(a) General Rule.**

Only Employees, Outside Directors and Consultants shall be eligible for the grant of Nonstatutory Options or the direct award or sale of Shares. Only Employees shall be eligible for the grant of ISOs.

**(b) Ten-Percent Stockholders** .

A person who owns more than 10% of the total combined voting power of all classes of outstanding stock of the Company, its Parent or any of its Subsidiaries shall not be eligible for the grant of an ISO unless (i) the Exercise Price is at least 110% of the Fair Market Value of a Share on the date of grant and (ii) such ISO by its terms is not exercisable after the expiration of five years from the date of grant. For purposes of this Subsection (b), in determining stock ownership, the attribution rules of Section 424(d) of the Code shall be applied.

**SECTION 4. STOCK SUBJECT TO PLAN** .

**(a) Basic Limitation** .

Not more than 695,147 Shares may be issued under the Plan (subject to Subsection (b) below and Section 8). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares.

**(b) Additional Shares** .

In the event that Shares previously issued under the Plan are reacquired by the Company, such Shares shall be added to the number of Shares then available for issuance under the Plan. In the event that an outstanding Option or other right for any reason expires or is canceled, the Shares allocable to the unexercised portion of such Option or other right shall be added to the number of Shares then available for issuance under the Plan.

**SECTION 5. TERMS AND CONDITIONS OF AWARDS OR SALES** .

**(a) Stock Purchase Agreement** .

Each award or sale of Shares under the Plan (other than upon exercise of an Option) shall be evidenced by a Stock Purchase Agreement between the Purchaser and the Company. Such award or sale shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Purchase Agreement. The provisions of the various Stock Purchase Agreements entered into under the Plan need not be identical.

**(b) Duration of Offers and Nontransferability of Rights** .

Any right to acquire Shares under the Plan (other than an Option) shall automatically expire if not exercised by the Purchaser within 30 days after the grant of such right was communicated to the Purchaser by the Company. Such right shall not be transferable and shall be exercisable only by the Purchaser to whom such right was granted.

**(c) Purchase Price** .

The Purchase Price of Shares to be offered under the Plan, if newly issued, shall not be less than the par value of such Shares. Subject to the preceding sentence, the Board of Directors shall determine the Purchase Price at its sole discretion. The Purchase Price shall be payable in a form described in Section 7.

**(d) Withholding Taxes** .

As a condition to the purchase of Shares, the Purchaser shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such purchase.

**(e) Restrictions on Transfer of Shares** .

Any Shares awarded or sold under the Plan shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Purchase Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally. A Stock Purchase Agreement may provide for accelerated vesting in the event of the Purchaser's death, disability or retirement or other events.

**SECTION 6. TERMS AND CONDITIONS OF OPTIONS** .

**(a) Stock Option Agreement** .

Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Company. Such Option shall be subject to all applicable terms and conditions of the Plan and may be subject to any other terms and conditions which are not inconsistent with the Plan and which the Board of Directors deems appropriate for inclusion in a Stock Option Agreement. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical.

**(b) Number of Shares** .

Each Stock Option Agreement shall specify the number of Shares that are subject to the Option and shall provide for the adjustment of such number in accordance with Section 8. The Stock Option Agreement shall also specify whether the Option is an ISO or a Nonstatutory Option.

**(c) Exercise Price** .

Each Stock Option Agreement shall specify the Exercise Price. The Exercise Price of any Option shall not be less than 100% of the Fair Market Value of a Share on the date of grant, and a higher percentage may be required by Section 3(b). Subject to the preceding sentence, the Exercise Price shall be determined by the Board of Directors at its sole discretion. The Exercise Price shall be payable in a form described in Section 7.

**(d) Exercisability** .

Each Stock Option Agreement shall specify the date when all or any installment of the Option is to become exercisable. No Option shall be exercisable unless the Optionee (i) has delivered an executed copy of the Stock Option Agreement to the Company or (ii) otherwise agrees to be bound by the terms of the Stock Option Agreement. The Board of Directors shall determine the exercisability provisions of any Stock Option Agreement at its sole discretion.

**(e) Term** .

The Stock Option Agreement shall specify the term of the Option. The term shall not exceed 10 years from the date of grant, and in the case of an ISO a shorter term may be required by Section 3(b). Subject to the preceding sentence, the Board of Directors at its sole discretion shall determine when an Option is to expire. A Stock Option Agreement may provide for expiration prior to the end of its term in the event of the termination of the Optionee's Service or death.

**(f) Restrictions on Transfer of Shares** .

Any Shares issued upon exercise of an Option shall be subject to such special forfeiture conditions, rights of repurchase, rights of first refusal and other transfer restrictions as the Board of Directors may determine. Such restrictions shall be set forth in the applicable Stock Option Agreement and shall apply in addition to any restrictions that may apply to holders of Shares generally.

**(g) Transferability of Options** .

An Option shall be transferable by the Optionee only by (i) a beneficiary designation, (ii) a will or (iii) the laws of descent and distribution, except as provided in the next sentence. If the applicable Stock Option Agreement so provides, a Nonstatutory Option shall also be transferable by gift or domestic relations order to a Family Member of the Optionee. An ISO may be exercised during the lifetime of the Optionee only by the Optionee or by the Optionee's guardian or legal representative.

**(h) Withholding Taxes** .

As a condition to the exercise of an Option, the Optionee shall make such arrangements as the Board of Directors may require for the satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with such exercise. The Optionee shall also make such arrangements as the Board of Directors may require for the

satisfaction of any federal, state, local or foreign withholding tax obligations that may arise in connection with the disposition of Shares acquired by exercising an Option.

**(i) No Rights as a Stockholder** .

An Optionee, or a transferee of an Optionee, shall have no rights as a stockholder with respect to any Shares covered by the Optionee's Option until such person becomes entitled to receive such Shares by filing a notice of exercise and paying the Exercise Price pursuant to the terms of such Option.

**(j) Modification, Extension and Assumption of Options** .

Within the limitations of the Plan, the Board of Directors may modify, extend or assume outstanding Options or may accept the cancellation of outstanding Options (whether granted by the Company or another issuer) in return for the grant of new Options for the same or a different number of Shares and at the same or a different Exercise Price. The foregoing notwithstanding, no modification of an Option shall, without the consent of the Optionee, impair the Optionee's rights or increase the Optionee's obligations under such Option.

**SECTION 7. PAYMENT FOR SHARES** .

**(a) General Rule** .

The entire Purchase Price or Exercise Price of Shares issued under the Plan shall be payable in cash or cash equivalents at the time when such Shares are purchased, except as otherwise provided in this Section 7.

**(b) Services Rendered** .

At the discretion of the Board of Directors, Shares may be awarded under the Plan in consideration of services rendered to the Company, a Parent or a Subsidiary prior to the award.

**(c) Promissory Note** .

At the discretion of the Board of Directors, all or a portion of the Purchase Price or Exercise Price (as the case may be) of Shares issued under the Plan may be paid with a full-recourse promissory note. The Shares shall be pledged as security for payment of the principal amount of the promissory note and interest thereon. The interest rate payable under the terms of the promissory note shall not be less than the minimum rate (if any) required to avoid the imputation of additional interest under the Code. Subject to the foregoing, the Board of Directors (at its sole discretion) shall specify the term, interest rate, amortization requirements (if any) and other provisions of such note.

**(d) Surrender of Stock** .

At the discretion of the Board of Directors, all or any part of the Exercise Price may be paid by surrendering, or attesting to the ownership of, Shares that are already owned by the Optionee. Such Shares shall be surrendered to the Company in good form for transfer and shall be valued at their Fair Market Value as of the date when the Option is exercised.

**(e) Exercise/Sale** .

To the extent that a Stock Option Agreement so provides, and if Stock is publicly traded, all or part of the Exercise Price and any withholding taxes may be paid by the delivery (on a form prescribed by the Company) of an irrevocable direction to a securities broker approved by the Company to sell Shares and to deliver all or part of the sales proceeds to the Company.

**(f) Other Forms of Payment** .

To the extent that a Stock Purchase Agreement or Stock Option Agreement so provides, the Purchase Price or Exercise Price of Shares issued under the Plan may be paid in any other form permitted by the Delaware General Corporation Law, as amended.

**SECTION 8. ADJUSTMENT OF SHARES** .

**(a) General** .

In the event of a subdivision of the outstanding Stock, a declaration of a dividend payable in Shares, a combination or consolidation of the outstanding Stock into a lesser number of Shares, a reclassification, or any other increase or decrease in the number of issued shares of Stock effected without receipt of consideration by the Company, proportionate adjustments shall automatically be made in each of (i) the number of Shares available for future grants under Section 4, (ii) the number of Shares covered by each outstanding Option and (iii) the Exercise Price under each outstanding Option. In the event of a declaration of an extraordinary dividend payable in a form other than Shares in an amount that has a material effect on the Fair Market Value of the Stock, a recapitalization, a spin-off, or a similar occurrence, the Board of Directors at its sole discretion may make appropriate adjustments in one or more of (i) the number of Shares available for future grants under Section 4, (ii) the number of Shares covered by each outstanding Option or (iii) the Exercise Price under each outstanding Option.

**(b) Mergers and Consolidations** .

In the event that the Company is a party to a Corporate Transaction, all outstanding Shares acquired under the Plan and all outstanding Options shall be subject to the agreement evidencing the Corporate Transaction, which does not have to provide that all outstanding Options (or a portion thereof) be treated in an identical manner. Such agreement, without the Optionees' or Purchasers' consent, may assign the Company's right of repurchase with respect to unvested and outstanding Shares to the Successor Corporation and such

assignment does not have to apply to the outstanding Shares in an identical manner. Such agreement, without the Optionees' consent, may provide for one or more of the following:

(i) The continuation of any such outstanding Options by the Company (if the Company is the surviving corporation).

(ii) The assumption of any such outstanding Options by the Successor Corporation in a manner that complies with Section 424(a) of the Code (whether or not such Options are ISOs). Assumption shall include a transaction in which the Optionee would be entitled to receive upon exercise of the Option the same number and kind of shares of stock or the same amount of property, cash or securities as such Optionee would have been entitled to receive upon the occurrence of the transaction if the Optionee had been, immediately prior to such transaction, the holder of the number of Shares covered by the Option at such time, provided that if such consideration received in the transaction is not solely common stock of the Successor Corporation, the Company may, with the consent of the Successor Corporation, provide for the consideration to be received upon exercise of the Option to be solely common stock of the Successor Corporation equal to the Fair Market Value of the per Share consideration received by holders of Stock in the transaction.

(iii) The substitution by the Successor Corporation of new options for any such outstanding Options in a manner that complies with Section 424(a) of the Code (whether or not such Options are ISOs).

(iv) The cancellation of any such outstanding Options and a payment to the Optionees equal to the excess of (A) the Fair Market Value of the Shares subject to such Options (whether or not such Options are then exercisable or such Shares are then vested) as of the closing date of such merger or consolidation over (B) their Exercise Price. Such payment shall be made in the form of cash, cash equivalents, or securities of the surviving corporation or its parent with a Fair Market Value equal to the required amount. Such payment may be made in installments and may be deferred until the date or dates when such Options would have become exercisable or such Shares would have vested. Such payment may be subject to vesting based on the Optionee's continuing Service, provided that the vesting schedule shall not be less favorable to the Optionee than the schedule under which such Options would have become exercisable or such Shares would have vested. If the Exercise Price of the Shares subject to such Options exceeds the Fair Market Value of such Shares, then such Options may be cancelled without making a payment to the Optionees. For purposes of this Paragraph (iv), the Fair Market Value of any security shall be determined without regard to any vesting conditions that may apply to such security.

**SECTION 9. SECURITIES LAW REQUIREMENTS** .

Shares shall not be issued under the Plan unless the issuance and delivery of such Shares comply with (or are exempt from) all applicable requirements of law, including (without limitation) the Securities Act of 1933, as amended, the rules and regulations promulgated thereunder, state securities laws and regulations, and the regulations of any stock exchange or other securities market on which the Company's securities may then be traded.

**SECTION 10. NO RETENTION RIGHTS** .

Nothing in the Plan or in any right or Option granted under the Plan shall confer upon the Purchaser or Optionee any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company (or any Parent or Subsidiary employing or retaining the Purchaser or Optionee) or of the Purchaser or Optionee, which rights are hereby expressly reserved by each, to terminate his or her Service at any time and for any reason, with or without cause.

**SECTION 11. DURATION AND AMENDMENTS** .

**(a) Term of the Plan** .

The Plan, as set forth herein, shall become effective on the date of its adoption by the Board of Directors, subject to the approval of the Company's stockholders. If the stockholders fail to approve the Plan within 12 months after its adoption by the Board of Directors, then any grants, exercises or sales that have already occurred under the Plan shall be rescinded and no additional grants, exercises or sales shall thereafter be made under the Plan. The Plan shall terminate automatically 10 years after the later of (i) the date when the Board of Directors adopted the Plan or (ii) the date when the Board of Directors approved the most recent increase in the number of Shares reserved under Section 4 that was also approved by the Company's stockholders. The Plan may be terminated on any earlier date pursuant to Subsection (b) below.

**(b) Right to Amend or Terminate the Plan** .

The Board of Directors may amend, suspend or terminate the Plan at any time and for any reason; provided, however, that any amendment of the Plan shall be subject to the approval of the Company's stockholders if it (i) increases the number of Shares available for issuance under the Plan (except as provided in Section 8) or (ii) materially changes the class of persons who are eligible for the grant of ISOs. Stockholder approval shall not be required for any other amendment of the Plan. If the stockholders fail to approve an increase in the number of Shares reserved under Section 4 within 12 months after its adoption by the Board of Directors, then any grants, exercises or sales that have already occurred in reliance on such increase shall be rescinded and no additional grants, exercises or sales shall thereafter be made in reliance on such increase.

**(c) Effect of Amendment or Termination** .

No Shares shall be issued or sold under the Plan after the termination thereof, except upon exercise of an Option granted prior to such termination. The termination of the Plan, or any amendment thereof, shall not affect any Share previously issued or any Option previously granted under the Plan.

**SECTION 12. DEFINITIONS** .

(a) " **Board of Directors** " shall mean the Board of Directors of the Company, as constituted from time to time.

(b) " **Change of Control** " means a sale of all or substantially all of the Company's assets, or any merger or consolidation of the Company with or into another corporation other than a merger or consolidation in which the holders of more than 50% of the shares of capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by the voting securities remaining outstanding or by their being converted into voting securities of the surviving entity) more than 50% of the total voting power represented by the voting securities of the Company, or such surviving entity, outstanding immediately after such transaction.

(c) " **Code** " shall mean the Internal Revenue Code of 1986, as amended.

(d) " **Committee** " shall mean a committee of the Board of Directors, as described in Section 2(a).

(e) " **Company** " shall mean Synacor, Inc., a Delaware corporation.

(f) " **Consultant** " shall mean a person who performs bona fide services for the Company, a Parent or a Subsidiary as a consultant or advisor, excluding Employees and Outside Directors.

(g) " **Corporate Transaction** " shall mean a sale of all or substantially all of the Company's assets, or a merger, consolidation or other capital reorganization of the Company with or into another corporation and includes a Change of Control.

(h) " **Employee** " shall mean any individual who is a common-law employee of the Company, a Parent or a Subsidiary.

(i) " **Exercise Price** " shall mean the amount for which one Share may be purchased upon exercise of an Option, as specified by the Board of Directors in the applicable Stock Option Agreement.

(j) " **Fair Market Value** " shall mean the fair market value of a Share, as determined by the Board of Directors in accordance with applicable law. Such determination shall be conclusive and binding on all persons.

(k) " **Family Member** " shall mean (i) any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, (ii) any person sharing the Optionee's household (other than a tenant or employee), (iii) a trust in which persons described in Clause (i) or (ii) have more than 50% of the beneficial interest, (iv) a foundation in which persons described in Clause (i) or (ii) or the Optionee control the management of assets and (v) any other entity in which persons described in Clause (i) or (ii) or the Optionee own more than 50% of the voting interests.

(l) " **ISO** " shall mean an employee incentive stock option described in Section 422(b) of the Code.

(m) " **Nonstatutory Option** " shall mean a stock option not described in Sections 422(b) or 423(b) of the Code.

(n) " **Option** " shall mean an ISO or Nonstatutory Option granted under the Plan and entitling the holder to purchase Shares.

(o) " **Optionee** " shall mean a person who holds an Option.

(p) " **Outside Director** " shall mean a member of the Board of Directors who is not an Employee.

(q) " **Parent** " shall mean any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.

(r) " **Plan** " shall mean this Synacor, Inc. 2006 Stock Plan.

(s) " **Purchase Price** " shall mean the consideration for which one Share may be acquired under the Plan (other than upon exercise of an Option), as specified by the Board of Directors.

(t) " **Purchaser** " shall mean a person to whom the Board of Directors has offered the right to acquire Shares under the Plan (other than upon exercise of an Option).

(u) " **Service** " shall mean service as an Employee, Outside Director or Consultant.

(v) " **Share** " shall mean one share of Stock, as adjusted in accordance with Section 8 (if applicable).

(w) " **Stock** " shall mean the Common Stock of the Company.

(x) “ **Stock Option Agreement** ” shall mean the agreement between the Company and an Optionee that contains the terms, conditions and restrictions pertaining to the Optionee’s Option.

(y) “ **Stock Purchase Agreement** ” shall mean the agreement between the Company and a Purchaser who acquires Shares under the Plan that contains the terms, conditions and restrictions pertaining to the acquisition of such Shares.

(z) “ **Subsidiary** ” shall mean any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

(aa) “ **Successor Corporation** ” shall mean a successor corporation or a parent or subsidiary of such successor corporation.

**Exhibit 10.3.2**

**AMENDMENT NO. 1 TO THE**
**SYNACOR, INC.**
**2006 STOCK PLAN**

Synacor, Inc., a Delaware corporation (the " Company "), adopted the 2006 Stock Plan on December 5, 2006 (the " Plan "). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 4(a) of the Plan shall be amended in its entirety to read as follows:

"(a) **Basic Limitation** . Not more than 966,915 Shares may be issued under the Plan (subject to Subsection (b) below and Section 8). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares."

Except as expressly amended hereby, the Plan shall remain unchanged and in full force and effect and is hereby ratified and confirmed.

| | |
|---|---|
| Adopted by the Company's Board of Directors: | July 31, 2007 |
| Adopted by the Company's Stockholders: | August 30, 2007 |

**Exhibit 10.3.3**

**AMENDMENT NO. 2 TO THE**
**SYNACOR, INC.**
**2006 STOCK PLAN**

Synacor, Inc., a Delaware corporation (the " Company "), adopted the 2006 Stock Plan on December 5, 2006, as amended on July 31, 2007 (the " Plan "). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 4(a) of the Plan shall be amended in its entirety to read as follows:

"(a) **Basic Limitation** . Not more than 1,271,197 Shares may be issued under the Plan (subject to Subsection (b) below and Section 8). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares."

Except as expressly amended hereby, the Plan shall remain unchanged and in full force and effect and is hereby ratified and confirmed.

| | |
|---|---|
| Adopted by the Company's Board of Directors: | September 14, 2007 |
| Adopted by the Company's Stockholders: | November 19, 2007 |

**Exhibit 10.3.4**

**AMENDMENT NO. 3 TO THE**
**SYNACOR, INC.**
**2006 STOCK PLAN**

Synacor, Inc., a Delaware corporation (the " Company "), adopted the 2006 Stock Plan on December 5, 2006, as amended on July 31, 2007 and September 14, 2007 (the " Plan "). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 4(a) of the Plan shall be amended in its entirety to read as follows:

"(a) **Basic Limitation** . Not more than 1,548,667 Shares may be issued under the Plan (subject to Subsection (b) below and Section 8). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares."

Except as expressly amended hereby, the Plan shall remain unchanged and in full force and effect and is hereby ratified and confirmed.

| | |
|---|---|
| Adopted by the Company's Board of Directors: | April 30, 2008 |
| Adopted by the Company's Stockholders: | June 24, 2008 |

**Exhibit 10.3.5**

**AMENDMENT NO. 4 TO THE**
**SYNACOR, INC.**
**2006 STOCK PLAN**

Synacor, Inc., a Delaware corporation (the " Company "), adopted the 2006 Stock Plan on December 5, 2006, as amended on July 31, 2007, September 14, 2007 and April 30, 2008 (the " Plan "). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 4(a) of the Plan shall be amended in its entirety to read as follows:

"(a) **Basic Limitation** . Not more than 4,646,001 Shares may be issued under the Plan (subject to Subsection (b) below and Section 8). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares."

Except as expressly amended hereby, the Plan shall remain unchanged and in full force and effect and is hereby ratified and confirmed.

Adopted by the Company's Board of Directors: July 28, 2008

Adopted by the Company's Stockholders: July 31, 2008

**Exhibit 10.3.6**

**AMENDMENT NO. 5 TO THE**
**SYNACOR, INC.**
**2006 STOCK PLAN**

Synacor, Inc., a Delaware corporation (the " Company "), adopted the 2006 Stock Plan on December 5, 2006, as amended on July 31, 2007, September 14, 2007, April 30, 2008 and July 28, 2008 (the " Plan "). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 4(a) of the Plan shall be amended in its entirety to read as follows:

"(a) **Basic Limitation** . Not more than 4,875,211 Shares may be issued under the Plan (subject to Subsection (b) below and Section 8). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares."

Except as expressly amended hereby, the Plan shall remain unchanged and in full force and effect and is hereby ratified and confirmed.

Adopted by the Company's Board of Directors: May 12, 2010

Adopted by the Company's Stockholders: November 22, 2010

**Exhibit 10.3.7**

**AMENDMENT NO. 6 TO THE**
**SYNACOR, INC.**
**2006 STOCK PLAN**

Synacor, Inc., a Delaware corporation (the " Company "), adopted the 2006 Stock Plan on December 5, 2006, as amended on July 31, 2007, September 14, 2007, April 30, 2008, July 28, 2008 and May 12, 2010 (the " Plan "). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

Section 4(a) of the Plan shall be amended in its entirety to read as follows:

"(a) **Basic Limitation** . Not more than 7,536,211 Shares may be issued under the Plan (subject to Subsection (b) below and Section 8). All of these Shares may be issued upon the exercise of ISOs. The number of Shares that are subject to Options or other rights outstanding at any time under the Plan shall not exceed the number of Shares that then remain available for issuance under the Plan. The Company, during the term of the Plan, shall at all times reserve and keep available sufficient Shares to satisfy the requirements of the Plan. Shares offered under the Plan may be authorized but unissued Shares or treasury Shares."

Except as expressly amended hereby, the Plan shall remain unchanged and in full force and effect and is hereby ratified and confirmed.

Adopted by the Company's Compensation Committee
of the Board: August 16, 2011

Adopted by the Company's Stockholders:

**Exhibit 10.5.1**

synacor 40 LA RIVIERA DRIVE SUITE 300 BUFFALO, NY 14202 WWW.SYNACOR.COM

July 25, 2007

Mr. Ronald N. Frankel
275 Monte Grigio Street
Pacific Palisades, CA 90272

Dear Ron:

We are pleased to confirm and ratify for you the following benefits that were initially offered to you on January 19, 2001, as our President and Chief Executive Officer.

**Severance and Vesting Acceleration:** Your employment is at will and may be terminated by you or Synacor, Inc. (the "Company") at any time with or without Cause (as defined below) or notice. In the event that the Company terminates your employment without Cause, you will be paid a lump sum amount equal to twelve months of your base salary at the rate in effect on your last date of employment with the Company. If the Company determines that you are a "specified employee" under Section 409A(a)(2)(B)(i) of the Internal Revenue Code of 1986, as amended (the "Code"), when your employment terminates, then the lump sum payment described in this paragraph will be paid on the earliest practicable date that occurs more than six months after the termination of your employment.

If you are terminated without Cause, then with respect to any equity award that the Company has granted to you, including options, you will become vested in an additional number of shares or options, as if you provided another twelve months of service following your employment termination date. The term "Cause" will consist of (a) your intentional failure to substantially perform duties assigned to you by the Company's Board of Directors, following at least 30 days written notice of such failure, (b) your commission of any act of fraud, embezzlement, felony, or other willful misconduct that causes material injury to the Company, (c) the intentional unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party to whom you owe an obligation of nondisclosure as a result of your relationship with the Company, which unauthorized use of disclosure causes material harm to the Company, or (d) your willful breach of your obligations under any written covenant or agreement with the Company, which breach is not cured within 30 days following written notice thereof and which causes material harm to the Company.

In the event of a change of control, you will become vested in 100% of all of your stock options or equity awards granted by the Company if (a) the acquirer or successor does not assume in full your Company options or equity awards, as applicable, (b) your compensation is reduced below your rate of compensation as of immediately prior to such change of control, (c) your place of employment is relocated more than 35 miles from the place of employment as of immediately prior to such change of control, or (d) there is a reduction in your duties and responsibilities as a result of or following such change of control.

If these terms meet with your approval, please execute a copy of this letter below and return it to me.

Best regards,

/s/ Andrew Kau
Andrew Kau
Managing Director, Walden Intl.

Date: 8/1/07

/s/ Ronald N. Frankel
Ronald N. Frankel

Date: 7/31/07

**Exhibit 10.6**

synacor
40 LA RIVIERE DRIVE SUITE 300 BUFFALO, NY 14202 www.SYNACOR.COM

September 7, 2010

Scott Bailey
7312 Elbow Ln
Philadelphia, PA 19119

Dear Scott:

Synacor, Inc. (the " Company ") is pleased to offer you employment on the following terms:

**1. Position** . Your initial title will be Chief Operating Officer and you will initially report to the Company's Chief Executive Officer, Ron Frankel. This is a full-time Exempt position. While you render services to the Company, you will not engage in any other employment, consulting or other business activity (whether full-time or part-time) that would create a conflict of interest with the Company except as referenced in Exhibit A of the Proprietary Information and Inventions Agreement. By signing this letter agreement, you confirm to the Company that you have no contractual commitments or other legal obligations that would prohibit you from performing your duties for the Company.

**2. Cash Compensation** . The Company will pay you a starting salary at the rate of $325,000 per year, payable in accordance with the Company's standard payroll schedule. This salary will be subject to adjustment pursuant to the Company's employee compensation policies in effect from time to time. In addition, you will be eligible to be considered for an incentive bonus for each fiscal year of the Company. Your target bonus will be equal to 50% of your annual base salary. The criteria for your incentive bonus will be materially similar to those used for other senior executives at the Company, including the chief executive officer. Any bonus for the fiscal year in which your employment begins will be prorated, based on the number of days you are employed by the Company during that fiscal year. The bonus for a fiscal year will be paid after the Company's books for that year have been closed and will be paid only if you are employed by the Company at the time of payment. The requirement that Employee be employed at the time of payment does not apply if Employee's employment is terminated by the Company prior to the date of payment. The determinations of the Company's Chief Executive and Board of Directors with respect to your bonus will be final and binding.

**3. Employee Benefits** . As a regular employee of the Company, you will be eligible to participate in a number of Company-sponsored benefits. In addition, you will be entitled to paid vacation in accordance with the Company's vacation policy, as in effect from time to time.

**4. Stock Options** . Subject to the approval of the Company's Board of Directors or its Compensation Committee, you will be granted an option to purchase 800,000 shares of the Company's Common Stock. The exercise price per share will be equal to the fair market value per share on the date the option is granted or on your first day of employment, whichever is later.

The option will be subject to the terms and conditions applicable to options granted under the Company's 2006 Stock Plan (the " Plan "), as described in the Plan and the applicable Stock Option Agreement. The option will be immediately exercisable, but the unvested portion of the purchased shares will be subject to repurchase by the Company at the exercise price in the event that your service terminates for any reason before you vest in the shares. You will vest in 25% of the option shares after 12 months of continuous service, and the balance will vest in equal monthly installments over the next 36 months of continuous service, as described in the applicable Stock Option Agreement.

**5. Relocation** . The Company shall reimburse the Employee for relocation expenses (i.e., moving company, realtor fees, transfer taxes, etc) that the Employee incurs in moving himself from Philadelphia, PA to the Buffalo, NY area for approved moving expenses in an agreed upon amount, of $150,000. The employee agrees to move to Buffalo, NY by Monday December 31, 2010. Any unused portion of the $150,000 for relocation expenses will be paid to the employee as a relocation bonus. If the Employee resigns from the Company before completing 12 months of continuous service, the Employee shall immediately refund to the Company all payments and reimbursements made by the Company for relocation expenses and/or relocation bonus. The Relocation reimbursements and bonus shall be paid to you after submission of your relocation expenses and completion of your relocation.

The Company will provide reasonable executive style temporary housing to Employee until no later than December 31, 2010. In order to facilitate the permanent relocation of Employee's family to the Buffalo NY area, the Company will provide the Employee reasonable rental housing from the date the Employee's family moves through June 30, 2011. The Employee's residence will be placed for sale no later than thirty (30) days of Employee beginning employment with the Company. The Company will also provide reasonable travel expenses incurred by Employee or his spouse for travel between Philadelphia, PA and Buffalo, NY until no later than December 31, 2010. The expenses referenced in this paragraph are not considered to be part of relocation expenses referenced in the paragraph above.

**6. Severance Pay** . If after Employee and Employee's spouse relocates to the Buffalo NY area (which shall occur no later than December 31, 2010) or subsequent to any change of control the Company terminates the Employee's Employment for any reason other than Cause or Permanent Disability, then the Company shall pay the Employee his Base Salary for a period of twelve months following the termination of his Employment (the " Continuation Period "). Such Base Salary shall be paid at the rate in effect at the time of the termination of Employment and in accordance with the Company's standard payroll procedures. If Employee is terminated subsequent to any change of control or when the Company is a public Company then the Company shall also pay Employee his target bonus prorated to his last date of employment. The Company shall accelerate twelve (12) months of vesting on all options or other unvested stock including, but not limited to, the options referenced in paragraph 4 above.

**7. COBRA Premiums** . You will receive information about your right to continue your group health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") after the termination Date. In order to continue your coverage, you must file the

required election form. If the Company terminates the Employee's Employment for any reason other than Cause or Permanent Disability, and you elect to continue group health insurance coverage, then the Company will pay the monthly premium under COBRA for yourself and, if applicable, your dependents for a period equal to the severance period as described in section 5, following the termination date. You acknowledge that you otherwise would not have been entitled to any continuation of Company-paid health insurance.

**8. Proprietary Information and Inventions Agreement** . Like all Company employees, you will be required, as a condition of your employment with the Company, to sign the Company's standard Proprietary Information and Inventions Agreement, a copy of which is attached hereto as **Exhibit A** .

**9. Employment Relationship** . Employment with the Company is for no specific period of time. Your employment with the Company will be "at will," meaning that either you or the Company may terminate your employment at any time and for any reason, with or without cause. Any contrary representations that may have been made to you are superseded by this letter agreement. This is the full and complete agreement between you and the Company on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of the Company (other than you).

**10. Withholding Taxes** . All forms of compensation referred to in this letter agreement are subject to reduction to reflect applicable withholding and payroll taxes and other deductions required by law.

**11. Interpretation, Amendment and Enforcement** . This letter agreement and Exhibit A constitute the complete agreement between you and the Company, contain all of the terms of your employment with the Company and supersede any prior agreements, representations or understandings (whether written, oral or implied) between you and the Company. This letter agreement may not be amended or modified, except by an express written agreement signed by both you and a duly authorized officer of the Company. The terms of this letter agreement and the resolution of any disputes as to the meaning, effect, performance or validity of this letter agreement or arising out of, related to, or in any way connected with, this letter agreement, your employment with the Company or any other relationship between you and the Company (the " Disputes ") will be governed by New York law, excluding laws relating to conflicts or choice of law. You and the Company submit to the exclusive personal jurisdiction of the federal and state courts located in New York in connection with any Dispute or any claim related to any Dispute.

**12. Arbitration** . Any controversy or claim arising out of this letter agreement and any and all claims relating to your employment with the Company will be settled by final and binding arbitration. The arbitration will take place in Erie County or, at your option, the County in which you primarily worked when the arbitrable dispute or claim first arose. The arbitration will be administered by the American Arbitration Association under its National Rules for the

Resolution of Employment Disputes. Any award or finding will be confidential. You and the Company agree to provide one another with reasonable access to documents and witnesses in connection with the resolution of the dispute. You and the Company will share the costs of arbitration equally. Each party will be responsible for its own attorneys' fees, and the arbitrator may not award attorneys' fees unless a statute or contract at issue specifically authorizes such an award. This Section 12 does not apply to claims for workers' compensation benefits or unemployment insurance benefits. This Section 12 also does not apply to claims concerning the ownership, validity, infringement, misappropriation, disclosure, misuse or enforceability of any confidential information, patent right, copyright, mask work, trademark or any other trade secret or intellectual property held or sought by either you or the Company (whether or not arising under the Proprietary Information and Inventions Agreement between you and the Company).

**13. Definitions** . The following terms have the meaning set forth below wherever they are used in this letter agreement:

**"Cause"** means (a) your unauthorized use or disclosure of the Company's confidential information or trade secrets, which use or disclosure causes material harm to the Company, (b) your material breach of any agreement between you and the Company, (c) your material failure to comply with the Company's written policies or rules which has not been cured within forty five (45) days of being so notified by the Company, (d) your conviction of, or your plea of "guilty" or "no contest" to, a felony under the laws of the United States or any State, (e) your gross negligence or willful misconduct, (f) your continuing failure to perform assigned duties which has not been cured within forty five (45) days after receiving written notification of the failure from the Company's Board of Directors or (g) your failure to cooperate in good faith with a governmental or internal investigation of the Company or its directors, officers or employees, if the Company has requested your cooperation.

**"Permanent Disability"** means that you are unable to perform the essential functions of your position, with or without reasonable accommodation, for a period of at least 120 consecutive days because of a physical or mental impairment.

We hope that you will accept our offer to join the Company. You may indicate your agreement with these terms and accept this offer by signing and dating both the enclosed duplicate original of this letter agreement and the enclosed Proprietary Information and Inventions Agreement and returning them to me. This offer, if not accepted, will expire at 5pm Eastern time on September 8, 2010. Your employment is contingent upon your starting work with the Company on or before October 1, 2010. As required by law, your employment with the Company is contingent upon your providing legal proof of your identity and authorization to work in the United States. Scott, we are very pleased to be presenting you with this offer. We are confident that your skills, enthusiasm and professionalism will add to Synacor's success while creating the opportunities and rewards that will help you achieve your professional goals. We look forward to having you as a part of our team.

If you have any questions, please call me at (716)362-3305.

Very truly yours,

SYNACOR, INC.

/s/ Julia Culkin
JULIA CULKIN, VICE PRESIDENT OF
HUMAN RESOURCES

I have read and accept this employment offer:

/s/ Scott Bailey
Signature of Scott Bailey

Dated: 10/15/10

**Attachment**

Exhibit A: Proprietary Information and Inventions Agreement

**Exhibit 10.7.1**

# EMPLOYMENT AND NONCOMPETITION AGREEMENT

THIS EMPLOYMENT AND NONCOMPETITION AGREEMENT (this "Agreement"), dated as of December 22, 2000, is between George Chamoun, an individual ("Employee"), and CKMP, Inc., a New York corporation (the "Company").

## RECITALS:

WHEREAS, Employee is one of the Company's principal stockholders, and owns 3,795,515 shares (the "Employee Shares") of common stock, $.01 par value per share, of the Company ("Common Shares") as of the date of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions . The following terms, when capitalized, shall have the meanings set forth below:

" Board " shall mean the Board of Directors of the Company.

" Business " shall have the meaning provided in the Recitals to this Agreement.

" Cause " shall mean a reasonable and good faith determination by a majority of the Board that the Employee's performance is inadequate.

" Confidential Information " shall mean information that, although not a Trade Secret, is not in the public domain and includes, but is not limited to, sales and marketing information, customer account records, training and operations materials and memoranda, personnel records, pricing and financial information relating to the business, accounts, customers, employees and affairs of the Company and any other similar information that is not a Trade Secret.

" Disability " shall mean physical or mental incapacity of Employee which prevents the performance of Employee's obligations hereunder, and which continues for a consecutive period of 90 days or longer or an aggregate period of 120 days or longer during any consecutive twelve-month period.

" Material Transaction " shall mean any of the following: (a) a reorganization, merger or consolidation involving the Company or the sale of all or substantially all of the assets of the Company to another person or entity (unless, following any such reorganization, merger, consolidation or sale, all or substantially all of the shareholders of the Company immediately prior to such transaction own, directly or indirectly, more than 50% the combined voting power of the then-outstanding voting securities of the corporation resulting from such transaction (including, without limitation, a corporation that, as a result of such transaction, owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to

such transaction), and (b) the acquisition by a person or group of a majority of the outstanding voting capital stock of the Company.

" Noncompetition Period " shall mean the period of time consisting of the term of Employee's employment with the Company and a period of two (2) years following the termination of Employee's employment hereunder for any reason by the Company or by Employee.

" Services " shall have the meaning described in Section 5.

" Territory " shall mean the United States, Canada and in any other country where the Company has generated revenue.

" Trade Secret " shall mean (i) any scientific or technical information, program, software, design, process, procedure, formula, invention or improvement that is secret and of value and (ii) information that is secret and of value, including, but not limited to, technical or nontechnical data, formula patterns, compilations, programs, software, devices, methods, techniques, drawings, processes, financial data, and lists of actual or potential customers which the Company takes reasonable efforts to protect from disclosure.

2. Termination of Existing Agreement . The existing agreement relating to Employee's employment with the Company, and all other agreements as to Employee's employment, are hereby terminated in all respects and any and all existing or future obligations of the Company pursuant thereto, if any, are hereby terminated without having to be satisfied by the Company. The Company and Employee acknowledge that this Agreement supercedes in all respects any such existing agreement and all other agreements as to Employee's employment with regard to the matters set forth therein.

3. Employment At Will . Upon execution of this Agreement, Employee shall be employed by the Company on an "at will" basis and Employee's employment hereunder by the Company shall continue for such time as the Company is in need of, or desirous of, the Services. It is expressly understood and agreed between the Company and Employee, subject in all events to Employee's right to terminate employment, that the duration of Employee's employment are unspecified and rest in the sole discretion of the Company.

4. Compensation .

(a) The Company shall pay to Employee an annual salary of $125,000.00 (the "Base Salary") for each calendar year or portion thereof (prorated for the number of days in a partial calendar year) while Employee performs the Services, such amount to be payable in accordance with the Company's standard practices in the payment of salaries to its salaried executives. Such Base Salary shall be subject to an annual review conducted jointly by the Company and Employee on or about each anniversary of this Agreement.

(b) In addition to the Base Salary, during the term of this Agreement Employee shall be eligible to receive bonuses (each, a "Bonus") at the discretion of the Compensation Committee of the Board pursuant to this Section 4(b), payable, if earned, pursuant to such

bonus program, if any, of the Company as may be in effect from time to time for executives of the Company, pro-rated to the extent paid for a period of less than twelve months.

(c) All payments made to Employee pursuant to this Section 4 shall be subject to withholding on account of applicable federal, state and local taxes and other payroll taxes.

5. Duties . Employee shall be employed as a key executive officer of the Company with such title as determined by the Board of Directors of the Company and shall perform such duties as are consistent therewith, and shall have such other duties as the Board of Directors of the Company in its discretion designates, consistent with those of a senior executive (the "Services"). Employee shall devote his full business time and efforts to the business and interest of the Company. Employee shall diligently perform his obligations and discharge his duties under this Agreement. Employee shall adhere to all ethical practices and other reasonable rules and regulations established by the Company.

6. Noncompetition; Proprietary Information .

(a) During the Noncompetition Period, Employee shall not, directly or indirectly, either individually, in partnership, jointly, or in conjunction with any person, firm, partnership, limited liability company, corporation, or unincorporated association of any kind, whether as principal, agent, shareholder, employee, or in any other capacity whatsoever:

(i) engage in any business in the Territory which competes with the business of the Company (the "Business");

(ii) solicit or contact the Company's customers or potential customers on behalf of, invest in, obtain any interest in, advise, lend money to, or guarantee the debts or obligations of any person, firm, partnership, limited liability company, corporation, or unincorporated association of any kind, which is engaged in the Territory in any business which competes with the Business;

(iii) solicit or accept business from any of the Company's customers or potential customers, for the purposes of providing products or services in the Territory which are the same as or substantially similar to those provided by the Company in connection with its conduct of the Business; or

(iv) persuade or attempt to persuade any employee of the Company to terminate his or her service with the Company.

For purposes of this Agreement, "competes" with the Business means being actively engaged in a material manner or otherwise materially competing in the same or a similar line of business as the Company.

(b) During Employee's employment with the Company and thereafter, Employee shall not use, reveal or divulge any Trade Secrets or Confidential Information

relating to the Business. Notwithstanding the foregoing, Employee shall not be subject to the restrictions set forth in this Section 6 with respect to information that:

(i) becomes generally available to the public other than as a result of disclosure by Employee or his agents or representatives;

(ii) becomes available to Employee on a non-confidential basis from a source other than the Company or its agents, provided that such source lawfully obtained such information and is not bound by a confidentiality obligation not to disclose such information; or

(iii) is required to be disclosed by law.

(c) Notwithstanding anything in this Agreement to the contrary, nothing shall prohibit (i) any investment or loan by Employee in or to any enterprise which amounts to less than 5% of the equity or debt, respectively, of such enterprise or (ii) service as a member of the board of any enterprise that does not compete with the Business. In the event Employee is a member, partner, shareholder or other owner of a venture capital or other investment fund (a "Fund"), the aforementioned 5% will be calculated on the basis of Employee's percentage interest in the Fund multiplied by the Fund's percentage ownership interest on a fully diluted basis in the competitive enterprise. For example, if Employee owned a 20% interest in the Fund, and the Fund owned a 20% interest on a fully diluted basis in a competitive business, then Employee's ownership interest for purposes of this provision would equal 4%.

7. Assignment of Inventions; Return of Company Documents .

(a) Employee shall promptly make full written disclosure to the Company, shall hold in trust for the sole right and benefit of the Company, and hereby assigns to the Company, or its designee, all of Employee's right, title and interest in and to any and all inventions, original works of authorship, developments, concepts, improvements, designs, discoveries, ideas, trademarks or trade secrets, whether or not patentable or registrable under copyright or similar laws, which Employee may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time of Employee's employment with the Company if the same was made on Company time or with Company assets or is within the scope of Employee's employment or otherwise relate directly or indirectly to the Business (collectively referred to as "Inventions"). Employee also assigns to the Company, or its designee, all of Employee's right, title and interest in and to any and all Inventions, which Employee solely or jointly conceived or developed or reduced to practice, or caused to be developed or reduced to practice, during Employee's employment with the Company prior to the date of this Agreement. Employee further acknowledges that all original works of authorship which are made or were made by Employee (solely or jointly with others) within the scope of and during the period of Employee's employment with the Company prior to and after the date of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act. Employee understands and agrees that the decision whether or not to commercialize or market any invention developed by

Employee solely or jointly with others is within the Company's sole discretion and for the Company's sole benefit and that no royalty shall be due to Employee as a result of the Company's efforts to commercialize or market any such invention.

(b) Employee shall keep and maintain adequate and current written records of all Inventions made by Employee (solely or jointly with others) during the term of his employment with the Company. Employee shall keep such records in the form of notes, sketches, drawings, and any other format that may be specified by the Company. The records shall be available to and remain the sole property of the Company at all times.

(c) Employee shall assist the Company, or its designee, at the Company's expense, in every proper way reasonably necessary to secure the Company's rights in the Inventions and any copyrights, patents or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents or other intellectual property rights relating thereto. Employee further agrees that such obligation to execute or cause to be executed, when it is in Employee's power to do so, any such instrument or papers at the Company's expense shall continue after the termination of this Agreement. If the Company is unable because of the mental or physical incapacity of Employee to secure Employee's signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering Inventions or original works of authorship assigned to the Company pursuant to this Agreement, then Employee hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Employee's agent and attorney in fact, to act for and in Employee's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by Employee.

(d) Upon termination of Employee's employment with the Company, Employee shall deliver to the Company (and shall not keep in his possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items developed by Employee pursuant to Employee's employment with the Company or otherwise belonging to the Company, its successors or assigns.

8. Remedies . Employee acknowledges and agrees that the Company would suffer irreparable harm from a breach by Employee of the restrictive covenants set forth in Section 6 or 7. Therefore, in the event of the actual or threatened breach by Employee under Section 6 or 7 the Company may, in addition and supplementary to any other rights and remedies existing in its favor (including, without limitation, its right to terminate Employee's employment), apply to any court of law or equity of competent jurisdiction for specific performance or injunctive or other relief in order to enforce or prevent any violation of the provisions of Section 6 or 7. Employee

agrees that the existence of any claim or cause of action by Employee against the Company, whether predicated upon this Agreement or any other contract, shall not constitute a defense to the enforcement by the Company of the provisions of Section 6 or 7.

9. Termination of Employment .

(a) Termination by Employee or by the Company for Specified Reasons . Subject to subsection (c) hereof, if Employee's employment with the Company is terminated by Employee for any reason other than a termination contemplated by Section 9(c) hereof or by the Company because of Employee's dishonesty, commission of a felony, willful violation of his fiduciary duties or, materially violation of the terms of this Agreement after having written notice thereof and remains uncured for a period of forty-five (45) days after such notice:

(i) The Company shall have the right (the "Buyback Right") to purchase from Employee (or his estate) a number of Employee Shares equal to 1,897,757.5 (subject to adjustment for stock splits, dividends, combinations and reclassifications) minus the product of (A) the number of complete one-month periods between the date hereof and the date Employee's employment with the Company is so terminated and (B) 79,073.3 (subject to adjustment for stock splits, dividends, combinations and reclassifications), at a purchase price per share of $0.30 (subject to adjustment for stock splits, dividends, combinations and reclassifications); and

(ii) The Company shall pay Employee (or his estate) his Base Salary (pursuant to Paragraph 4(a)) earned, pro rata, up to and including the date of any such termination.

(b) Other Termination by the Company . If Employee's employment with the Company is terminated by the Company for a reason other than those specified in Section 9(a):

(i) The Employee Shares shall not be subject to the Buyback Right; and

(ii) The Company shall pay Employee (A) his compensation (including any bonus awarded but not yet paid) (pursuant to Paragraph 4 (a)) earned up to and including the date of any such termination and (B) as severance, his Base Salary in effect at the time of such termination for six (6) months, payable periodically in the same amounts, at the same intervals and subject to the same withholdings as Base Salary prior to the date of termination.

(c) Termination by Reason of Death, Disability, Breach by the Company or a Material Transaction . Notwithstanding the provisions of subsection (a) or (b) hereof to the contrary, if (I) Employee's employment with the Company is terminated by reason of Employee's death or Disability, (II) Employee's employment with the Company is terminated by Employee because of a material breach of this Agreement by the Company

that remains uncured for a period of forty-five (45) days after notice of such breach by Employee to the Company, (III) a Material Transaction occurs and Employee's employment with the Company is thereupon terminated (x) by Employee because he is not offered a position having duties, rights and responsibilities similar to those of Employee immediately prior to such Material Transaction or (y) by the Company in contemplation of such Material Transaction or (IV) Employee terminates this Agreement due to relocation to a location other than a principal office of the Company:

(i) The Employee Shares shall not be subject to the Buyback Right; and

(ii) The Company shall pay Employee his Base Salary (pursuant to Paragraph 4(a)) earned up to and including the date of any such termination (plus any bonus awarded but not yet paid) and, in the case of (II), (III) and (IV) above, severance pay as specified in Section 9(b)(ii).

10. Notice . All notices and other communications required or permitted under this Agreement shall be deemed to have been duly given and made if in writing and if served either by personal delivery to the party for whom intended (which shall include delivery by Federal Express or similar service) or three (3) business days after being deposited, postage prepaid, certified or registered mail, return receipt requested, in the United States mail bearing the address shown in this Agreement for, or such other address as may be designated in writing hereafter by, such party:

If to Employee: At the address specified on the signature page hereto or such other address as appears on the Company's records.

If to the Company: CKMP, Inc.
465 Main Street, 8th Floor
Buffalo, NY 14203
Attention: Chief Executive Officer

11. Reformation; Severability . Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is finally determined by a court of competent jurisdiction to be unenforceable or invalid under applicable law, such provision shall be effective only to the extent of its enforceability or validity, without affecting the enforceability or validity of the remainder of this Agreement, and such court shall have jurisdiction to reform this Agreement to the maximum extent permitted by law. In the event that any such provision of this Agreement cannot be reformed, such provision shall be deemed severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

12. Binding Effect; Waiver . The terms and provisions of this Agreement shall be binding on and inure to the benefit of Employee, his heirs, executors, administrators, and other legal representatives and shall be binding on and inure to the benefit of the Company, its affiliates, successors or assigns. The failure of the Company at any time or from time to time to

require performance of any of Employee's obligations under this Agreement shall in no manner affect the Company's right to enforce any provision of this Agreement at a subsequent time, and the waiver of any rights arising out of any breach shall not be construed as a waiver of any rights arising out of any subsequent or prior breach.

13. Entire Agreement . This Agreement constitutes the entire agreement and understanding between Employee and the Company with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to the subject matter hereof.

14. Amendment . No amendment, modification, or waiver of any provision of this Agreement, or consent to any departure by Employee therefrom, shall be effective unless the same shall be in writing and signed by the parties hereto.

15. Assignment . This Agreement is for personal services to be performed by Employee and may not be assigned or transferred either the Company or by Employee.

16. Counterparts . This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

17. Headings . The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provisions hereof.

18. Governing Law . This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

THE COMPANY :

CKMP, INC.

By: /s/ Darren J. Ascore
Name: Darren J. Ascore
Title: VP

EMPLOYEE :

/s/ George Chamoun
George Chamoun
Address: _____
_____
_____

**Exhibit 10.8**

synacor 40 LA RIVIERE DRIVE SUITE 300 BUFFALO, NY 14202 WWW.SYNACOR.COM

August 2, 2011

William J. Stuart
PO Box 789
Chatham, MA 02633

Dear Bill:

Synacor, Inc. (the " Company ") is pleased to offer you employment on the following terms:

**1. Position.** Your initial title will be Chief Financial Officer, and you will initially report to the Company's Chief Executive Officer, Ronald Frankel. This is a full-time, exempt position. While you render services to the Company, you will not engage in any other employment, consulting or other business activity (whether full-time or part-time) that would create a conflict of interest with the Company. By signing this letter agreement, you confirm to the Company that you have no contractual commitments or other legal obligations that would prohibit you from performing your duties for the Company.

**2. Cash Compensation.** The Company will pay you a starting salary at the rate of $250,000 per year, payable in accordance with the Company's standard payroll schedule. This salary will be subject to adjustment pursuant to the Company's employee compensation policies in effect from time to time. In addition, you will be eligible to be considered for an incentive bonus for each fiscal year of the Company. On the date the Company first becomes a public company as a result of an initial public offering or otherwise, your base salary shall increase to $290,000 per year, payable in accordance with the Company's standard payroll schedule. This salary will be subject to adjustment pursuant to the Company's employee compensation policies in effect from time to time. The bonus (if any) will be awarded based on objective or subjective criteria established by the Company's Chief Executive Officer and approved by the Company's Board of Directors (the " Board "). Your target bonus will be equal to 40% of your annual base salary. Any bonus for the fiscal year in which your employment begins will be prorated, based on the number of days you are employed by the Company during that fiscal year. The bonus for a fiscal year will be paid after the Company's books for that year have been closed (but in any event within 2 1/2 months after the close of that fiscal year) but only if you are employed by the Company at the time of payment. The determinations of the Board with respect to your bonus will be final and binding.

**3. Employee Benefits.** As a regular employee of the Company, you will be eligible to participate in a number of Company-sponsored benefits. In addition, you will be entitled to paid vacation in accordance with the Company's vacation policy, as in effect from time to time.

**4. Stock Options.** Subject to the approval of the Board or its Compensation Committee, you will be granted an option to purchase 500,000 shares of the Company's Common Stock (the "Option"). The exercise price per share of the Option will be determined by the Board or its

Compensation Committee when the Option is granted. The Option will be subject to the terms and conditions applicable to options granted under the Company's 2006 Stock Plan (the " Plan "), as described in the Plan and the applicable Stock Option Agreement. The Option will be immediately exercisable, but in the event that your service terminates for any reason before you vest in the shares, the unvested portion of the purchased shares will be subject to repurchase by the Company at the lower of (a) the original exercise price or (b) the fair market value of the shares at the time your service terminates. You will vest in 25% of the Option shares after 12 months of continuous service, and the balance will vest in equal monthly installments over the next 36 months of continuous service, as described in the applicable Stock Option Agreement.

In the event of a change of control, you will immediately vest 100% of any remaining Shares subject to the Option granted if (a) the acquirer or successor does not assume in full your Company option, (b) your compensation is reduced below your rate of compensation as of immediately prior to such change of control, or (c) there is a material reduction in your duties and responsibilities as a result of or within 12 months following such change of control.

**5. Relocation.** The Company shall reimburse you for the following relocation expenses that you incur in moving yourself from Cambridge, MA to the Buffalo, NY area: 1) Hotel stay at a reasonably priced hotel within first 60 days of employment; 2) Automobile rental within the first 30 days of employment; 3) 6 months of housing starting no later than October 1, 2011; 4) 6 months of utilities to coincide with housing 5) air travel two times a month for the first 6 months of employment. The employee agrees to move to the Buffalo, NY area by September 15, 2012. The Company shall provide an additional bonus in the amount of $40,000 to be paid to employee only if he and his spouse have relocated to Buffalo, NY by September 15, 2012. If you resign from the Company before completing 12 months of continuous service, you shall immediately refund to the Company all payments and reimbursements made by the Company for relocation expenses. If you resign from the Company after completion of 12 months of continuous service but before completing 36 months of continuous service, you will immediately refund to the Company a prorated amount of such payments and reimbursements. Excluding the additional bonus amount, any relocation reimbursements that result in income tax payable by you will be grossed up for taxes at the rate of 40% of the underlying relocation reimbursements.

**6. Severance Pay.**

(a) **General.** If (a) following the earlier of your and your spouse's relocation as noted above and your completion of 12 months of continuous service with the Company or (b) if, earlier, at any time after the Company is subject to a Change of Control, the Company terminates your employment for any reason other than Cause or Permanent Disability and a Separation occurs (a " Qualified Termination "), then you will be entitled to the benefits described in this Section 6. However, this Section 6 will not apply unless you (i) have returned all Company property in your possession, (ii) have resigned as a member of the Boards of Directors of the Company and all of its subsidiaries, to the extent applicable, and (iii) have executed a general release of all claims that you may have against the Company or persons affiliated with the

Company. The release must be in the form prescribed by the Company, without alterations. You must execute and return the release on or before the date specified by the Company in the prescribed form (the "Release Deadline"). The Release Deadline will in no event be later than 50 days after your Separation. If you fail to return the release on or before the Release Deadline, or if you revoke the release, then you will not be entitled to the benefits described in this Section 6.

(b) **Salary Continuation.** If you experience a Qualified Termination, then the Company will continue to pay your base salary for a period of twelve (12) months after your Separation. Your base salary will be paid at the rate in effect at the time of your Separation and in accordance with the Company's standard payroll procedures. The salary continuation payments will commence on the Company's first payroll that occurs on or following the 61 st day after your Separation and, once they commence, will include any unpaid amounts accrued from the date of your Separation

(c) **COBRA.** If you experience a Qualified Termination, and if you elect to continue your health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") following your Separation, then the Company will pay the monthly premium under COBRA for yourself and, if applicable, your dependents, as it pays for active employees until the earliest of (i) the close of the Severance Period, (ii) the expiration of your continuation coverage under COBRA or (iii) the date when you become eligible for substantially equivalent health insurance coverage in connection with new employment or self-employment

(d) **Section 409A.** For purposes of Section 409A of the Code, each salary continuation payment under Section 6(b) is hereby designated as a separate payment. If the Company determines that you are a "specified employee" under Section 409A(a)(2)(B)(i) of the Code at the time of your Separation, then (i) the salary continuation payments under Section 6(b), to the extent that they are subject to Section 409A of the Code, will commence during the seventh month after your Separation and (ii) the installments that otherwise would have been paid during the first six months after your Separation will be paid in a lump sum when the salary continuation payments commence.

**7. Proprietary Information and Inventions Agreement.** Like all Company employees, you will be required, as a condition of your employment with the Company, to sign the Company's standard Proprietary Information and Inventions Agreement, a copy of which is attached hereto as **Exhibit A.**

**8. Employment Relationship.** Employment with the Company is for no specific period of time. Your employment with the Company will be "at will," meaning that either you or the Company may terminate your employment at any time and for any reason, with or without cause. Any contrary representations that may have been made to you are superseded by this letter agreement. This is the full and complete agreement between you and the Company on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel

policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of the Company (other than you).

**9. Withholding Taxes.** All forms of compensation referred to in this letter agreement are subject to reduction to reflect applicable withholding and payroll taxes and other deductions required by law. You are encouraged to obtain your own tax advice regarding your compensation from the Company. You agree that the Company does not have a duty to design its compensation policies in a manner that minimizes your tax liabilities, and you will not make any claim against the Company or the Board related to tax liabilities arising from your compensation.

**10. Interpretation, Amendment and Enforcement.** This letter agreement and Exhibit A constitute the complete agreement between you and the Company, contain all of the terms of your employment with the Company and supersede any prior agreements, representations or understandings (whether written, oral or implied) between you and the Company. This letter agreement may not be amended or modified, except by an express written agreement signed by both you and a duly authorized officer of the Company. The terms of this letter agreement and the resolution of any disputes as to the meaning, effect, performance or validity of this letter agreement or arising out of, related to, or in any way connected with, this letter agreement, your employment with the Company or any other relationship between you and the Company (the " Disputes ") will be governed by New York law, excluding laws relating to conflicts or choice of law. You and the Company submit to the exclusive personal jurisdiction of the federal and state courts located in New York in connection with any Dispute or any claim related to any Dispute.

**11. Definitions.** The following terms have the meaning set forth below wherever they are used in this letter agreement:

**"Cause"** means (a) your unauthorized use or disclosure of the Company's confidential information or trade secrets, which use or disclosure causes material harm to the Company, (b) your material breach of any agreement between you and the Company, (c) your material failure to comply with the Company's written policies or rules, (d) your conviction of, or your plea of "guilty" or "no contest" to, a felony under the laws of the United States or any State, (e) your gross negligence or willful misconduct, (f) your continuing failure to perform assigned duties after receiving written notification of the failure from the Board or (g) your failure to cooperate in good faith with a governmental or internal investigation of the Company or its directors, officers or employees, if the Company has requested your cooperation.

**"Change of Control"** means:

(a) the consummation of any merger or consolidation of the Company with or into another corporation other than a merger or consolidation in which the holders of more than 50% of the shares of capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by the voting securities remaining outstanding or by their being converted into voting securities of the surviving entity) more than 50% of the total voting

power represented by the voting securities of the Company, or such surviving entity, outstanding immediately after such transaction;

(b) the sale, transfer or other disposition of all or substantially all of the Company's assets;

(c) a change in the composition of the Board, as a result of which fewer than 50% of the incumbent directors are directors who either:

(i) had been directors of the Company on the date 24 months prior to the date of such change in the composition of the Board (the " Original Directors "); or

(ii) were appointed to the Board, or nominated for election to the Board, with the affirmative votes of at least a majority of the aggregate of (A) the Original Directors who were in office at the time of their appointment or nomination and (B) the directors whose appointment or nomination was previously approved in a manner consistent with this Paragraph (ii); or

(d) Any transaction as a result of which any person is the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of securities of the Company representing at least 50% of the total voting power represented by the Company's then outstanding voting securities. For purposes of this Subsection (d), the term "person" shall have the same meaning as when used in sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended, but shall exclude (i) a trustee or other fiduciary holding securities under an employee benefit plan of the Company and (ii) a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the common stock of the Company.

A transaction shall not constitute a Change of Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction. In addition, a transaction will not constitute a Change of Control unless such transaction also constitutes a "change in control event" as defined in Treasury Regulation §1.409A-3(i)(5).

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Permanent Disability"** means that you are unable to perform the essential functions of your position, with or without reasonable accommodation, for a period of at least 120 consecutive days because of a physical or mental impairment.

**"Separation"** means a "separation from service," as defined in the regulations under Section 409A of the Code.

* * * * *

We hope that you will accept our offer to join the Company. You may indicate your agreement with these terms and accept this offer by signing and dating both the enclosed duplicate original of this letter agreement and the enclosed Proprietary Information and Inventions Agreement and returning them to me. This offer, if not accepted, will expire at the close of business on August 5, 2011. As required by law, your employment with the Company is contingent upon your providing legal proof of your identity and authorization to work in the United States. Your employment is contingent upon your starting work with the Company on or before August 8, 2011.

Bill, we are very pleased to be presenting you with this offer. We are confident that your skills, enthusiasm and professionalism will add to Synacor's success while creating the opportunities and rewards that will help you achieve your professional goals. We look forward to having you as a part of our team.

If you have any questions, please call me at (716)362-3305.

Very truly yours,

SYNACOR, INC.

/s/ Julia Culkin
JULIA CULKIN, VICE PRESIDENT OF
HUMAN RESOURCES

I have read and accept this employment offer:

/s/ William J. Stuart
Signature of William J. Stuart

Dated: 8/3/11

**Attachment**

Exhibit A: Proprietary Information and Inventions Agreement

**Exhibit 10.14.1**

# SUBLEASE

THIS SUBLEASE (this " **Sublease** ") is made and entered as of this 3rd day of March 2006 by and between LUDLOW TECHNICAL PRODUCTS CORPORATION, a New York corporation formerly known as Graphic Controls Corporation (" **Sublandlord** "), with an address at c/o Tyco Healthcare Group LP 15 Hampshire Street, Mansfield, MA 02048, and SYNACOR, INC., a Delaware corporation (" **Subtenant** "), with an address at 40 La Riviere Drive, Buffalo, New York 14202.

WITNESSETH:

A. Sublandlord is the tenant under that certain Property Lease dated March 13, 1998 (the " **Original Lease** "), with Waterfront Associates, LLC, as successor by conversion to Waterfront Associates (" **Landlord** "), as landlord, covering Building No. 3, Waterfront Village Center, 40 La Riviere Drive, Buffalo, New York 14202, as amended by that certain First Amendment to Lease dated April 29, 1998, that Second Amendment to Lease dated April 21, 1999, and that Third Amendment to Lease dated July 30, 1999 (collectively, the three amendments are the " **Amendments** "). As amended, the Original Lease is referred to herein as the " **Lease** ."

B. Under the terms and conditions of this Sublease, Subtenant desires to sublease from Sublandlord approximately 20,027 rentable square feet located on the third (3 rd ) floor of the Building (the " **Premises** "), which Premises is shown cross-hatched on Exhibit A attached hereto and incorporated herein.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sublandlord and Subtenant agree as follows:

## ARTICLE 1
## DEFINITIONS: RECITALS

Section 1.1 Definitions. Capitalized terms used herein and not otherwise defined shall have the same meanings given to them in the Lease. For the purposes of this Sublease, unless the context otherwise requires:

(a) " **Base Building Systems** " shall mean the mechanical, gas, utility, electrical, sanitary, heating, air conditioning, ventilating, elevator, plumbing, sprinkler, cabling and wiring, life-safety and other service systems of the Building, excluding (i) the distribution portions of such systems within the Premises, and (ii) any supplemental HVAC and other systems installed by Subtenant within the Premises.

(b) " **Building** " shall mean the building known as Building No. 3, Waterfront Village Center, 40 LaRiviere Drive, Buffalo, New York 14202, which Building includes approximately. 102,816 rentable square feet of space.

(c) " **Common Areas** " shall mean the Land and all portions of the Building not intended as leasable area, including without limitation the parking facilities, the lobby, public corridors and equipment rooms.

(d) " **Land** " shall mean the parcel of land situated in the City of Buffalo, the County of Erie and State of New York, more particularly described on Exhibit B attached hereto.

(e) " **Property** " shall mean the Land and Building.

(f) " **Sublandlord's Representatives** " shall mean Sublandlord's employees, agents, contractors, and invitees.

(g) " **Subtenant's Property** " shall mean all trade fixtures, furniture, and equipment installed at the sole expense of Subtenant and which are not replacements of any property of Sublandlord, whether any such replacement is made at Subtenant's expense or otherwise. Subtenant's Property shall not include items which become affixed to the Premises and cannot be removed without causing material damage to the Building.

(h) " **Subtenant's Representatives** " shall mean Subtenant, Subtenant's subtenants and assignees, if applicable, and Subtenant's employees, agents, contractors, licensees, and invitees.

(i) " **Subtenant's Share** " shall mean 19.5%, which is the number of rentable square feet in the Premises divided by the number of rentable square feet in the Building.

(j) " **Unavoidable Delays** " shall mean any and all delays beyond a party's reasonable control, including without limitation, governmental restrictions, governmental regulations, controls, order of civil, military or naval authority, governmental preemption, strikes, labor disputes, lock-outs, shortage of labor or materials, inability to obtain materials or reasonable substitutes therefore, default of any building or construction contractor or subcontractor, Acts of God, fire, earthquake, floods, explosions, actions of the elements, extreme weather conditions, enemy action, civil commotion, riot or insurrection, fire or other unavoidable casualty. Notwithstanding anything herein to the contrary, a monetary default by Subtenant is never an Unavoidable Delay.

Section 1.2 Recitals . The recitals set forth above are incorporated into this Sublease by reference as if fully set forth herein.

## ARTICLE 2
## DEMISE; TERM

Section 2.1 Demise . Conditioned upon receipt by Sublandlord of Landlord's written consent executed in substantially the form attached hereto as Exhibit C, Sublandlord hereby subleases and demises to Subtenant, and Subtenant hereby takes and hires from Sublandlord, the Premises on the terms and conditions and subject to the provisions hereinafter set forth herein.

Section 2.2 Commencement Date . The term (the " **Term** ") of this Sublease shall commence on April 1, 2006 (the " **Commencement Date** ").

Section 2.3 Expiration Date . Subject to the terms, covenants, or conditions of this Sublease, the Term shall end on the earlier of: (a) March 31, 2016, or (b) five days before the expiration or earlier termination, for any reason whatsoever, of the Lease. The date of expiration of this Sublease shall be referred to herein as the " **Expiration Date** ."

Section 2.4 Termination by Subtenant . Provided that Subtenant is not in default when Subtenant delivers the early termination notice or on the cancellation note, Subtenant may, at its sole option, terminate this Sublease effective as of March 31, 2011 (the " Cancellation Date "). To exercise such termination right, Subtenant must no later than June 30, 2010, give notice thereof to Sublandlord together with Subtenant's payment to Sublandlord of $120,000.00 (the " **Cancellation Fee** ") in lawful money of the United States of America. As a condition to the effectiveness of Subtenant's cancellation right, Subtenant shall pay to Sublandlord prior to the Cancellation Date any past-due amounts then outstanding under the Sublease. If Subtenant fails timely to deliver the Cancellation Fee or the cancellation notice or is otherwise unable to comply with or exercise this cancellation option, then Subtenant's right to cancel this Lease under this section shall expire; time is of the essence with respect thereto.

Section 2.5 Delivery Date . Sublandlord and Subtenant presently anticipate that possession of the Premises will be tendered to Subtenant in the condition required by this Sublease on or about April 1, 2006 (the " **Estimated Delivery Date** "). If Sublandlord is unable to tender possession of the Premises in such condition to Subtenant by the Estimated Delivery Date, then (a) the validity of this Sublease shall not be affected or impaired thereby, (b) Sublandlord shall not be in default hereunder or be liable for damages therefor, and (c) Subtenant shall accept possession of the Premises when Sublandlord tenders possession thereof to Subtenant. By occupying the Premises, Subtenant shall be deemed to have accepted the Premises in their condition as of the date of such occupancy, subject to the performance of punch-list items that remain to be performed by Sublandlord, if any.

## ARTICLE 3
## CONDITION OF THE PREMISES; USE

Section 3.1 AS-IS Condition of Premises . Except as otherwise expressly provided to the contrary herein, Subtenant accepts the Premises " **AS-IS** " in its presently existing condition. Subtenant acknowledges that (a) it was given a full opportunity to inspect the Premises; (b) as of the Commencement Date, Subtenant has inspected the Premises; (c) neither Sublandlord nor its agents or employees have made any representations or warranties as to the condition of the Premises, or the suitability or fitness of the Premises for the conduct of Subtenant's business or for any other purpose; and (d) subject to the provisions of Section 3.2 below, neither Sublandlord nor its agents or employees agreed to undertake any alterations or construct any tenant improvements in the Premises.

Section 3.2 Sublandlord's Preparation; Subtenant's Early Entry . Notwithstanding anything herein to the contrary, Sublandlord shall deliver the Premises to the Subtenant with all Base Building Systems serving the Premises in working order and condition, with functioning light bulbs in each light fixture located therein, and free of damaged ceiling tiles. In addition, subject to Landlord's consent, either (i) Sublandlord shall repaint the existing painted walls in the Premises with Building-standard paint in Subtenant's choice of color in Building-standard

quantities, in which case Subtenant shall select the color choice and provide notice thereof to Landlord on or before March 6, 2006; or (ii) under the terms and conditions of this Sublease, Subtenant may enter the Premises before the Commencement Date (" **Subtenant's Early Entry** ") solely for the purposes of performing such repainting itself and re-carpeting the Premises, provided that Sublandlord has approved the contractor performing the work, which approval shall not be unreasonably withheld. If Subtenant elects to do such painting itself, then before doing any work, Subtenant shall submit to Sublandlord an estimate prepared by a contractor for the cost of the repainting. Sublandlord shall reimburse Subtenant for the actual cost of such repainting or $9,000, whichever amount is less. Subtenant shall be responsible for any costs above that cap amount. Subtenant's Early Entry shall be governed by the terms of this Sublease, including without limitation the requirement that Subtenant maintain the insurance coverage required under Article 10 hereof. Before Subtenant's Early Entry, Subtenant shall furnish to Sublandlord a certificate evidencing the required insurance coverage. Except as set forth in Section 4.1, Subtenant shall not be required to pay any Rent prior to the Commencement Date. If Subtenant decides to repaint the Premises itself, then Subtenant shall provide notice to Sublandlord of such election no later than March 6, 2006.

Section 3.3 Permitted Uses . Subtenant shall use and occupy the Premises for general office and administrative uses consistent with first class office buildings in Buffalo, New York, and for no other purpose whatsoever. Subtenant shall not use or occupy or suffer or permit the use or occupancy of the Premises or any part thereof in any manner which, in Sublandlord's judgment, shall adversely affect or interfere with any services required to be furnished by Sublandlord to Subtenant or to any other subtenant or occupant of any part of the Building, or with the proper and economical rendition of any such service or with the use or enjoyment of any part of the Building by Sublandlord, or by any other subtenant or occupant. Subtenant shall comply with all laws relating to the use, condition, access to, and occupancy of the Premises and will not commit waste.

Section 3.4 Access . Subject to any reasonable security procedures that may be instituted by Sublandlord and/or Landlord from time to time, Subtenant shall have access to the Premises and the parking areas twenty-four (24) hours per day, seven (7) days per week and 52 weeks per year.

## ARTICLE 4
## RENT

Section 4.1 Fixed and Additional Rent . Subtenant shall pay to Sublandlord, without notice, billing, demand, deduction, or set off, in lawful money of the United States of America, at the address of Sublandlord first above written or at such place as Sublandlord may designate, the following:

(a) Annual fixed rent (" **Fixed Rent** ") in the amount of $280,378.00, payable in equal monthly installments of $23,364.84 each for the period commencing on July 1, 2006 (the " **Rent Commencement Date** ") until the Expiration Date. Fixed Rent is payable in equal monthly installments in advance on the first day of each and every calendar month during such period.

(b) Additional rent (" **Additional Rent** ") consisting of all other sums of money as shall become due and payable by Subtenant hereunder (for default in the payment of which Sublandlord shall have the same remedies as for a default in the payment of Fixed Rent), commencing on the Commencement Date. Unless otherwise specified herein, Additional Rent shall be payable within ten (10) days after receipt of an invoice from Sublandlord.

Fixed Rent and Additional Rent are herein collectively called " **Rent** ." There shall be no abatement of, deduction from, counterclaim or setoff against Rent, except as otherwise specifically provided in this Sublease. If the Term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, then Rent (and all other sums or charges due or payable by Subtenant to Sublandlord hereunder) for the first and last fractional months of the Term shall be appropriately prorated. The first monthly installment of Fixed Rent shall be payable contemporaneously with the execution of this Sublease; thereafter, Fixed Rent shall be payable on the first day of each month beginning on the first day of the second full calendar month following the Rent Commencement Date.

Section 4.2 Late Charge . If Subtenant shall fail to pay when due any Rent, Subtenant shall pay with the next installment a late charge equal to five percent (5%) of the unpaid Rent. In addition, all past-due payments required of Subtenant hereunder shall bear interest from the date due until paid at the lesser of eighteen percent (18%) per annum or the maximum lawful rate of interest. In no event, however, shall the charges permitted under this section (to the extent such charges are considered to be interest under applicable law) exceed the maximum lawful rate of interest.

## ARTICLE 5
## UTILITIES AND SERVICES

Section 5.1 **Services** . Subject to the terms of this Sublease, Sublandlord shall use all reasonable efforts to furnish to Subtenant (1) water at those points of supply provided for general use of subtenants of the Building; (2) heated and refrigerated air conditioning (" **HVAC** ") as appropriate, (a) at such temperatures and in such amounts as are standard, as reasonably determined by Sublandlord, for comparable buildings in the vicinity of the Building and (b) as specified in Section 5.2; (3) elevators for ingress and egress to the floor on which the Premises is located, in common with other subtenants, provided that Sublandlord may reasonably limit the number of operating elevators during non-business hours and holidays; and (4) electrical current during normal business hours for equipment that does not require more than one hundred ten (110) volts and whose electrical energy consumption does not exceed normal office usage.

Section 5.2 **After-Hours HVAC** . If Subtenant desires any HVAC service at any time other than between 8:00 a.m. and 6:00 p.m. on weekdays (which term means all days except Saturdays, Sundays or holidays), then such service shall be supplied to Subtenant upon the written request of Subtenant delivered to Sublandlord before 3:00 p.m. on the business day preceding such extra usage, and Subtenant shall pay to Sublandlord the cost of such service within thirty (30) days after Sublandlord has delivered to Subtenant an invoice therefor. The costs charged for such service shall be based upon Sublandlord's reasonable estimate of the costs for such after-hours HVAC and shall include any costs incurred by Sublandlord in providing after-hour HVAC service to Subtenant (including without limitation costs for electricity, water,

sewage, water treatment, labor, metering, filtering, and maintenance reasonably allocated by Sublandlord to providing such service).

Section 5.3 **Excess Utility and Water Use** . Sublandlord shall not be required to furnish electrical current for equipment that requires more than one hundred ten (110) volts or other equipment whose electrical energy consumption exceeds normal office usage. If Subtenant's requirements for or consumption of electricity exceed the electricity to be provided by Sublandlord as described above, then Sublandlord shall, at Subtenant's expense, make reasonable efforts to supply such service through the then-existing feeders and risers serving the Building and the Premises, and Subtenant shall pay to Sublandlord the cost of such service within thirty (30) days after Sublandlord has delivered to Subtenant an invoice therefor. Sublandlord may determine the amount of such additional consumption and potential consumption by any verifiable method, including installation of a separate meter in the Premises installed, maintained, and read by Sublandlord, at Subtenant's expense. Subtenant shall not install any electrical equipment requiring special wiring or requiring voltage in excess of one hundred ten (110) volts unless approved in advance by Sublandlord. Subtenant shall not install any electrical equipment requiring voltage in excess of Building capacity unless approved in advance by Sublandlord, which approval may be withheld in Sublandlord's sole discretion. The use of electricity in the Premises shall not exceed the capacity of existing feeders and risers to or wiring in the Premises. Any risers or wiring required to meet Subtenant's excess electrical requirements shall, upon Subtenant's written request, be installed by Sublandlord, at Subtenant's cost, if, in Sublandlord's judgment, the same are necessary and shall not cause permanent damage to the Building or the Premises, cause or create a dangerous or hazardous condition, entail excessive or unreasonable alterations, repairs, or expenses, or interfere with or disturb other subtenants of the Building. If Subtenant uses machines or equipment in the Premises which affect the temperature otherwise maintained by the air conditioning system or otherwise overload any utility, Sublandlord may install supplemental air conditioning units or other supplemental equipment (the " **Supplemental Unit** ") in the Premises, and the cost thereof, including the cost of the Supplemental Unit, and the cost of the installation, operation, use, and maintenance, shall be paid by Subtenant to Sublandlord within thirty (30) days after Sublandlord has delivered to Subtenant an invoice therefor. No Supplemental Unit may be installed without Sublandlord's consent. If any Supplemental Unit is installed in the Premises, then Subtenant shall pay to Sublandlord an additional charge for excess and extra utility usage associated with such Supplemental Unit (the " **Utility Charge** "). Sublandlord shall, in good faith, determine the Utility Charge, and upon receipt of notice of the Utility Charge, Subtenant shall pay the Utility Charge to Sublandlord as additional rent, together with each monthly payment of Fixed Rent.

If Subtenant requires, uses or consumes water for any purpose in addition to the ordinary lavatory and drinking purposes, Sublandlord may install a water meter and thereby measure Subtenant's consumption of water for all purposes. Subtenant shall pay to Sublandlord the cost of any such meter and its installation, and Subtenant, at its expense, shall keep any such meter and any related equipment in good working order and repair. Subtenant shall pay for water consumed as shown on said meter and sewer charges thereon, as and when bills are rendered.

Section 5.4 Cleaning; Trash . Subtenant shall, at its expense, keep the Premises in a neat and clean condition at all times, utilizing a recognized cleaning contractor approved by

Sublandlord, which approval shall not be unreasonably withheld or delayed. Sublandlord shall provide trash disposal from one or more central trash depositories within the Common Areas.

Section 5.5 Security . In no event shall Sublandlord be required to provide any security services to the Premises. Subtenant shall supply such security services to the Premises as Subtenant requires, subject to Sublandlord's prior approval of plans. If Sublandlord or Landlord shall, at their discretion, supply any security services to the Building and/or the parking areas, same shall not guarantee the safety of Subtenant or Subtenant's Representatives, or its or their property.

Section 5.6 Parkin g. Subtenant shall have the non-exclusive right, together with the other tenants and occupants of the Building and other buildings comprising Waterfront Village Center and their employees, agents, licensees and invitees, to use the parking areas servicing the Building and any driveways appurtenant thereto for the purposes of egress and ingress, parking of vehicles for Subtenant's Representatives and the loading and unloading of vehicles in connection with and incidental to the business conducted by Subtenant in the Premises, all without additional charge; provided however that Subtenant's Representatives shall not occupy more than an aggregate of ninety (90) parking spaces at any time. If, for any reason, Sublandlord is unable to provide all or any portion of the parking spaces to which Subtenant is entitled hereunder, then Subtenant shall have no claims against Sublandlord because of Sublandlord's failure or inability to provide Subtenant with such parking spaces. Sublandlord shall not be responsible for enforcing Subtenant's parking rights against any third parties. Subtenant shall cause Subtenant's Representatives to comply with all reasonable rules and regulations that Sublandlord and/or Landlord may promulgate with respect to parking in the parking areas, including without limitation, a system of stickers, access cards or other system intended to regulate and control access to such parking areas.

Section 5.7 Interruption of Services . Sublandlord does not warrant that any of the services referred to in this Article, or any other services which Sublandlord may supply, will be free from interruption, and Subtenant acknowledges that any one or more such services may become unavailable or may be suspended by reason of accident, repairs, inspections, alterations or improvements necessary to be made, or by Unavoidable Delays. In the absence of gross negligence or willful misconduct on the part of Sublandlord, any such unavailability, interruption, or discontinuance of service shall not render Sublandlord liable for any damages caused thereby, be deemed an eviction or constructive eviction, be deemed a disturbance of Subtenant's use and possession of the Premises, or any part thereof, constitute a breach of implied warranty, nor relieve Subtenant from performance of Subtenant's obligations under this Sublease. Sublandlord shall, however, use reasonable efforts to restore any service so interrupted.

## ARTICLE 6
## OPERATING EXPENSES

Section 6.1 Definitions . As used herein:

(a) The term " **Base Expenses** " shall mean the Operating Expenses for the Base Year. If less than 95% of the rentable area of the Building shall be occupied at any time

during the Base Year, then the Operating Expenses for the Base Year (and for each Operational Year in which actual occupancy of the Building shall be below 95% for any part thereof) shall be equitably adjusted by Sublandlord to the amount such expenses would have been had the Building been 95% occupied at all times during the applicable year.

(b) The term " **Base Impositions** " shall mean the Impositions paid by Sublandlord in the Base Year.

(c) " **Base Year** " shall be calendar year 2006.

(d) The term " **Operating Expenses** " shall mean all costs incurred by Sublandlord with respect to the operation, maintenance, repair, lighting, and cleaning of the Property, including, without limitation, the costs incurred for air conditioning; cleaning the Common Areas; window washing; elevators; porter and matron service; cost of electric current used throughout the Property; steam; all utilities; protection and security services, if any; repairs or replacements; maintenance; all insurance costs; supplies, wages, salaries, disability benefits, pensions, hospitalization, retirement plans and group insurance respecting service and maintenance employees; uniforms and working clothes for such employees and the cleaning thereof, expenses imposed pursuant to any collective bargaining agreement with respect to such employees; the current amortized portion of capital expenses incurred with respect to the Property, together with interest at the lesser of 10% per annum or the maximum rate of interest permitted by law; payroll, social security, unemployment and other similar taxes with respect to such employees; compensation paid to independent contractors performing any of the operation, maintenance or repair functions; sales, use and other similar taxes; water rates and sewer rents; management fees; legal and accounting fees; permit and license fees; the cost of changes to comply with governmental requirements; maintenance of sprinkler, electrical, plumbing and mechanical systems; removal of snow, ice, trash and debris; and repairs and utility and other consultants' fees.

Notwithstanding anything herein to the contrary, the term "Operating Expenses" shall not include: (i) brokerage fees, leasing commissions, advertising costs or other expenses incurred by Sublandlord in connection with the subleasing of space in the Building; (ii) damage and repairs attributable to fire or other casualty, or to eminent domain; (iii) Sublandlord's general overhead expenses unless directly related to the Property; (iv) costs (including permits, licensing and inspection fees) incurred in renovating or otherwise improving, decorating, painting, or altering space for subtenants or other occupants, or of vacant space (excluding Common Areas) in the Building; (v) rent payable by Sublandlord under the Lease; (iv) interest or penalties resulting solely from late payment by Sublandlord; (vii) costs for any items that Sublandlord is actually reimbursed by insurance, condemnation, governmental authorities or otherwise; (viii) legal and other fees associated with collecting rents or settling disputes with other subtenants; or (ix) any cost or charge for electric current or other utilities that is separately metered and billed directly to other subtenants. Notwithstanding anything contained herein to the contrary, all capital expenses will be amortized over the useful life of the improvement or equipment, as reasonably determined by Sublandlord.

(e) The term " **Impositions** " shall have the same meaning as in Section 6.01(a) of the Lease.

(f) " **Operational Year** " shall mean each twelve (12)-month period after the Base Year.

(g) The term " **Sublandlord's Statement** " shall mean a writing containing a computation of any Additional Rent due pursuant to this Article.

(h) " **Subtenant's Estimated Share** " shall mean Subtenant's Share multiplied by Sublandlord's written estimate of increase of Operating Expenses for the applicable Operational Year over the Base Expenses. Subtenant's Estimated Share shall be divided by twelve (12) and shall be payable by Subtenant to Sublandlord on the first of each month of the applicable year, as Additional Rent.

Section 6.2 Increase in Imposition s.

(a) If Impositions with respect to the Property are increased, during any Operational Year, over Impositions paid by Sublandlord during the Base Year, then Subtenant shall pay to Sublandlord, without setoff or deduction of any kind, as Additional Rent, an amount equal to Subtenant's Share of such increase. Payment of such increase shall be made in the installments provided by the taxing or other governmental authority within twenty (20) days after Subtenant receives from Sublandlord notice of such increase and a bill for Subtenant's Share thereof, together with a copy of the applicable bill(s) received by Sublandlord from the taxing or other governmental authority. If Sublandlord shall be required under a creditor arrangement (or under the Lease) to make Imposition deposits monthly or otherwise, Subtenant shall make the same installment payments to Sublandlord of its share of same. If Sublandlord receives a refund of any portion of Impositions that were included in the Impositions paid by Subtenant, then Sublandlord shall reimburse Subtenant its pro rata share of the net refund, less any expenses that Sublandlord reasonably incurred to obtain the refund.

(b) Subtenant shall pay to Sublandlord as Additional Rent the Impositions attributable to improvements made to the Premises by Subtenant from time to time.

(c) There is currently in effect with respect to the Property a Payment In Lieu of Taxes Agreement (" **PILOT Agreement** ") with the Erie County Industrial Development Agency, as described in Section 24.01(d) of the Lease. Sublandlord makes no representation that the PILOT Agreement shall remain in effect for any part of the Term, but Subtenant shall cooperate with Sublandlord's efforts to maintain such status with respect to part or all of the Building. To the extent that the PILOT Agreement shall not remain in effect, Impositions shall exceed the Impositions under the PILOT Agreement.

Section 6.3 Increase in Operating Expenses .

(a) Within a reasonable period of time after the expiration of the Base Year and each Operational Year, Sublandlord shall furnish to Subtenant a written statement prepared by Sublandlord of the Operating Expenses incurred for such year. Sublandlord shall use good faith efforts to deliver such statement to Subtenant within one hundred twenty (120) days after the expiration of the Base Year and each Operational Year. Within thirty (30) days after receipt of such statement for any Operational Year setting forth Subtenant's Share of any increase of

Operating Expenses during such Operational Year over the Operating Expenses in the Base Year (said increase being referred to herein as the " **Cost Increase** "), Subtenant shall pay same (less the amount of Subtenant's Estimated Share paid by Subtenant on account thereof) to Sublandlord as Additional Rent.

(b) Commencing with the first Operational Year, Sublandlord may make a good faith estimate of the Additional Rent to be due by Subtenant for any calendar year or part thereof during the Term. During each calendar year or partial calendar year of the Term after the Base Year, Subtenant shall pay to Sublandlord, in advance concurrently with each monthly installment of Fixed Rent, an amount equal to the estimated Additional Rent for such calendar year or part thereof divided by the number of months therein. From time to time, Sublandlord may estimate and re-estimate the Additional Rent to be due by Subtenant and deliver a copy of the estimate or re-estimate to Subtenant. Thereafter, the monthly installments of Additional Rent payable by Subtenant shall be appropriately adjusted in accordance with the estimations so that, by the end of the calendar year in question, Subtenant shall have paid all of the Additional Rent as estimated by Sublandlord. Any amounts paid based on such an estimate shall be subject to adjustment as herein provided when actual Operating Expenses are available for each calendar year.

(c) If Sublandlord's Statement at the end of the Operational Year just completed shall indicate that Subtenant's Estimated Share exceeded Subtenant's Share of the Cost Increase, Sublandlord shall issue a credit to Subtenant for the amount of such excess against the subsequent payments of Additional Rent due hereunder. If Sublandlord's Statement shall indicate that Subtenant's Share of the Cost Increase exceeded Subtenant's Estimated Share for the completed Operational Year, then Subtenant shall pay the amount of such excess to Sublandlord within thirty (30) days after demand. If Sublandlord's Statement is furnished to Subtenant after the commencement of an Operational Year, then there shall be promptly paid by Subtenant to Sublandlord or vice versa, as the case may be, an amount equal to the portion of such payment or credit allocable to the part of such Operational Year which shall have elapsed prior to the first day of the calendar month following the calendar month in which said Sublandlord's Statement is furnished to Subtenant.

Section 6.4 Sublandlord's Statement . Sublandlord's failure to render Sublandlord's Statement with respect to any Operational Year, or Sublandlord's delay in rendering said Statement beyond a date specified herein, shall not prejudice Sublandlord's right to render a Sublandlord's Statement with respect to that or any subsequent Operational Year. The obligations of Sublandlord and Subtenant under the provisions of this Article with respect to any Additional Rent shall survive the expiration or any sooner termination of the Term.

## ARTICLE 7
## ASSIGNMENT, MORTGAGING AND SUBLETTING

Section 7.1 Incorporation By Reference . The terms of Article 14 of the Lease are incorporated by reference, as provided in Section 11.1 herein; provided however that references therein to obtaining the consent of Landlord shall be deemed references to obtaining the consent of both Landlord and of Sublandlord to a proposed assignment, subleasing or other transaction governed by Article 14 of the Lease.

## ARTICLE 8
## REPAIRS

Section 8.1 Repairs and Maintenance . Subtenant shall maintain the Premises in a clean, safe, operable, and good condition, and shall not permit or allow to remain any waste or damage to any portion of the Premises. At Subtenant's expense, Subtenant shall make all repairs and replacements, as and when needed to preserve the Premises in good working order and condition, including without limitation the Base Building Systems located within the Premises. Subtenant shall keep and maintain Subtenant's Property in good working order and condition. Subtenant shall not be required to make any structural repairs or structural replacements to the Premises; provided however that if any such structural repairs or replacements to the Premises, or if any repairs or replacements to the Common Areas shall be necessitated or caused by the acts, omissions or negligence of Subtenant or any of Subtenant's Representatives, or by the use or occupancy or manner of use or occupancy of the Premises by Subtenant or Subtenant's Representatives, then Sublandlord shall make such repairs or replacements within a reasonable time after notice from Subtenant, and Subtenant shall reimburse Sublandlord for the cost of same as Additional Rent. Subtenant shall repair or replace, subject to Sublandlord's direction and supervision, any damage to the Building caused by a Subtenant's Representative. If Subtenant fails to make such repairs or replacements within fifteen (15) days after the occurrence of such damage, then Sublandlord may make the same at Subtenant's cost. If any such damage occurs outside of the Premises, then Sublandlord may elect to repair such damage at Subtenant's expense, rather than having Subtenant repair such damage. The cost of all maintenance, repair, or replacement work performed by Sublandlord under this section shall be paid by Subtenant to Sublandlord within twenty (20) days after Sublandlord has invoiced Subtenant therefor.

When used in this Article, the term " **repairs** " shall include all reasonably necessary and/or appropriate replacements, renewals, alterations, additions and betterments. The necessity for, appropriateness of and adequacy of repairs to the Premises and to the Common Areas pursuant to this Article shall be measured by the standard which is appropriate for buildings of similar construction and location. All materials and workmanship in connection with repairs shall be at least equal in quality to the original materials and workmanship.

Section 8.2 Performance of Work . All work described in this section shall be performed only by Sublandlord or by contractors and subcontractors approved in writing by Sublandlord. Subtenant shall cause all contractors and subcontractors to procure and maintain insurance coverage naming Sublandlord as an additional insured against such risks, in such amounts, and with such companies as Sublandlord may reasonably require. Subtenant shall provide Sublandlord with the identities, mailing addresses and telephone numbers of all persons performing work or supplying materials prior to beginning such construction, and Sublandlord may post on and about the Premises notices of non-responsibility pursuant to applicable laws. All such work shall be performed in accordance with all laws and in a good and workmanlike manner so as not to damage the Building (including the Premises, the Base Building's Systems and the Building's structure).

Section 8.3 Mechanic's Liens . All work performed, materials furnished, or obligations incurred by or at the request of a Subtenant's Representative shall be deemed authorized and ordered by Subtenant only, and Subtenant shall not permit any mechanic's liens

to be filed against the Premises or the Land in connection therewith. Upon completion of any such work, Subtenant shall deliver to Sublandlord final lien waivers from all contractors, subcontractors and materialmen who performed such work. If such a lien is filed, then Subtenant shall, within ten (10) days after such filing (or such earlier time period as may be necessary to prevent the forfeiture of the Premises or any interest of Landlord or Sublandlord therein or the imposition of a civil or criminal fine with respect thereto), either (1) pay the amount of the lien and cause the lien to be released of record, or (2) diligently contest such lien and deliver to Sublandlord a bond or other security reasonably satisfactory to Sublandlord. If Subtenant fails to timely take either such action, then Sublandlord may pay the lien claim, and any amounts so paid, including expenses and interest, shall be paid by Subtenant to Sublandlord within ten (10) days after Sublandlord has invoiced Subtenant therefor. Subtenant shall defend, indemnify and hold harmless Sublandlord and Sublandlord's Representatives from and against all claims, demands, causes of action, suits, judgments, damages and expenses (including attorneys' fees) in any way arising from or relating to the failure by any Subtenant's Representative to pay for any work performed, materials furnished, or obligations incurred by or at the request of a Subtenant's Representative. This indemnity provision shall survive termination or expiration of this Lease.

## ARTICLE 9
## DAMAGE TO OR DESTRUCTION OF THE PREMISES

Section 9.1 Termination . If the Building or Premises are damaged by fire or other casualty and Sublandlord or Landlord shall, pursuant to the terms of the Lease, elect to terminate the Lease, then this Sublease shall cease and terminate on the date of termination of the Lease, and Rent shall be apportioned from the time of the damage. Otherwise, this Sublease shall remain in full force and effect, subject to the terms of the Lease. Sublandlord shall have no obligation hereunder to repair any portion of the Building or Premises, whether or not this Sublease shall be terminated, which obligation shall be Landlord's to the extent required under the Lease.

## ARTICLE 10
## INSURANCE

Section 10.1 Required Coverage . Subtenant shall maintain, at its expense, for the Term, general public liability insurance (naming Sublandlord, Landlord and designees of each as additional insureds) against claims for personal injury, death, or property damage occurring upon, in, about, or adjacent to the Premises, such insurance to afford protection with single limit coverage of at least $4,000,000. Subtenant shall also maintain, at its sole expense, for the Term, any and all insurance in the amounts and form required of Sublandlord by and pursuant to the provisions of the Lease with respect to the Premises and Subtenant's Property. All such policies shall be issued by reputable insurance companies approved by Sublandlord and Landlord and shall be endorsed to provide that they shall not be modified or cancelled without at least thirty (30) days' prior written notice to Sublandlord and Landlord. On or prior to the Commencement Date, Subtenant shall furnish to Sublandlord said policies or certificates thereof evidencing that the required coverage is being maintained, together with such evidence as Sublandlord shall deem satisfactory of the payment of premiums thereon.

## ARTICLE 11
## MASTER LEASE

Section 11.1 Incorporation of Master Lease . Subtenant hereby acknowledges and agrees that it has received and reviewed a copy of the Lease. Except as otherwise set forth below, and to the extent not inconsistent with the provisions of this Sublease, the terms, provisions, covenants, and conditions of the Lease are hereby incorporated by reference as if set forth at length herein on the following basis: Subtenant hereby assumes and agrees to perform all of the obligations of Sublandlord under the Lease with respect to the Premises, accruing or payable during the Term in the manner and time required under the Lease. The term "Landlord" therein shall refer to Sublandlord herein, its successors and assigns; and the term "Tenant" therein shall refer to Subtenant herein, its permitted successors and assigns; and the term "Premises" therein shall refer to the Premises. The obligations assumed by Subtenant hereunder which accrue during the Term shall survive and extend beyond the termination of this Sublease.

Section 11.2 Landlord Right . In any case where under the Lease the Landlord reserves or is granted any right, including, without limitation, the right to enter the Premises, said right shall inure to the benefit of Landlord as well as Sublandlord with respect to the Premises.

Section 11.3 Consent . In any case where under the Lease the consent or approval of Landlord is required, the consent or approval of both Landlord and Sublandlord shall be required. In determining whether to grant or withhold any consent or approval hereunder, Sublandlord may expressly condition the same upon the consent or approval of Landlord, as applicable. If Subtenant requests the consent of Sublandlord under any provisions of this Sublease, Subtenant shall, as a condition to doing any such act and the receipt of such consent, reimburse Sublandlord for any and all reasonable costs and expenses incurred by Sublandlord in connection therewith, including, without limitation, reasonable attorneys' fees.

Section 11.4 Indemnification Under Lease . Any provisions in the Lease requiring indemnification by the Sublandlord of Landlord (and its partners, shareholders, officers, directors, affiliates, agents, employees and contractors) or releasing Landlord from liability shall be deemed an indemnification or release, as applicable, running from Subtenant to both Landlord and Sublandlord (and their partners, shareholders, officers, directors, affiliates, agents, employees and contractors). Each and every indemnification set forth in this Sublease, or incorporated into this Sublease from the Lease, shall survive the expiration or earlier termination of the Term of this Sublease.

Section 11.5 Time Limits . Wherever there are time limits contained in the Lease (i) calling or allowing for the service of notice by the Tenant thereunder, (ii) pertaining to events of default by the Tenant thereunder, or (iii) within which the Tenant thereunder must perform any act or observe any term, covenant or condition thereunder, the same shall be deemed amended for the purposes of this Sublease to provide for time limits of three business days less and deadlines that are three business days earlier than those provided for in the Lease. To the extent the Lease requires (x) the Landlord thereunder to serve notice upon Tenant or (y) perform any act or observe any term, covenant or condition thereunder, the same shall be deemed amended for the purposes of this Sublease to provide for time limits for Sublandlord of three

business days more and deadlines that are three business days later than those provided for Landlord in the Lease.

Section 11.6 Landlord Covenants, Representations and Warranties . Any covenant, representation or warranty made by Landlord in the Lease shall be deemed to be made by Landlord only and shall in no way be imputed to Sublandlord.

Section 11.7 Default . Any act or omission by Subtenant that would constitute a breach or default by the Tenant under the Lease shall constitute a default on the part of Subtenant hereunder. In addition, Sublandlord shall have the right to declare a default under this Sublease in the event Subtenant fails to perform or violates any covenant or condition set forth herein. In the event of any breach or default by Subtenant hereunder or under the Lease, Sublandlord shall have each and all of the rights and remedies afforded Landlord under the Lease. In addition to the rights or remedies afforded Landlord under the Lease, Sublandlord shall have the right, but not the obligation, (i) to cure any such breach or default by Subtenant (and enter upon the Premises in connection therewith if necessary), without being liable for damages, and Subtenant shall thereupon be obligated to reimburse Sublandlord immediately upon demand for all costs (including costs of settlements, defense, court costs and attorneys' fees) that Sublandlord may incur in effecting the cure of such breach or default, plus interest thereon at the rate of ten percent (10%) per annum; (ii) terminate this Sublease and Subtenant's interest in the Premises by giving Subtenant written notice thereof, in which event Subtenant shall pay to Sublandlord the sum of (a) all Rent accrued hereunder through the date of termination, and (b) an amount equal to the total Rent that Subtenant would have been required to pay for the remainder of the Term; (iii) terminate Subtenant's right to possess the Premises without terminating this Sublease by giving written notice thereof to Subtenant, in which event Subtenant shall pay to Sublandlord (1) all Rent and other amounts accrued hereunder to the date of termination of possession, (2) all amounts due from time to time under this Sublease, and (3) all Rent and other net sums required hereunder to be paid by Subtenant during the remainder of the Term, diminished by any net sums thereafter received by Sublandlord through reletting the Premises during such period, after deducting all costs incurred by Sublandlord in reletting the Premises and (iv) to have any and all rights and remedies now or hereafter afforded a landlord under applicable law.

Section 11.8 Not Incorporated . Anything to the contrary notwithstanding, the following provisions of the Original Lease are not incorporated by reference:

(a) Sections 1.01, 2.01, 2.02, 5.01, 18.01, 20.12, 20.21 and 25.01;

(b)

| | |
|---|---|
| Article 3 | (Rent) |
| Article 4 | (Utilities and Services) |
| Article 6 | (Taxes) |
| Article 7 | (Initial Construction by Sublandlord) |
| Article 8 | (Repairs and Maintenance) |
| Article 16 | (Subordination to Mortgages) |
| Article 21 | (Subtenants' Extension Options) |
| Article 22 | (Broker) |
| Article 24 | (Contingencies) |
| Article 26 | (Subtenant's Right of First Offer); and |

(c) Exhibits A through E and H

Anything to the contrary notwithstanding, no provisions of the Amendments are incorporated by reference, unless (and only to the extent) a provision in one of the Amendments specifically modifies an incorporated provision of the Original Lease (in which case only that specific provision in the applicable Amendment is incorporated)

Section 11.9 Subtenant Action . Subtenant shall not take any action or fail to take any action in connection with the Premises as a result of which Sublandlord would be in violation of any of the provisions of the Lease; and Subtenant hereby agrees to defend, indemnify, and hold Sublandlord harmless from and against all loss, cost, liability, damage, and expense (including, but not limited to, attorneys' fees and court costs) caused by or arising out of Subtenant's act or inaction as a result of which Sublandlord is alleged and/or determined to be in violation of any of the provisions of the Lease.

## ARTICLE 12
## BROKERAGE

Section 12.1 Representation and Indemnification . Subtenant represents that in the negotiation of this Sublease it dealt with no real estate broker or salesman except Pyramid Brokerage, CB Richard Ellis, and Trammel Crow Company. Sublandlord shall compensate such brokers pursuant to a separate agreement. Subtenant shall indemnify Sublandlord and hold it harmless from any and all losses, damages and expenses arising out of any inaccuracy or alleged inaccuracy of the above representation, including court costs and attorneys' fees. Sublandlord shall have no liability for brokerage commissions arising out of a sublease or assignment by Subtenant, and Subtenant shall and does hereby indemnify Sublandlord and hold Sublandlord harmless from any and all liability for brokerage commissions arising out of any such sublease or assignment.

## ARTICLE 13
## NOTICES

Section 13.1 Notices . Any notice, demand, consent, approval, direction, agreement or other communication required or permitted hereunder or under any other documents in connection herewith shall be in writing and shall be directed as follows:

If to Sublandlord:

Ludlow Technical Products Corporation
c/o Tyco Healthcare Group, LP
15 Hampshire Street
Mansfield, MA 02048
Attn: General Counsel
Facsimile: (508) 261-8544

With a copy to:

Blackwell Sanders Peper Martin LLP
720 Olive Street, Suite 2400
St. Louis, MO 63101
Attn: Melissa Smith-Groff, Esq.
Facsimile: (314) 345-6060

If to Subtenant:

Synacor, Inc.
40 La Riviere Drive
Buffalo, NY 14202
Attn: Brian C. Neeson, Controller
Facsimile: (716) 332-0081

or to such changed address or facsimile number as a party hereto shall designate to the other parties hereto from time to time in writing. Notices shall be (i) personally delivered (including delivery by Federal Express, United Parcel Service or other comparable nation-wide overnight courier service) to the offices set forth above, in which case they shall be deemed delivered on the date of delivery (or first business day thereafter if delivered other than on a business day or after 5:00 p.m. New York City time to said offices); (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused or delayed by the addressee in which event they shall be deemed delivered on the third day after the date of deposit in the U.S. Mail; or (iii) sent by means of a facsimile transmittal machine, in which case they shall be deemed delivered at the time and on the date of receipt thereof confirmed by telephonic acknowledgment or first business day thereafter if receipted other than on a business day or after 5:00 p.m. New York City time.

## ARTICLE 14
## SECURITY DEPOSIT

Section 14.1 Security Deposit . Subtenant shall deposit with Sublandlord the sum of $23,364.84 (the " **Security Deposit** ") as security for the performance by Subtenant of the provisions of this Sublease. If Subtenant defaults with respect to any provision of this Sublease, including payment of the Rent, Sublandlord may use, apply, draw upon or retain all or any part of the Security Deposit to the extent necessary for the payment of any Rent, or to compensate Sublandlord for any other loss, cost or damage which Sublandlord may suffer by reason of Subtenant's default. If any portion of the Security Deposit is so used, applied, or drawn upon, Subtenant shall, within ten (10) days after notice thereof, deposit cash with Sublandlord in an amount sufficient to restore the Security Deposit to its original amount. Subtenant's failure to do so shall be a breach of this Sublease. Sublandlord shall not, unless otherwise required by law, be required to keep the Security Deposit separate from its general funds, nor pay interest to Subtenant. If Subtenant shall fully and faithfully perform every provision of this Sublease to be performed by it, the Security Deposit or any balance thereof shall be returned to Subtenant (or to the last transferee of Subtenant's interest hereunder) within thirty (30) days after the expiration of the Term (or sooner termination of this Sublease) and upon Subtenant's vacation of the Premises in accordance with this Sublease. If the Lease is assigned, the Security Deposit shall be

transferred to the assignee, and thereupon Sublandlord shall be discharged from further liability with respect thereto.

## ARTICLE 15
## RIGHTS OF LANDLORD; LANDLORD'S APPROVAL

Section 15.1 Rights of Landlord .

(a) Subtenant acknowledges any rights specifically reserved by Landlord under the Lease; and Subtenant further acknowledges that its possession and use of the Premises shall at all times be subject to such rights. Subtenant hereby releases Sublandlord from all liability in connection with Landlord's exercise of such rights.

(b) Sublandlord shall not be liable to Subtenant for Landlord's failure to perform any of Landlord's obligations under the Lease or under law (including without limitation provide any services; comply with any laws or requirements of governmental authorities regarding the maintenance or operation of the Premises; provide any reimbursements, credits, rebates allowance or other concession or pay any costs; provide any information (including, without limitation, invoices, bills, statements or other documentation); maintain, repair, restore, alter, service or insure all or any part of the Premises (including, without limitation, any obligations to rebuild, repair and restore the Premises after damage or destruction); or indemnify the Tenant under the Lease), nor shall Sublandlord have any obligation to perform same or to bring legal proceedings or take any other action against Landlord to assure performance of Landlord's obligations under the Lease. Subtenant shall not make any claim against Sublandlord for any damage which may arise by reason of (x) the failure of Landlord to keep observe or perform any of its obligations under the Lease; or (y) the acts or omissions of Landlord or its agents, contractors, employees, invitees or licensees. Except as otherwise provided herein, whenever Sublandlord shall have the right to enforce any rights against Landlord or any other party under the Lease because of the default or breach of Landlord or such other party with respect to the Premises, and if, within a reasonable period after Subtenant's request, Sublandlord fails to enforce such rights, then Subtenant shall have the right, in the name of Subtenant or, if necessary, in the name of Sublandlord, to enforce any such rights of Sublandlord with respect to the Premises. Such enforcement shall be at the sole expense of Subtenant, and Subtenant shall indemnify Sublandlord against all costs and expenses, including but not limited to reasonable attorneys' fees, which may be incurred by Sublandlord in connection with any claim, action, or proceeding so undertaken by Subtenant. Any amount of recovery obtained by Subtenant shall be the property of Subtenant, except that Sublandlord shall be compensated therefrom for any damages sustained by Sublandlord as a consequence of such default or breach on the part of Landlord or such other party.

(c) Whenever Subtenant must obtain the consent of Landlord with respect to the Premises, Sublandlord shall cooperate with Subtenant (at Subtenants sole cost and expense) in obtaining Landlord's consent. Sublandlord shall forward to Subtenant true copies of all notices, requests, demands and communications received by Sublandlord from Landlord (or its agent) with respect to the Premises. If Subtenant shall not give timely directions to Sublandlord, Sublandlord may give such notice to Landlord as Sublandlord desires, or no notice or direction with respect to the matter in question.

Section 15.2 Lease Requirements . Without limiting Article 11 of this Sublease, the following requirements of the Lease shall apply:

(a) this Sublease is subject to, and does not modify any of, the terms, covenants, agreements, provisions and conditions of the Lease; and a termination or expiration of the Lease shall automatically cause a termination of this Sublease as set forth in Section 2.3;

(b) Subtenant shall not have the right to a further assignment hereof or sublease or assignment hereunder, or to allow the Premises to be used by others, without the prior written consent of Landlord in each instance;

(c) a consent by Landlord thereto shall not be deemed or construed to modify, amend or affect any of the terms and provisions of the Lease, or any of Sublandlord's obligations thereunder, which shall continue to apply to the premises involved, and the occupants thereof, as if the Sublease had not been made;

(d) if Sublandlord defaults in the payment of any fixed monthly rent, additional rent or other charges due under the Lease, Landlord is authorized to collect any rents due or accruing from any assignee, subtenant or other occupant of the Premises and to apply the net amounts collected to the Fixed Rent, Additional Rent, and other charges reserved under the Lease; and

(e) the receipt by Landlord of any amounts from an assignee or subtenant, or other occupant of any part of the Premises, shall not be deemed or construed as releasing Sublandlord from Sublandlord's obligations under the Lease or as Landlord's acceptance of any such subtenant or occupant as a direct tenant.

Section 15.3 Landlord's Approval . Upon execution of this Sublease, Sublandlord shall submit this Sublease to Landlord for Landlord's approval, together with the additional information required by Section 14.04 of the Lease and submitted by Subtenant. In the event that Landlord fails to approve this Sublease within fifteen (15) days of the date of receipt of such submission, either party, upon notice to the other within five (5) business days after the expiration of such fifteen (15) day period, may elect to terminate this Sublease, whereupon Sublandlord shall promptly refund any amounts deposited hereunder, and this Sublease shall be of no further force and effect. The parties hereto shall not bring any claim against each other for any loss, cost, expense, damage, or injury caused by or arising out of the failure of Landlord to consent to this Sublease.

## ARTICLE 16
## RIGHT OF FIRST OFFER

Section 16.1 Right of First Offer . Subject to then-existing renewal or expansion options of other subtenants, and provided no default by Subtenant exists, Sublandlord shall, before offering the same to any party (other than the then-current subtenant therein), first offer to lease to Subtenant the five different spaces designated by suite number or floor number, and by square footage on Exhibit D (each, an " **Offer Space** ") in an " **AS-IS** " condition; such offer shall be in writing and specify the lease terms for the Offer Space, including the rent to be paid for the Offer Space and the date on which the Offer Space shall be included in the Premises (the " **Offer**

**Notice** "). Sublandlord shall use good faith in determining the rent amount for the Offer Space. The Offer Notice shall be substantially similar to the Offer Notice attached to this Sublease as Exhibit E . Subtenant shall notify Sublandlord in writing whether Subtenant elects to lease the entire Offer Space on the terms set forth in the Offer Notice, within ten (10) days after Sublandlord delivers to Subtenant the Offer Notice. If Subtenant timely elects to lease the Offer Space, then Sublandlord and Subtenant shall execute an amendment to this Sublease, effective as of the date the Offer Space is to be included in the Premises, on the terms set forth in the Offer Notice and, to the extent not inconsistent with the Offer Notice terms, the terms of this Sublease; however, Subtenant shall accept the Offer Space in an " **AS-IS** " condition. Notwithstanding the foregoing, if before Sublandlord's delivery to Subtenant of the Offer Notice, Sublandlord has received an offer to lease all or part of the Offer Space from a third party (a " **Third Party Offer** ") and such Third Party Offer includes space in excess of the Offer Space, Subtenant must exercise its rights hereunder, if at all, as to all of the space contained in the Third Party Offer.

If Subtenant fails or is unable to timely exercise its right hereunder, then such right shall lapse, time being of the essence with respect to the exercise thereof (it being understood that each of Subtenant's five rights of first offer hereunder is a one-time right only with respect to each Offer Space), and Sublandlord may lease all or a portion of the Offer Space to third parties on such terms as Sublandlord may elect. Subtenant may not exercise its rights under this Article 16 if a default exists or Subtenant is not then occupying the entire Premises. For purposes hereof, if an Offer Notice is delivered for less than all of the Offer Space but such notice provides for an expansion, right of first refusal, or other preferential right to lease some of the remaining portion of the Offer Space, then such remaining portion of the Offer Space shall thereafter be excluded from the provisions of this Sublease. In no event shall Sublandlord be obligated to pay a commission with respect to any space leased by Subtenant under this Article 16, and Subtenant and Sublandlord shall each indemnify the other against all costs, expenses, attorneys' fees, and other liability for commissions or other compensation claimed by any broker or agent claiming the same by, through, or under the indemnifying party.

Subtenant's rights under this Article 16 shall terminate if (a) this Sublease or Subtenant's right to possession of the Premises is terminated, (b) Subtenant assigns any of its interest in this Sublease or sublets any portion of the Premises, or (c) less than two full calendar years remain in the initial Term of this Sublease.

## ARTICLE 17
## NO RECORDING

Section 17.1 No Recording . Subtenant shall not record this Sublease or any memorandum of this Sublease without the prior written consent of Sublandlord, which consent may be withheld or denied in the sole and absolute discretion of Sublandlord, and any recordation by Subtenant shall be a material breach of this Sublease. Subtenant grants to Sublandlord a power of attorney to execute and record a release releasing any such recorded instrument of record that was recorded without the prior written consent of Sublandlord.

IN WITNESS WHEREOF Sublandlord has duly executed this Sublease as of the day and year first above written.

SUBLANDLORD:

LUDLOW TECHNICAL PRODUCTS CORPORATION

By: /s/ Chuck J. Dockendaeff
Name: Chuck J. Dockendaeff
Title: VP of Finance

Comm OF Massachusetts
) SS.
COUNTY OF BRISTOL )

On the 8 th day of March, in the year 2006, before me, the undersigned, a Notary Public in and for said Comm of Massachusetts personally appeared Chuck J. Dockendaeff, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the entity upon behalf of whom the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in Bristol County, MA.

/s/ Suzanne E. Gaddy
Notary Public
My Commission Expires: 3-22-2007

[SEAL]

SUZANNE E. GADDY
Notary Public
Commonwealth of Massachusetts
My Commission Expires Mar 22, 2007

IN WITNESS WHEREOF Sublandlord has duly executed this Sublease as of the day and year first above written.

SUBTENANT:

SYNACOR, INC.

By: /s/ Robert S. Rusak
Name: Robert S. Rusak
Title: CFO

State OF New York )
) SS.
COUNTY OF Ene )

On the 6 th day of March, in the year 2006, before me, the undersigned, a Notary Public in and for said State of New York, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the entity upon behalf of whom the individual acted, executed ,the instrument, and that such individual made such appearance before the undersigned in Ene County, New York.

/s/ Kimberly R. Borowski
Notary Public
My Commission Expires:

[SEAL]

KIMBERLY R. BOROWSKI
Notary Public State of New York
Qualified in Erie County
My Commission Expires Nov. 9, 2006

**EXHIBIT A**

**Premises**

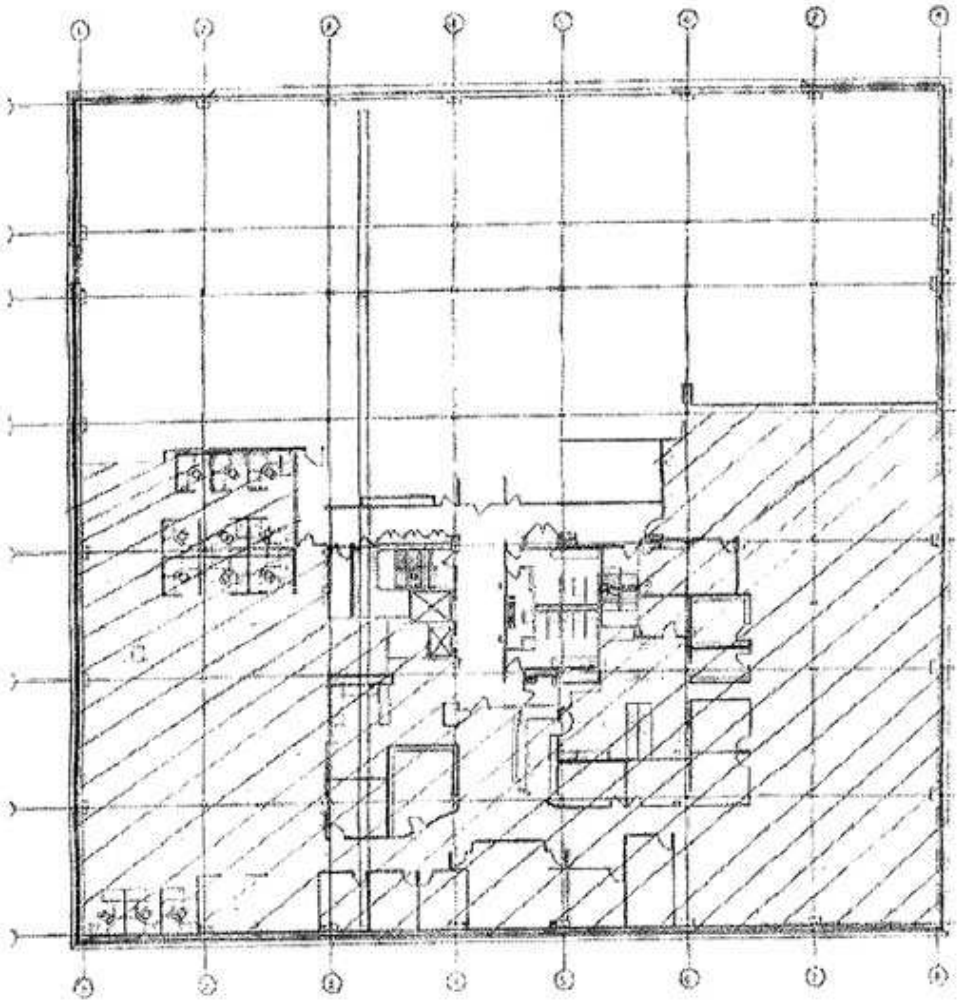


**EXHIBIT B**

**Land**

ALL THAT CERTAIN PIECE OR PARCEL OF LAND, situate, lying and being in the City of Buffalo, County of Erie and State of New York, being part of Outer Lots 4 and 6, Township 11, Range 8 of the Holland Land Company's Survey, being more particularly bounded and described as follows:

BEGINNING at the northeast corner of Sublot 3, Cover 2432 as filed in the Erie County Clerk's Office, said point being in the northerly right-of-way of LaRiviere Drive (60 feet wide); thence south 38° 30' 19" East through the right-of-way of said LaRiviere Drive, 39.00 feet to a point; thence South 51° 29' 41" West through the right-of-way of said LaRiviere Drive, 209.06 feet to a point; thence North 38° 30' 19" West through the right-of-way of said LaRiviere Drive and Sublot 3,199.00 feet to a point in the westerly line of said Sublot 3, thence North 51° 29' 41" East along the west line of said Sublot 3, 209.06 feet to the northwest corner of said Sublot 3; thence South 38° 30' 19" East along the north line of said Sublot 3, 160.00 feet to the point or place of beginning and containing 0.96 acre of land, more or less.

TOGETHER with an easement for a stairway over the following lands:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Outer Lot 4 in said City and being more particularly bounded and described as follows:

COMMENCING at the northeast corner of Sublot 3, Cover 2432 as filed in the Erie County Clerk's Office, said point being in the northerly right-of-way of LaRiviere Drive (60 feet wide); thence South 38° 30' 19" East through the right-of-way of said LaRiviere Drive, 39.00 feet to a point; thence South 51° 29' 41" West through the right-of-way of said LaRiviere Drive, 87.1 feet to the point or place of beginning; thence continuing westerly along the last mentioned line 24.0 feet to a point; thence southerly along a line at right angles to the last mentioned course, 4.0 feet to a point; thence easterly along a line at right angles to the last mentioned course, 24.0 feet to a point; thence northerly along a line at right angles to the last mentioned course, 4.0 feet to the point or place of beginning.

**EXHIBIT C**

**Landlord Consent**

The undersigned is the landlord under the Property Lease dated March 13,1998, between Waterfront Associates, LLC, as successor by conversion to Waterfront Associates (" **Landlord** "), as landlord, and Ludlow Technical Products Corporation, formerly known as Graphic Controls Corporation (" **Sublandlord** "), as tenant, for that certain space containing approximately 102,816 rentable square feet located at Building No. 3, Waterfront Village Center, 40 La Riviere Drive, Buffalo, New York 14202, which Property Lease was amended April 29, 1998, April 21, 1999, and July 30, 1999 (as amended, the " **Lease** ").

Landlord hereby acknowledges and agrees that it has received and reviewed a copy of the Sublease dated _____, 2006 by and between Sublandlord and Synacor, Inc., a _____corporation, as subtenant, having an address at _____. A copy of the Sublease is attached to this Landlord Consent.

After review, Landlord consents to the provisions of the attached Sublease effective as of the Effective Date (as defined in the Sublease) of the Sublease.

The foregoing Consent shall not be deemed to constitute consent by the undersigned to any subletting other than that described in the Sublease.

Waterfront Associates, LLC

By: _____
Name: _____
Title: _____

**EXHIBIT D**

**Offer Space**

Each of the following five spaces located in the Building at Building No. 3, Waterfront Village Center, 40 La Riviere Drive, Buffalo, New York 14202, is an Offer Space:

(1) Suite 100, containing 20,818 square feet of space — currently occupied by Adelphia.

(2) Suite 150, containing 5,582 square feet of space — currently occupied by Bergmann Associates.

(3) The remaining portion of the first floor, containing 3,178 square feet of space — currently vacant.

(4) Suite 200, containing 33,237 square feet of space — currently occupied by Adelphia.

(5) Suite 350, containing 17,250 square feet of space — vacant as of March 1, 2006.

**EXHIBIT E**

**Form of Offer Notice**

[Insert Date of Notice]

_____ *[SUBTENANT'S ADDRESS]*

_____

_____

_____

Re: Sublease Agreement (the " **Sublease** ") dated _____, 2006, between LUDLOW TECHNICAL PRODUCTS CORPORATION, a New York corporation (" **Sublandlord** "), and SYNACOR, INC., a _____(" **Subtenant** "). Capitalized terms used herein but not defined shall be given the meanings assigned to them in the Sublease.

Ladies and Gentlemen:

Pursuant to the Right of First Offer set forth in Article 16 attached to the Sublease, enclosed please find an Offer Notice for _____. The basic terms and conditions are as follows:

**LOCATION:** _____

**SIZE:** _____rentable square feet

**BASIC RENT RATE:** $ _____per month

**TERM:** _____

**COMMENCEMENT:** _____

**OTHER MATERIAL TERMS:** _____

Under the terms of the Right of First Offer, you must exercise your rights, if at all, as to the Offer Space within ten days after Sublandlord delivers such Offer Notice. Accordingly, you have until 5:00 p.m. local time on _____, 200 _____, to exercise your rights under the Right of First Offer and accept the terms as contained herein, failing which your rights under the Right of First Offer shall terminate and Sublandlord shall be free to lease the Offer Space to any third party. If possible, any earlier response would be appreciated. Please note that your acceptance of this Offer Notice shall be irrevocable and may not be rescinded.

Upon receipt of your acceptance herein, Sublandlord and Subtenant shall execute an amendment to the Sublease memorializing the terms of this Offer Notice including the inclusion of the Offer Space in the Premises; provided, however, that the failure by Sublandlord and Subtenant to execute such amendment shall not affect the inclusion of such Offer Space in the Premises in accordance with this Offer Notice.

THE FAILURE TO ACCEPT THIS OFFER NOTICE BY (1) DESIGNATING THE “ACCEPTED” BOX, AND (2) EXECUTING AND RETURNING THIS OFFER NOTICE TO SUBLANDLORD WITHOUT MODIFICATION WITHIN SUCH TIME PERIOD SHALL BE DEEMED A WAIVER OF SUBTENANT’S RIGHTS UNDER THE RIGHT OF FIRST OFFER, AND SUBTENANT SHALL HAVE NO FURTHER RIGHTS TO THE OFFER SPACE. THE FAILURE TO EXECUTE THIS LETTER WITHIN SUCH TIME PERIOD SHALL BE DEEMED A WAIVER OF THIS OFFER NOTICE.

Should you have any questions, do not hesitate to call.

Sincerely,

_____

_____

_____

[please check appropriate box]

ACCEPTED ☐
REJECTED ☐

SYNACOR, INC.,

By: _____
Name: _____
Title: _____
Date: _____

Enclosure *[depiction of Offer Space]*

**Exhibit 10.14.2**

# FIRST AMENDMENT TO SUBLEASE

THIS FIRST AMENDMENT TO SUBLEASE (this " **Amendment** ") is made and entered into as of September 25, 2006, by and between LUDLOW TECHNICAL PRODUCTS CORPORATION, a New York corporation (" **Sublandlord** "), with an address at c/o Tyco Healthcare Group LP, 15 Hampshire Street, Mansfield, MA 02048, and SYNACOR, INC., a Delaware corporation (" **Subtenant** "), with an address at 40 La Riviere Drive, Buffalo, New York 14202.

WITNESSETH:

A. Sublandlord is the tenant under that certain Property Lease dated March 13, 1998, with Waterfront Associates, LLC (" **Landlord** "), as landlord, covering Building No. 3, Waterfront Village Center, 40 La Riviere Drive, Buffalo, New York 14202 (the " **Building** "), as amended by that certain First Amendment to Lease dated April 29, 1998, that Second Amendment to Lease dated April 21, 1999, and that Third Amendment to Lease dated July 30, 1999 (collectively, the Property Lease and amendments thereto are the " **Lease** ").

B. Under the terms and conditions of that certain Sublease dated as of March 3, 2006, Subtenant subleased from Sublandlord approximately 20,027 rentable square feet of space located on the third floor of the Building (the " **Existing Premises** "), which Existing Premises is more particularly described in the Sublease.

C. Under the terms and conditions of the Sublease, Subtenant desires to sublease additional space on the third floor of the Building, which additional space contains approximately 6,437 rentable square feet of space and is more particularly depicted on Exhibit A , attached hereto and incorporated herein (the " **Additional Premises** "); and Sublandlord has agreed to sublease such Additional Premises to Subtenant on the terms and conditions of the Sublease, as modified herein.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sublandlord and Subtenant agree as follows:

1. **Additional Premises** . Conditioned upon receipt by Sublandlord of Landlord's written consent executed in substantially the form attached hereto as Exhibit B , Sublandlord hereby subleases to Subtenant, and Subtenant hereby subleases from Sublandlord, the Additional Premises on the terms and conditions of the Sublease, as modified hereby; accordingly, from and after the Effective Date (hereinafter defined), the term "Premises" shall refer collectively to the Existing Premises and the Additional Premises; and, except as otherwise provided herein, Subtenant's Share shall be increased to 26%, which is the percentage obtained by dividing the number of rentable square feet in the Premises (26,464) by the number of rentable square feet in the Building (102,816). Subtenant accepts the Additional Premises in their " **AS-IS** " condition, and Sublandlord shall not be required to perform any demolition work or tenant-finish work therein or to provide any allowances therefor except as set forth in Section 6 of this Amendment.

Sublandlord and Subtenant stipulate that the number of rentable square feet in the Existing Premises, the Additional Premises, and the Building is correct.

**2. Term for Additional Premises** . The term for the Additional Premises shall begin on the Effective Date and shall expire on the Expiration Date as set forth in Section 2.3 of the Sublease. As used herein, the " **Effective Date** " shall mean the earlier of (a) the date on which Subtenant occupies any portion of the Additional Premises and begins conducting business therein, or (b) December 1, 2006; provided, if Sublandlord is unable to deliver possession of the Additional Premises to Subtenant by the date stated in the preceding clause (b), then Sublandlord shall not be in default hereunder or be liable for damages therefor, and Subtenant shall accept possession of the Additional Premises on the date when Sublandlord tenders possession thereof to Subtenant (which date will then be defined as the Effective Date).

Subtenant shall execute and deliver to Sublandlord, within ten days after Sublandlord has requested the same, a letter confirming (i) the Effective Date, (ii) that Subtenant has accepted the Additional Premises, and (iii) that Sublandlord has performed all of its obligations with respect to the Additional Premises.

**3. Rent for Additional Premises** . The annual fixed rent due under the Sublease for the Additional Premises shall be $90,118.00, payable in equal monthly installments of $7,509.83 per month, beginning on the Effective Date. Thus, the total monthly fixed rent due under the Sublease for the Premises shall be $30,874.67.

**4. Security Deposit** . Contemporaneously with the execution hereof, and as a condition to the effectiveness of this Amendment, Subtenant shall deliver to Sublandlord $7,509.83 to be held as part of the Security Deposit under the Sublease.

**5. Right of First Offer** . The reference to "Suite 350" is hereby deleted from Exhibit D attached to the Sublease.

Subject to then-existing renewal or expansion options of other subtenants, and provided no default by Subtenant exists, Sublandlord shall, before offering the same to any party (other than the then-current subtenant or occupant therein), first offer to lease to Subtenant the space shown on Exhibit A , containing approximately 4,205 rentable square feet of space (the " **Offer Space** ") in an " **AS-IS** " condition; such offer shall be in writing and specify the terms for the Offer Space, including the rent to be paid for the Offer Space and the date on which the Offer Space shall be included in the Premises (the " **Offer Notice** "). Sublandlord shall use good faith in determining the rent amount for the Offer Space. The Offer Notice shall be substantially similar to the Offer Notice attached to the Sublease as Exhibit E. Subtenant shall notify Sublandlord in writing whether Subtenant elects to lease the entire Offer Space on the terms set forth in the Offer Notice, within ten (10) days after Sublandlord delivers to Subtenant the Offer Notice. If Subtenant timely elects to lease the Offer Space, then Sublandlord and Subtenant shall execute an amendment to this Sublease, effective as of the date the Offer Space is to be included in the Premises, on the terms set forth in the Offer Notice and, to the extent not inconsistent with the Offer Notice terms, the terms of this Sublease; however, Subtenant shall accept the Offer Space in an " **AS-IS** " condition. Notwithstanding the foregoing, if before Sublandlord's delivery to Subtenant of the Offer Notice, Sublandlord has received an offer to lease all or part of the

Offer Space from a third party (a " **Third Party Offer** ") and such Third Party Offer includes space in excess of the Offer Space, Subtenant must exercise its rights hereunder, if at all, as to all of the space contained in the Third Party Offer.

If Subtenant fails or is unable timely to exercise its right hereunder, then such right shall lapse, time being of the essence with respect to the exercise thereof (it being understood that each of Subtenant's five rights of first offer hereunder is a one-time right only with respect to each Offer Space), and Sublandlord may lease all or a portion of the Offer Space to third parties on such terms as Sublandlord may elect. Subtenant may not exercise its rights under this Section 5 if a default exists or Subtenant is not then occupying the entire Premises. For purposes hereof, if an Offer Notice is delivered for less than all of the Offer Space but such notice provides for an expansion, right of first refusal, or other preferential right to lease some of the remaining portion of the Offer Space, then such remaining portion of the Offer Space shall thereafter be excluded from the provisions of this Sublease. In no event shall Sublandlord be obligated to pay a commission with respect to any space leased by Subtenant under this Section 5, and Subtenant and Sublandlord shall each indemnify the other against all costs, expenses, attorneys' fees, and other liability for commissions or other compensation claimed by any broker or agent claiming the same by, through, or under the indemnifying party.

Subtenant's rights under this Section 5 shall terminate if (a) the Sublease or Subtenant's right to possession of the Premises (or any portion thereof) is terminated, (b) Subtenant assigns any of its interest in this Sublease or sublets any portion of the Premises, or (c) less than two full calendar years remain in the initial Term of the Sublease.

6. **Landlord Work** . Subject to Landlord obtaining the necessary governmental approvals and permits and subject to any structural issues that may be encountered or may affect the Building, Landlord will create a doorway opening between the Existing Premises and the Additional Premises.

7. **Termination by Subtenant** . Section 2.4 of the Sublease is hereby deleted in its entirety and shall have no further force or effect. The following provision is hereby inserted in its place:

> Provided that Subtenant is not in default when Subtenant delivers the early termination notice or on the cancellation note, Subtenant may, at its sole option, terminate this Sublease effective as of November 30, 2011 (the " **Cancellation Date** "). To exercise such termination right, Subtenant must, no later than February 28, 2011, give notice thereof to Sublandlord together with Subtenant's payment to Sublandlord of One Hundred and Sixty Seven Thousand Dollars ($167,000.00) (the " **Cancellation Fee** ") in lawful money of the United States of America. As a condition to the effectiveness of Subtenant's cancellation right, Subtenant shall pay to Sublandlord prior to the Cancellation Date any past-due amounts then outstanding under the Sublease. If Subtenant fails timely to deliver the Cancellation Fee or the cancellation notice or is otherwise unable to comply with or exercise this cancellation option, then Subtenant's right to cancel this Lease under this section shall expire; time is of the essence with respect thereto.

8. **Brokerage** . Sublandlord and Subtenant each warrant to the other that it has not dealt with any broker or agent in connection with the negotiation or execution of this Amendment other than Trammell Crow Services, Inc., and CB Richard Ellis, Inc., whose commission shall be paid under a separate written agreement. Subtenant and Sublandlord shall each indemnify the other against all costs, expenses, attorneys' fees, and other liability for commissions or other compensation claimed by any other broker or agent claiming the same by, through, or under the indemnifying party.

9. **Ratification** . Subtenant hereby ratifies and confirms its obligations under the Sublease, and represents and warrants to Sublandlord that it has no defenses thereto. Additionally, Subtenant further confirms and ratifies that, as of the date hereof, (a) the Sublease is and remains in good standing and in full force and effect, and (b) Subtenant has no claims, counterclaims, set-offs or defenses against Sublandlord arising out of the Sublease or in any way relating thereto or arising out of any other transaction between Sublandlord and Subtenant.

10. **Binding Effect; Governing Law; Recitals** . Except as modified hereby, the Sublease shall remain in full effect and this Amendment shall be binding upon Sublandlord and Subtenant and their respective successors and assigns. If any inconsistency exists or arises between the terms of this Amendment and the terms of the Sublease, the terms of this Amendment shall prevail. This Amendment shall be governed by the laws of the State of New York. The recitals at the beginning of this Amendment are hereby incorporated as if fully set forth herein.

11. **Counterparts** . This Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

[ *The Remainder of this Page is Intentionally Left Blank;*
*Sublandlord and Subtenant's Signature Pages Follow on the Next Two Pages* ]

IN WITNESS WHEREOF Sublandlord has duly executed this Amendment as of the day and year first above written.

SUBLANDLORD:

LUDLOW TECHNICAL PRODUCTS CORPORATION

By: /s/ Charles J. Dockendorff
Name: Charles J. Dockendorff
Title: Vice President

Commonwealth OF Massachusetts )
) ss.
COUNTY OF Bristol )

On the 3rd day of October, 2006, before me, the undersigned, a Notary Public in and for said Massachusetts, personally appeared Charles J. Dockendorff, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the entity upon behalf of whom the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in Bristol County, MA.

/s/ Suzanne E. Gaddy
Notary Public
My Commission Expires: 3-22-2007

[SEAL]

IN WITNESS WHEREOF Sublandlord has duly executed this Amendment as of the day and year first above written.

SUBTENANT:

SYNACOR, INC.

By: /s/ Robert S. Rusak
Name: Robert S. Rusak
Title: Chief Financial Officer

State OF New York )
) ss.
COUNTY OF Evie )

On the 27 th day of September, 2006, before me, the undersigned, a Notary Public in and for the State of New York, personally appeared Robert S. Rusak, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the entity upon behalf of whom the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in Evie County, New York.

/s/ Brian C Neeson
Notary Public
My Commission Expires: 6/15/2010

[SEAL]

BRIAN C NEESON
Notary Public - State of New York
No. O1NE6008596
Qualified in Erie County
My Commission Expires Jun 15, 2010

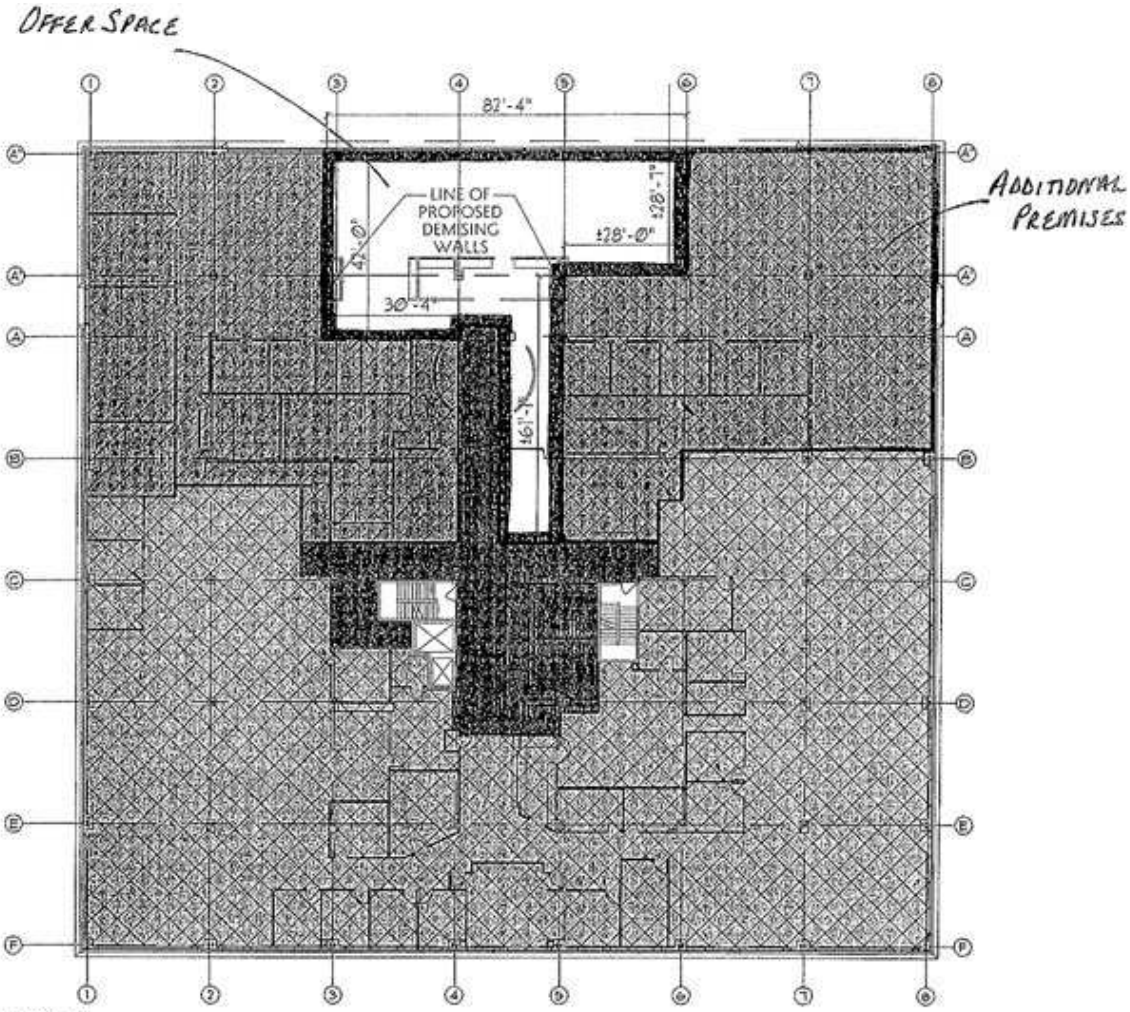
6/15/2010 BCN

**EXHIBIT A**

Additional Premises
and Offer Space

*[See Attached]*

**EXHIBIT A**




LEGEND:

| AREA OF EXISTING SYNACOR SPACE | ADDITIONAL PREMISES | AREA OF PARSONS SPACE | COMMON FLOOR AREA |
|---|---|---|---|
| 17,488 SF USABLE AREA<br>20,111 SF RENTABLE AREA | 5,597 SF USABLE AREA<br>6,437 SF RENTABLE AREA | 5,746 SF USABLE AREA<br>6,608 SF RENTABLE AREA | 2,557 SF<br>(NOT INCLUDING VERTICAL PENETRATIONS) |

Scheid Architectural
111 Elmwood Avenue
Buffalo, NY 14201
Voice: 716.884.0059
Fax: 716.884.6414
E-Mail: mail@scheidaia.com

PROJECT: 40 La RIVIERE DRIVE, BUFFALO, NY

SUBJECT: EXISTING 3RD FLOOR PLAN

| PROJECT NO: | SCALE: | DATE: | |
|---|---|---|---|
| 2006-059 | 1/32" = 1'-0" | SEP-18-2006 | © 2006 SCHEID ARCHITECTURAL |

SHEET NO: SK3

| | | |
|---|---|---|
| 8.5x11 | P:\Drawings\2006\2006-059\base drawing.dwg | Sep 18, 2006 - 1:39pm |

**EXHIBIT B**

Landlord Consent

The undersigned is the landlord under the Property Lease dated March 13, 1998, between Waterfront Associates, LLC, as successor by conversion to Waterfront Associates (" **Landlord** "), as landlord, and Ludlow Technical Products Corporation, formerly known as Graphic Controls Corporation (" **Sublandlord** "), as tenant, for that certain space containing approximately 102,816 rentable square feet located at Building No. 3, Waterfront Village Center, 40 La Riviere Drive, Buffalo, New York 14202 (the " **Building** "), which Property Lease was amended April 29, 1998, April 21, 1999, and July 30, 1999 (as amended, the " **Lease** ").

Under that certain Sublease dated as of March 3, 2006, by and between Sublandlord and Synacor, Inc., a Delaware corporation, as subtenant (" **Subtenant** "), having an address at 40 La Riviere Drive, Buffalo, New York, Sublandlord subleased the Premises (as defined in the Sublease) to Subtenant. Landlord hereby acknowledges and agrees that it has received and reviewed a copy of the First Amendment to Sublease dated as of _____, 2006 (the " **Amendment** "). A copy of the Amendment is attached to this Landlord Consent. Under the Amendment, Subtenant is subleasing an additional 6,603 square feet of space located on the third floor of the Building.

After review (and with the representation by Synacor, Inc. that the additional subleased premises will not be used as a call center), Landlord consents to the provisions of the attached Amendment effective as of the Effective Date (as defined in the Amendment) of the Amendment. Further, Landlord hereby waives any rights Landlord or its designee may have under Section 14.05 of the Lease to terminate the Lease with respect to the Additional Premises (as defined in the Amendment), to sublease the Additional Premises, or to otherwise recapture the Additional Premises.

The foregoing Consent shall not be deemed to constitute consent by the undersigned to any subletting other than that described in the Amendment.

Waterfront Associates, LLC

By: _____
Name: _____
Title: _____

**Exhibit 10.14.3**

# SECOND AMENDMENT TO SUBLEASE

THIS SECOND AMENDMENT TO SUBLEASE (this " **Amendment** ") is made and entered into as of February 27, 2007, by and between LUDLOW TECHNICAL PRODUCTS CORPORATION, a New York corporation (" **Sublandlord** "), with an address at c/o Tyco Healthcare Group LP, 15 Hampshire Street, Mansfield, MA 02048, and SYNACOR, INC., a Delaware corporation (" **Subtenant** "), with an address at 40 La Riviere Drive, Buffalo, New York 14202.

WITNESSETH:

A. Sublandlord is the tenant under that certain Property Lease dated March 13, 1998, with Waterfront Associates, LLC (" **Landlord** "), as landlord, covering Building No. 3, Waterfront Village Center, 40 La Riviere Drive, Buffalo, New York 14202 (the " **Building** "), as amended by that certain First Amendment to Lease dated April 29, 1998, that Second Amendment to Lease dated April 21, 1999, and that Third Amendment to Lease dated July 30, 1999 (collectively, the Property Lease and amendments thereto are the " **Lease** ").

B. Under the terms and conditions of that certain Sublease dated as of March 3, 2006 (the " **Original Sublease** "), as amended by that certain First Amendment to Sublease dated September 25, 2006 (collectively, the "Sublease"), Subtenant subleased from Sublandlord approximately 26,464 rentable square feet of space located on the third floor of the Building (the " **Existing Premises** "), which Existing Premises is more particularly described in the Sublease as the Premises.

C. Under the terms and conditions of the Sublease, Subtenant desires to sublease additional space on the third floor of the Building, which additional space contains approximately 4,344 rentable square feet of space and is more particularly depicted on Exhibit A , attached hereto and incorporated herein (the " **Additional Premises** "); and Sublandlord has agreed to sublease such Additional Premises to Subtenant on the terms and conditions of the Sublease, as modified herein.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sublandlord and Subtenant agree as follows:

1. **Additional Premises .** Conditioned upon receipt by Sublandlord of Landlord's written consent executed in substantially the form attached hereto as Exhibit B , Sublandlord hereby subleases to Subtenant, and Subtenant hereby subleases from Sublandlord, the Additional Premises on the terms and conditions of the Sublease, as modified hereby; accordingly, from and after the Effective Date (hereinafter defined), the term "Premises" shall refer collectively to the Existing Premises and the Additional Premises; and, except as otherwise provided herein, Subtenant's Share shall be increased to 30%, which is the percentage obtained by dividing the number of rentable square feet in the Premises (30,808) by the number of rentable square feet in the Building (102,816). Subtenant accepts the Additional Premises in their " **AS-IS** " condition, and Sublandlord shall not be required to perform any demolition work or tenant-finish work

therein or to provide any allowances therefor. Sublandlord and Subtenant stipulate that the number of rentable square feet in the Existing Premises, the Additional Premises, and the Building is correct.

2. **Term for Additional Premises** . The term for the Additional Premises shall begin on the Effective Date and shall expire on the Expiration Date as set forth in Section 2.3 of the Original Sublease. As used herein, the " **Effective Date** " shall mean the earlier of (a) the date on which Subtenant occupies any portion of the Additional Premises and begins conducting business therein, or (b) April 1, 2007; provided, if Sublandlord is unable to deliver possession of the Additional Premises to Subtenant by the date stated in the preceding clause (b), then Sublandlord shall not be in default hereunder or be liable for damages therefor, and Subtenant shall accept possession of the Additional Premises on the date when Sublandlord tenders possession thereof to Subtenant (which date will then be defined as the Effective Date).

Subtenant shall execute and deliver to Sublandlord, within ten days after Sublandlord has requested the same, a letter confirming (i) the Effective Date, and (ii) that Subtenant has accepted the Additional Premises.

3. **Rent for Additional Premises .** The annual fixed rent due under the Sublease for the Additional Premises shall be $60,816.00, payable in equal monthly installments of $5,068.00 per month, beginning on April 1, 2007. Thus, commencing on April 1, 2007, the total monthly fixed rent due under the Sublease for the Premises shall be $35,942.67.

4. **Security Deposit** . Contemporaneously with the execution hereof, and as a condition to the effectiveness of this Amendment, Subtenant shall deliver to Sublandlord an additional $5,068.00 to be held as part of the Security Deposit under the Sublease.

5. **Right of First Offer** . The Right of First Offer set forth in Section 5 of the First Amendment to Sublease dated September 25, 2006, is hereby deleted.

6. **Termination by Subtenant** . Section 7 of the First Amendment to Sublease dated September 25, 2006, is hereby deleted in its entirety and shall have no further force or effect. The following provision is hereby inserted in its place:

> Provided that Subtenant is not in default when Subtenant delivers the early termination notice or on the Cancellation Date, Subtenant may, at its sole option, terminate this Sublease effective as of November 30, 2011 (the " **Cancellation Date** "). To exercise such termination right, Subtenant must, no later than February 28, 2011, give notice thereof to Sublandlord together with Subtenant's payment to Sublandlord of One Hundred Ninety-Four Thousand Dollars ($194,000.00) (the " **Cancellation Fee** ") in lawful money of the United States of America. As a condition to the effectiveness of Subtenant's cancellation right, Subtenant shall pay to Sublandlord prior to the Cancellation Date any past-due amounts then outstanding under the Sublease. If Subtenant fails timely to deliver the Cancellation Fee or the cancellation notice or is otherwise unable to comply with or exercise this cancellation option, then Subtenant's right to cancel this

Sublease under this section shall expire; time is of the essence with respect thereto.

7. **Parking .** Section 5.6 of the Original Sublease is hereby deleted and replaced with the following:

Subtenant shall have the non-exclusive right, together with the other tenants and occupants of the Building and other buildings comprising Waterfront Village Center and their employees, agents, licensees, and invitees, to use the parking areas servicing the Building (as reasonably designated by Landlord) for the purpose of vehicular parking for Subtenant's Representatives, all without additional charge; provided however that Subtenant's Representatives shall not occupy more than an aggregate of one hundred and thirty five (135) parking spaces at any time. If, for any reason, Sublandlord is unable to provide all or any portion of the parking spaces to which Subtenant is entitled hereunder, then Subtenant shall have no claims against Sublandlord because of Sublandlord's failure or inability to provide Subtenant with such parking spaces. Sublandlord shall not be responsible for enforcing Subtenant's parking rights against any third parties. Subtenant shall cause Subtenant's Representatives to comply with all reasonable rules and regulations that Sublandlord and/or Landlord may promulgate with respect to parking in the parking areas, including without limitation, a system of stickers, access cards or other system intended to regulate and control access to such parking areas.

8. **Brokerage** . Sublandlord and Subtenant each warrant to the other that it has not dealt with any broker or agent in connection with the negotiation or execution of this Amendment other than Trammell Crow Services, Inc., and CB Richard Ellis, Inc., whose commission Sublandlord shall pay under a separate written agreement. Subtenant and Sublandlord shall each indemnify the other against all costs, expenses, attorneys' fees, and other liability for commissions or other compensation claimed by any other broker or agent claiming the same by, through, or under the indemnifying party.

9. **Ratification** . Subtenant hereby ratifies and confirms its obligations under the Sublease, and represents and warrants to Sublandlord that it has no defenses thereto. Additionally, Subtenant further confirms and ratifies that, as of the date hereof, (a) the Sublease is and remains in good standing and in full force and effect, and (b) Subtenant has no claims, counterclaims, set-offs or defenses against Sublandlord arising out of the Sublease or in any way relating thereto or arising out of any other transaction between Sublandlord and Subtenant.

10. **Binding Effect; Governing Law; Recitals** . Except as modified hereby, the Sublease shall remain in full effect and this Amendment shall be binding upon Sublandlord and Subtenant and their respective successors and assigns. If any inconsistency exists or arises between the terms of this Amendment and the terms of the Sublease, the terms of this Amendment shall prevail. This Amendment shall be governed by the laws of the State of New York. The recitals at the beginning of this Amendment are hereby incorporated as if fully set forth herein.

11. **Counterparts** . This Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

IN WITNESS WHEREOF Sublandlord has duly executed this Amendment as of the day and year first above written.

SUBLANDLORD:

LUDLOW TECHNICAL PRODUCTS CORPORATION

By: /s/ Charles J. Dockendorff
Charles J. Dockendorff
Vice President

COMMONWEALTH OF MASSACHUSETTS )
) ss.
COUNTY OF BRISTOL )

On the 9th day of March, 2007, before me, the undersigned, a Notary Public in and for said Commonwealth of Massachusetts, personally appeared Charles J. Dockendorff, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the entity upon behalf of whom the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in Bristol County, Massachusetts.

/s/ Suzanne E. Gaddy
Notary Public
My Commission Expires: 3-22-2007

[SEAL]

IN WITNESS WHEREOF Sublandlord has duly executed this Amendment as of the day and year first above written.

SUBTENANT:

SYNACOR, INC.

By: /s/ Ron Frankel
Name: Ron Frankel
Chief Executive Officer

State OF New York )
) ss.
COUNTY OF Erie )

On the 27 th day of February, 2007, before me, the undersigned, a Notary Public in and for the State of New York, personally appeared Robert S. Rusak, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the entity upon behalf of whom the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in Erie County, New York.

Notary Public
My Commission Expires: 6/15/2010

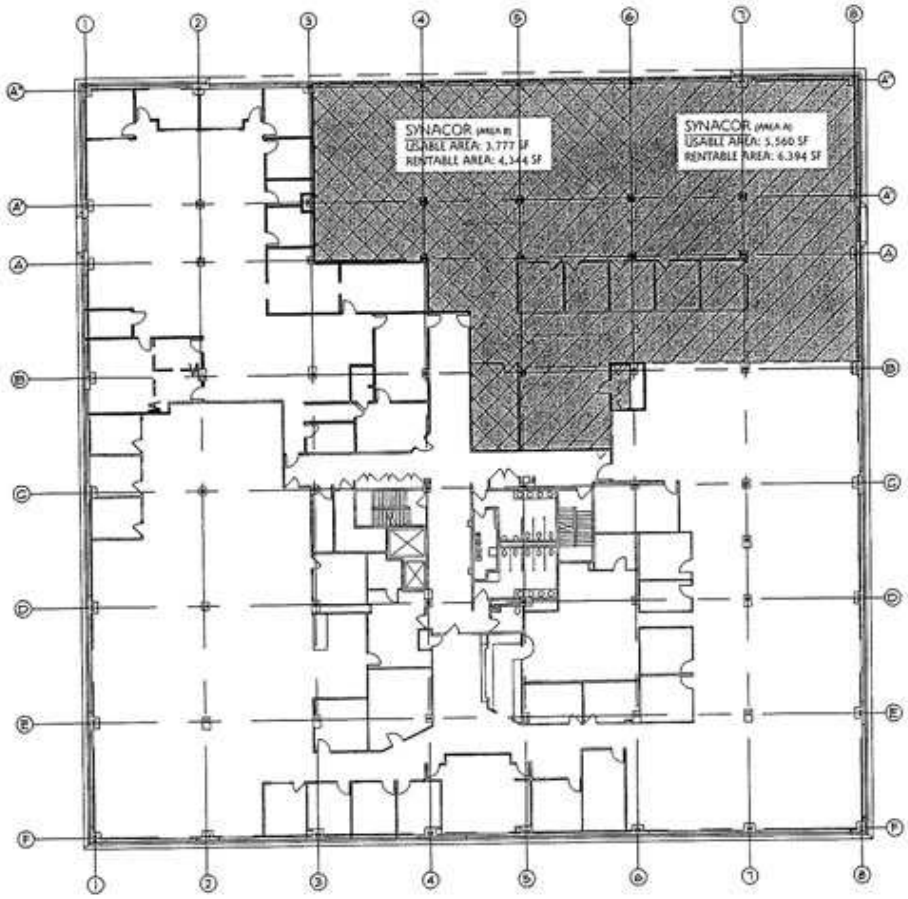
[SEAL]

6/15/2010

**EXHIBIT A**

Additional Premises

*[See Attached]*




## 3RD FLOOR PLAN

SCALE: 1/32"=1'-0"

1 SK

NORTH

= Additional Premises

Scheid Architectural
111 Elmwood Avenue
Buffalo, NY 14201
Voice: 716.884.0059
Fax: 716.884.6414
E-Mail: mail@scheidaia.com

| | |
|---|---|
| PROJECT: | 3rd FLOOR, 40 La RIVIERE DR |
| SUBJECT: | SYNACOR AREA CALCULATIONS |
| PROJECT NO: | 2006-092 |
| SCALE: | 1/32" = 1'-0" |
| DATE: | MARCH-13-2007 |
| |  |
| SHEET NO: | SK |

| | | |
|---|---|---|
| SK | P:\Drawings\2006\2006-092\Parsons-Synacor.dwg | Mar 13, 2007 - 4:57pm |

**EXHIBIT B**

Landlord Consent

The undersigned is the landlord under the Property Lease dated March 13, 1998, between Waterfront Associates, LLC, as successor by conversion to Waterfront Associates (" **Landlord** "), as landlord, and Ludlow Technical Products Corporation, formerly known as Graphic Controls Corporation (" **Sublandlord** "), as tenant, for that certain space containing approximately 102,816 rentable square feet located at Building No. 3, Waterfront Village Center, 40 La Riviere Drive, Buffalo, New York 14202 (the " **Building** "), which Property Lease was amended April 29, 1998, April 21, 1999, and July 30, 1999 (as amended, the " **Lease** ").

Under that certain Sublease dated as of March 3, 2006, as amended by that First Amendment to Sublease dated September 25, 2006, (collectively, the " **Sublease** ") by and between Sublandlord and Synacor, Inc., a Delaware corporation, as subtenant (" **Subtenant** "), having an address at 40 La Riviere Drive, Buffalo, New York, Sublandlord subleased the Premises (as defined in the Sublease) to Subtenant. Landlord hereby acknowledges and agrees that it has received and reviewed a copy of the Second Amendment to Sublease dated as of _____, 2007 (the " **Amendment** "). A copy of the Amendment is attached to this Landlord Consent. Under the Amendment, Subtenant is subleasing an additional 4,344 rentable square feet of space located on the third floor of the Building.

After review (and with the representation by Synacor, Inc. that the additional subleased premises will not be used as a call center), Landlord consents to the provisions of the attached Amendment effective as of the Effective Date (as defined in the Amendment) of the Amendment. Further, Landlord hereby waives any rights Landlord or its designee may have under Section 14.05 of the Lease to terminate the Lease with respect to the Additional Premises (as defined in the Amendment), to sublease the Additional Premises, or to otherwise recapture the Additional Premises.

The foregoing Consent shall not be deemed to constitute consent by the undersigned to any subletting other than that described in the Amendment.

Waterfront Associates, LLC

By: _____

Name: _____

Title: _____

**Exhibit 23.1**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the use in this Registration Statement on Form S-1 of our report dated March 29, 2011 (November 18, 2011 as to Note 6 and 10), relating to the financial statements of Synacor, Inc. appearing in the Prospectus, which is part of this Registration Statement.

We also consent to the reference to us under the heading “Experts” in such Prospectus.

/s/ Deloitte & Touche LLP

Williamsville, New York
November 18, 2011

**Exhibit 23.2**

November 9, 2011
Mr. Ron Frankel
Chief Executive Officer
Synacor, Inc.
40 La Riviere Drive, Suite 300
Buffalo, NY 14202

**Subject:** **WRITTEN CONSENT TO REFERENCE ANVIL ADVISORS IN SEC FORM S-1 FILING OF SYNACOR, INC .**

Dear Mr. Frankel:

We hereby consent to the inclusion in the registration statement on Form S-1 (Reg. No. _____) of Synacor, Inc. for the registration of shares of its common stock (the "Registration Statement") of references to our final reports relating to the estimation of the fair value of the common stock of Synacor, Inc. as of various dates and to references to our firm's name therein. In giving such consent, we do not hereby admit that we come within the category of persons whose consent is required under Section 7 or Section 11 of the Securities Act of 1933, as amended, or the rules and regulations adopted by the Securities and Exchange Commission thereunder, nor do we admit that we are experts with respect to any part of such Registration Statement within the meaning of the term "experts" as used in the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder.

Sincerely,

Anvil Advisors