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

FORM S-1
REGISTRATION STATEMENT
Under
The Securities Act of 1933

SPLUNK INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

7372
(Primary Standard Industrial Classification Code Number)

86-1106510
(I.R.S. Employer Identification Number)

250 Brannan Street
San Francisco, California 94107
(415) 848-8400

(address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Godfrey R. Sullivan
President and Chief Executive Officer
250 Brannan Street
San Francisco, California 94107
(415) 848-8400

(name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:
Jeffrey D. Saper
Wilson Sonsini Goodrich & Rosati,
P.C.
650 Page Mill Road
Palo Alto, California 94304
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Senior Vice President, General Counsel
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Martin A. Wellington
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Davis Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, California 94025
(650) 752-2000

(Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

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 check the following box: o

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please 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(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 the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o Accelerated filer o Non-accelerated filer ☒ (do not check if a smaller reporting company) Smaller reporting company o
<table>
<thead>
<tr>
<th>Title of Each Class of Securities to be Registered</th>
<th>Proposed Maximum Aggregate Offering Price(2)</th>
<th>Amount of Registration Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Stock, par value $0.001 per share</td>
<td>$125,000,000</td>
<td>$14,325.00</td>
</tr>
</tbody>
</table>

(1) Includes offering price of any additional shares that the underwriters have the option to purchase to cover over-allotments, if any.

(2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.

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 Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.
Splunk Inc. is offering shares of common stock and the selling stockholders are offering shares of common stock. We will not receive any proceeds from the sale of shares by the selling stockholders. This is our initial public offering and no public market currently exists for our shares. We anticipate that the initial public offering price will be between $ and $ per share.

We intend to apply to list our common stock on the under the symbol "SPLK."

Investing in our common stock involves risks. See "Risk Factors" beginning on page 11.

PRICE $ A SHARE

<table>
<thead>
<tr>
<th>Per Share</th>
<th>Price to Public</th>
<th>Underwriting Discounts and Commissions</th>
<th>Proceeds to Splunk</th>
<th>Proceeds to Selling Stockholders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

We and the selling stockholders have granted the underwriters the right to purchase up to an additional shares of common stock to cover over-allotments at the initial public offering price less the underwriting discount, with up to an additional shares sold by us and up to an additional shares sold by the selling stockholders.

The Securities and Exchange Commission and state securities regulators have not approved or disapproved these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares of common stock to purchasers on , 2012.

MORGAN STANLEY CREDIT SUISSE J.P. MORGAN BoA MERRILL LYNCH

UBS INVESTMENT BANK COWEN AND COMPANY

, 2012
Our mission is to make machine data accessible, usable and valuable to everyone.
Splunk is the Engine For Machine Data
Splunk harnesses the value of machine data, enabling customers to gain real-time operational intelligence.
You should rely only on the information contained in this prospectus or contained in any free writing prospectus prepared by or on behalf of us. Neither we, the selling stockholders nor the underwriters have authorized anyone to provide you with information different from, or in addition to, that contained in this prospectus or any related free writing prospectus. We, the selling stockholders and the underwriters are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is current only as of its date, regardless of its delivery. Our business, financial condition, results of operations and prospects may have changed since that date.

Through and including , 2012 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer’s obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

For investors outside the United States: neither we, the selling stockholders nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than the United States. You are required to inform yourselves about and to observe any restrictions relating to this offering and the distribution of this prospectus.

Splunk, the Splunk logo and other trademarks or service marks of Splunk appearing in this prospectus are the property of Splunk. Trade names, trademarks and service marks of other companies appearing in this prospectus are the property of their respective holders.
Table of Contents

PROSPECTUS SUMMARY

This summary highlights selected information appearing elsewhere in this prospectus and is qualified in its entirety by the more detailed information and financial statements included 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 this prospectus in its entirety before investing in our common stock, including the sections entitled “Risk Factors” and “Management Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes included elsewhere in this prospectus. Our fiscal year ends on January 31. As such, references to fiscal 2009, 2010 and 2011 herein refer to the fiscal years ended January 31, 2009, 2010 and 2011, respectively.

SPLUNK INC.

Splunk provides an innovative software platform that enables organizations to gain real-time operational intelligence by harnessing the value of their data. Our software collects and indexes data at massive scale, regardless of format or source, and enables users to quickly and easily search, correlate, analyze, monitor and report on this data, all in real time. Our software addresses the risks, challenges and opportunities organizations face with increasingly large and diverse data sets commonly referred to as big data, and is specifically tailored for machine-generated data. Machine data is produced by nearly every software application and electronic device in an organization and contains a definitive, time-stamped record of various activities, such as transactions, customer and user activities, and security threats. Our software is designed to help users in various roles, including IT and business professionals, quickly analyze machine data and realize real-time visibility into an organization's operations. This operational intelligence enables organizations to improve service levels, reduce costs, mitigate security risk, demonstrate and maintain compliance and gain new insights that enable them to drive better business decisions.

The volume and diversity of digital information within and available to today's organizations, including enterprises, universities and government agencies, has grown significantly over the last several years due to the proliferation of network-enabled devices, advances in virtual and cloud-computing, and evolving business and consumer uses of technology. IDC estimates that the volume of digital information created and replicated worldwide will grow approximately 45% annually from 1 trillion gigabytes in 2011 to 7.9 trillion gigabytes in 2015. Machine data is one of the fastest growing components of this digital information and comes in an increasing number of formats. The applications, servers, network devices, mobile phones, desktop computers, laptops and various other systems and devices that comprise an organization's IT infrastructure are continuously generating information in a variety of disparate formats relating to application and system performance, user activity, configuration changes, transactions, security alerts, error messages and other time-series information. Outside of an organization's traditional IT infrastructure, nearly every electronic device and software application, such as smart electrical meters, mobile applications, GPS equipment and RFID devices, continually generate machine data.

We believe our software is disrupting established markets and enabling new ones by delivering operational intelligence to organizations of all sizes. Our software enables organizations to harness the value of machine data in their enterprise across a variety of use cases. Our customers are deploying our software to enable more effective application management, IT operations management, security and compliance, and to realize operational intelligence and insight across a broad base of the organizations' activities.

The core of our software is a proprietary machine data engine, comprised of collection, indexing, search and data management capabilities. Our software can collect and index terabytes of information daily, irrespective of format or source. Our machine data engine uses an innovative data architecture that enables dynamic schema creation on the fly, allowing users to run queries on data without having to understand the structure of the data prior to collection and indexing. Our machine data fabric for data
collection and indexing delivers speed and scalability when processing massive amounts of machine data. Our software leverages improvements in the cost and performance of commodity computing and can be deployed in a wide variety of computing environments, from a single laptop to large globally distributed data centers.

To extend our software's functionality, customers can deploy additional solutions as well as lightweight applications, or apps, on top of our core data engine. Our apps, which are available for download via our Splunkbase website, provide incremental functionality in the form of pre-built data inputs, searches, reports, alerts and dashboards, and are generally available for free. We, along with a number of third-party developers and customers, have developed over 300 apps for specific use cases in our core and adjacent markets. We also build and deliver a select number of packaged solutions that provide more robust functionality targeting a specific market or use case. We currently provide Splunk for Enterprise Security and Splunk for PCI Compliance and have made available, through a controlled preview Splunk for VMware. These packaged solutions and apps allow our customers to further extend the value of their machine data using our software. We provide AP and SDKs in various programming languages that enable developers to leverage our machine data engine and its broad capabilities in their own software. In addition to our packaged solutions and apps, we are investing in the development of Splunk Storm, which is a cloud-based service currently in beta that provides a subset of software's capabilities, but is tailored for machine data in the cloud. Our online user communities, Splunkbase and Splunk Answers, provide our customers with an environment to share these apps, collaborate on the use of our software and provide community-based support. We believe this user-driven ecosystem results in great use of our software and drives cost-effective marketing, increased brand awareness and viral adoption of our product.

Our software is designed to accelerate adoption and return-on-investment for our customers. It does not require customization, long deployment cycles or extensive professional services commonly associated with traditional enterprise software applications. Users can simply download and install the software, typically in a matter of hours, to connect to their relevant machine data sources and begin realizing operational intelligence. We also offer customers with complex IT infrastructure the ability to leverage the expertise of our professional services organization to deploy our software.

As of October 31, 2011, we had over 3,300 customers, including a majority of the Fortune 100. Some of our customers include Bank of America, Comcast, salesforce.com and Zynga. Our customers pay license fees based on their estimated indexing capacity needs. For fiscal 2009, 2010 and 2011, our revenues were $18.2 million, $35.0 million and $66.2 million, respectively, representing year-over-year growth of 93% for fiscal 2010 and 89% for fiscal 2011, and our net loss was $14.8 million, $7.5 million and $3.8 million, respectively. For the first nine months of fiscal 2011 and fiscal 2012, our revenues were $43.5 million and $77.8 million, respectively, representing year-over-year growth of 79%, and our net loss was $2.0 million and $9.7 million, respectively.

Our Market Opportunity

Today's IT infrastructure has become increasingly complex and diverse, with a wide range of on-premise and cloud-based software applications, network infrastructure, physical and virtual servers and endpoint devices, such as desktop computers and an array of mobile devices. The rapidly growing volume of data generated by this infrastructure, including application log files, call detail records, website clickstream data and system configuration files, provides a valuable and definitive record of the activity and behavior of users, customers, transactions, applications, servers and networks. The table below illustrates
the type of machine data created and the business and IT insights that can be derived when a single web visitor makes a purchase in a typical ecommerce environm

While machine data has always been generated by computing environments, many organizations have failed to recognize the value of this data or hav encountered challenges extracting value from it. Traditional IT products, such as relational databases, enterprise applications and IT management and securi software, are typically built to work with pre-defined data structures, or schema. As a result, because machine data consists of both structured and unstructured dat these products are not ideally suited to handle a large portion of an organization's data. Additionally, these products are generally narrowly scoped to only work wi specific data formats and systems and are unable to correlate machine data from multiple sources, formats and systems for both historical and real-time analy without significant configuration. Managing and cross-correlating data and outputs across multiple products can be especially challenging, leading to significant I complexity and cost. Moreover, these solutions and systems are not architected to take advantage of recent improvements in the price and performance of computin and storage systems, and in many cases require significant investment in computing hardware. Because of these limitations, traditional IT products are unable to full leverage the information and value in machine data.

Organizations need to capture the value locked in their machine data to enable more effective application management, IT operations management, security an compliance, and to derive intelligence and insight across the organization. Our software enables users to realize real-time operational intelligence across their busines

We believe software that provides operational intelligence addresses several established markets that in aggregate have been estimated by Gartner to b approximately $32 billion in 2012. Specifically, Gartner expects the market that our products address for IT operations, which includes application management, to l approximately $18.6 billion in 2012; the market that our products address for business intelligence, including web analytics software, to be approximately $12.5 billin in 2012; and the market that our products address for security information and event management software to be approximately $1.3 billion in 2012. Beyond thea areas, we believe software that provides operational intelligence can address a wide variety of additional markets in areas such as online marketing optimization video-on-demand analytics, RFID tracking and scientific applications using time-series data.

Our Solution

Our mission is to make machine data accessible, usable and valuable to everyone in an organization. Our software helps users derive new insights from machin data that can be used to, among others,
improve service levels, reduce operational costs, mitigate security risks, demonstrate and maintain compliance, and gain new insights that enable them to drive better
business decisions. Key benefits of our solution include:

**Real-time operational intelligence and visibility.** Our software collects and indexes data at massive scale, regardless of the format or source, and enables users to quickly and easily search, correlate, analyze, monitor and report on this data, all in real time. Our software enables users to identify problems, get answers and gain new business insights and intelligence from machine data significantly faster than traditional application management, IT operations management, security and compliance, and business intelligence tools. The result is a new level of operational visibility enabling more informed business decisions that can provide a significant competitive advantage for our customers.

**Compelling return on investment and lower total cost of ownership.** Our software enables customers to improve their customer service levels and system availability, reduce operational costs, improve security and compliance, and increase business insights. Although our data engine can index terabytes of data daily, it does not require the high-end hardware, software, extensive professional services or other capital intensive IT investments commonly associated with traditional enterprise software.

**Fast time to value.** Unlike traditional relational databases or business and IT applications, our software does not require custom implementations or long deployment cycles. While some enterprises leverage our professional services team to deploy our software in large, highly complex IT environments, most use simply download and install the software, typically in a matter of hours, to connect to the relevant machine data sources and begin realizing operational intelligence.

**Ease of use.** While we utilize complex data structures and algorithms in our machine data engine, we abstract that complexity to provide a compelling, intuitive interface similar to that of an internet search engine. Our software can be accessed through a standard web browser and requires limited training, saving on time and cost, as well as making it accessible to the broader set of non-technical users.

**Highly scalable and flexible data engine.** Our machine data engine, machine data fabric and broad technology stack are built to be highly flexible and scalable allowing our customers to index terabytes of data daily and search petabytes of historical data. Our software can be deployed in a wide variety of environments, from single user on a laptop to globally distributed data centers.

**Open, extensible platform.** Our machine data engine is a powerful, extensible platform on which custom reports, dashboards and applications can be run to analyze machine data for specific use cases. Splunk, as well as a number of customers and third-party developers, have developed numerous applications for specific use cases across application management, IT operations management, security and compliance, and business intelligence.

**Our Growth Strategy**

Our goal is to make our software the platform for delivering operational intelligence and real-time business insights from machine data. The key elements of our strategy are to:

- extend our technology leadership through continued investment in research and development designed to enhance our software, including our data engine and associated solutions;
- continue to expand our direct and indirect sales organizations, including our channel relationships, to acquire new customers;
- further penetrate our existing customer base;
- develop additional solutions in adjacent markets as well as products that enable organizations to use our software in different ways, such as Splunk Storm, our cloud-based service;
• grow our user communities and partner ecosystem to increase awareness of our brand, target new use cases, drive operational leverage and deliver more targeted, higher value solutions; and

• become the developer platform for machine data.

Risks Affecting Us

Our business is subject to numerous risks and uncertainties, including those highlighted in the section entitled "Risk Factors" immediately following the prospectus summary. These risks include, but are not limited to, the following:

• the market for our software is new and unproven and may not grow;

• we have a short operating history, which makes it difficult to evaluate our future prospects and may increase the risk that we will not be successful;

• our future operating results may fluctuate significantly, and our recent operating results may not be a good indication of our future performance;

• if we fail to effectively manage our growth, our business and operating results could be adversely affected;

• we have a history of losses, and we may not be profitable in the future;

• we derive substantially all of our revenues and cash flows from one software product;

• we face intense competition in our markets;

• our business and growth depend substantially on customers expanding their use of our software and renewing their maintenance agreements with us;

• interruptions or performance problems associated with our technology and infrastructure may adversely affect our business and operating results; and

• assertions by third parties that we violate their intellectual property rights or our failure to protect our intellectual property rights could adversely affect our business.

Corporate Information

Our principal executive offices are located at 250 Brannan Street, San Francisco, California 94107, and our telephone number is (415) 848-8400. Our website www.splunk.com. Information contained on, or that can be accessed through, our website is not incorporated by reference into this prospectus, and you should not consider information on our website to be part of this prospectus. We were incorporated in California in October 2003 and were reincorporated in Delaware in May 2006.
### THE OFFERING

<table>
<thead>
<tr>
<th>Description</th>
<th>Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common stock offered by us</td>
<td>shares</td>
</tr>
<tr>
<td>Common stock offered by the selling stockholders</td>
<td>shares</td>
</tr>
<tr>
<td>Total common stock offered</td>
<td>shares</td>
</tr>
<tr>
<td>Over-allotment option</td>
<td>shares (with shares being offered by us and shares being offered by the selling stockholders)</td>
</tr>
<tr>
<td>Common stock to be outstanding after this offering</td>
<td>shares (shares, if the over-allotment option is exercised in full)</td>
</tr>
<tr>
<td><strong>Use of proceeds</strong></td>
<td>We intend to use the net proceeds we receive from this offering for capital expenditures and for general and administrative matters. We also may use a portion of the net proceeds to acquire complementary businesses, products, services or technologies. However, we do not have agreements or commitments for any specific acquisitions at this time. We will not receive any of the proceeds from the sale of shares to be offered by the selling stockholders. See &quot;Use of Proceeds.&quot;</td>
</tr>
<tr>
<td>Proposed symbol</td>
<td>&quot;SPLK&quot;</td>
</tr>
</tbody>
</table>

The number of shares of our common stock to be outstanding after this offering is based on 79,350,595 shares of our common stock outstanding as of October 3, 2011, which includes the exercise of a warrant to purchase 200,000 shares of our Series A preferred stock, which occurred subsequent to October 31, 2011, and excludes:

- 19,430,429 shares of common stock issuable upon the exercise of options outstanding as of October 31, 2011, with a weighted average exercise price of $1.39 per share;
- 3,328,000 shares of common stock issuable upon the exercise of options granted after October 31, 2011, with an exercise price of $4.82 per share;
- 469,557 shares of common stock issuable upon the exercise of outstanding warrants to purchase shares of Series C preferred stock with an exercise price of $1.56 per share; and
- unallocated shares of common stock reserved for future issuance under our stock-based compensation plans, consisting of 2,462,856 shares of common stock reserved for future issuance under our 2003 Equity Incentive Plan, which shares will be added to the shares to be reserved under our 2012 Equity Stock Incentive Plan, and 3,557,856 shares of common stock reserved for future issuance under our 2012 Employee Stock Purchase Plan, which will become effective in connection with this offering, and shares that become available under our 2012 Equity Stock Incentive Plan or 2012 Employee Stock Purchase Plan, pursuant to provisions thereof that automatically increase the share reserves under the plans each year, as more fully described in "Management—Employee Benefit Plans."
Unless otherwise noted, the information in this prospectus reflects and assumes the following:

- the automatic conversion of all outstanding shares of our convertible preferred stock as of October 31, 2011 into an aggregate of 56,930,194 shares of common stock immediately prior to the completion of this offering (including the exercise of a warrant to purchase 200,000 shares of our Series preferred stock, which occurred subsequent to October 31, 2011);
- the filing of our amended and restated certificate of incorporation in connection with the completion of this offering;
- no exercise of outstanding options or warrants; and
- no exercise of the underwriters' over-allotment option.
## SUMMARY CONSOLIDATED FINANCIAL DATA

You should read the following summary consolidated financial data in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes, all included elsewhere in this prospectus. We derived the consolidated statements of operations data for fiscal 2009, 2010 and 2011 from our audited consolidated financial statements included elsewhere in this prospectus. The summary statement of operations data for the nine-months ended October 31, 2010 and 2011 and the balance sheet data as of October 31, 2011 have been derived from our unaudited interim consolidated financial statements included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results that may be expected in the future, and the results for the nine months ended October 31, 2011 are not necessarily indicative of operating results to be expected for the full fiscal year ending January 31, 2012 or any other period.

<table>
<thead>
<tr>
<th></th>
<th>Fiscal Year Ended January 31</th>
<th>Nine Months Ended October 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009</td>
<td>2010</td>
</tr>
<tr>
<td><strong>Consolidated Statements of Operations Data:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Revenues</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>License</td>
<td>$14,948</td>
<td>$27,183</td>
</tr>
<tr>
<td>Maintenance and services</td>
<td>3,208</td>
<td>7,817</td>
</tr>
<tr>
<td><strong>Total revenues</strong></td>
<td>18,156</td>
<td>35,000</td>
</tr>
<tr>
<td><strong>Cost of revenues</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>License</td>
<td>86</td>
<td>102</td>
</tr>
<tr>
<td>Maintenance and services</td>
<td>2,711</td>
<td>3,188</td>
</tr>
<tr>
<td><strong>Total cost of revenues</strong></td>
<td>2,797</td>
<td>3,290</td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>15,359</td>
<td>31,710</td>
</tr>
<tr>
<td><strong>Operating expenses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>8,684</td>
<td>8,479</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>17,281</td>
<td>24,072</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>30,427</td>
<td>39,013</td>
</tr>
<tr>
<td><strong>Loss before income taxes</strong></td>
<td>(15,068)</td>
<td>(7,303)</td>
</tr>
<tr>
<td><strong>Other income (expense), net</strong></td>
<td>332</td>
<td>(69)</td>
</tr>
<tr>
<td><strong>Provision for income taxes</strong></td>
<td>36</td>
<td>79</td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td>$14,772</td>
<td>$7,451</td>
</tr>
<tr>
<td><strong>Net loss per share:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic and diluted</td>
<td>$ (1.14)</td>
<td>$ (0.52)</td>
</tr>
<tr>
<td><strong>Weighted-average shares outstanding:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic and diluted</td>
<td>12,911</td>
<td>14,392</td>
</tr>
<tr>
<td><strong>Pro forma net loss per share (unaudited)</strong>:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic and diluted</td>
<td>$ (0.05)</td>
<td>$ (0.12)</td>
</tr>
<tr>
<td><strong>Pro forma weighted-average shares outstanding used in calculating net loss per share (unaudited)</strong>:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic and diluted</td>
<td>74,668</td>
<td>76,999</td>
</tr>
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</table>
### Other Financial Data:

<table>
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<tr>
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<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td>(in thousands)</td>
<td>(in thousands)</td>
<td>(in thousands)</td>
</tr>
<tr>
<td>Non-GAAP operating loss</td>
<td>$ (14,301)</td>
<td>$ (6,003)</td>
<td>$ (1,709)</td>
<td>$ (823)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$ (5,814)</td>
</tr>
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(1) Includes stock-based compensation expense as follows:

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<tr>
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<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td>(in thousands)</td>
<td>(in thousands)</td>
<td>(in thousands)</td>
</tr>
<tr>
<td>Cost of revenues</td>
<td>$ 11</td>
<td>$ 31</td>
<td>$ 59</td>
<td>$ 42</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$ 83</td>
</tr>
<tr>
<td>Research and development</td>
<td>96</td>
<td>215</td>
<td>347</td>
<td>249</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>531</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>176</td>
<td>382</td>
<td>495</td>
<td>352</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>829</td>
</tr>
<tr>
<td>General and administrative</td>
<td>484</td>
<td>672</td>
<td>684</td>
<td>512</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>824</td>
</tr>
<tr>
<td>Total stock-based compensation</td>
<td>$ 767</td>
<td>$ 1,300</td>
<td>$ 1,585</td>
<td>$ 1,155</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$ 2,267</td>
</tr>
</tbody>
</table>

(2) See Note 15 to our audited consolidated financial statements appearing elsewhere in this prospectus for an explanation of our pro forma basis and diluted net loss per share calculations.

<table>
<thead>
<tr>
<th></th>
<th>Actual</th>
<th>Pro Forma(1)</th>
<th>Pro Forma As Adjusted(2)(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td>(in thousands)</td>
<td>(in thousands)</td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 22,997</td>
<td>$ 23,047</td>
<td>$ —</td>
</tr>
<tr>
<td>Working capital</td>
<td>(579)</td>
<td>(520)</td>
<td>—</td>
</tr>
<tr>
<td>Total assets</td>
<td>56,451</td>
<td>56,501</td>
<td></td>
</tr>
<tr>
<td>Deferred revenue, current and long term</td>
<td>36,570</td>
<td>36,570</td>
<td>—</td>
</tr>
<tr>
<td>Debt and capital lease obligations, current and long term</td>
<td>2,556</td>
<td>2,556</td>
<td>—</td>
</tr>
<tr>
<td>Preferred stock warrants</td>
<td>2,528</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total stockholders’ equity (deficit)</td>
<td>(42,260)</td>
<td>267</td>
<td>—</td>
</tr>
</tbody>
</table>

(1) The pro forma balance sheet data in the table above reflects the automatic conversion of all outstanding shares of convertible preferred stock into common stock immediately prior to the completion of this offering, the conversion of the Series C preferred stock warrants into warrants to purchase common stock in connection with this offering, and the exercise of the warrant to purchase Series A preferred stock, which occurred subsequent to October 31, 2011.

(2) The pro forma as adjusted balance sheet data in the table above also reflects (i) the pro forma items described immediately above plus (ii) the sale of shares of our common stock in this offering at an assumed initial public offering price of $ per share, the midpoint of the range set forth on the front cover of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

(3) A $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) cash and cash equivalents, working capital, total assets and total stockholders’ equity by $ million, assuming that the number of shares offered by us, as set forth on the front cover of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma as adjusted information
discussed above is only illustrative and will be adjusted based on the actual public offering price and other terms of this offering determined pricing.

Non-GAAP Operating Loss

We believe that the use of non-GAAP operating loss is helpful for an investor to determine whether to invest in our common stock. In computing non-GAAP operating loss, we exclude stock-based compensation expense which represents non-cash charges for the fair value of stock options and other non-cash awards granted to employees. Because of varying available valuation methodologies, subjective assumptions and the variety of equity instruments that can impact a company’s non-cash operating expenses, we believe that providing a non-GAAP financial measure that excludes stock-based compensation expense allows for meaningful comparisons between our core business operating results and those of other companies, as well as providing us with an important tool for financial and operational decision making and for evaluating our own core business operating results over different periods of time.

Our non-GAAP operating loss may not provide information that is directly comparable to that provided by other companies in our industry, as other companies in our industry may calculate non-GAAP financial results differently, particularly related to non-recurring, unusual items. Our non-GAAP operating loss is not a measurement of financial performance under GAAP and should not be considered as an alternative to operating income or as an indication of operating performance or any other measure of performance derived in accordance with GAAP. We do not consider non-GAAP operating loss to be a substitute for, or superior to, the information provided by GAAP financial results.

The following table reflects the reconciliation from GAAP operating loss to non-GAAP operating loss.

<table>
<thead>
<tr>
<th></th>
<th>Fiscal Year Ended January 31</th>
<th>Nine Months Ended October 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009</td>
<td>2010</td>
</tr>
<tr>
<td>GAAP operating loss</td>
<td>$(15,068)</td>
<td>$(7,303)</td>
</tr>
<tr>
<td>Non-GAAP adjustments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee stock-based compensation expense</td>
<td>767</td>
<td>1,300</td>
</tr>
<tr>
<td>Non-GAAP operating loss</td>
<td>$(14,301)</td>
<td>$(6,003)</td>
</tr>
</tbody>
</table>
RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the following risks and all other information contained in this prospectus, including our consolidated financial statements and the related notes, before investing in our common stock. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, also may become important factors that affect us. If any of the following risks materialize, our business, financial condition and results of operations could be materially adversely affected. In that case, the trading price of our common stock could decline, and you may lose some or all of your investment.

Risks Related to Our Business and Industry

The market for our software is new and unproven and may not grow.

We believe our future success will depend in large part on the growth, if any, in the market for software that provides operational intelligence, particularly software designed to collect and index machine data. We market our software as a targeted solution for specific use cases and as an enterprise solution for machine data. In order to grow our business, we intend to expand the functionality of our product to increase its acceptance and use by the broader market. It is difficult to predict customer adoption and renewal rates, customer demand for our software, the size and growth rate of this market, the entry of competitive products or the success of existing competitive products. Any expansion in our market depends on a number of factors, including the cost, performance and perceived value associated with such software. If the market for our software does not achieve widespread adoption or there is a reduction in demand for software in our market caused by a lack of customer acceptance, technological challenges, lack of accessible machine data, competing technologies and products, decreases in corporate spending, weakening economic conditions, or otherwise, it could result in reduced customer orders, early terminations, reduced renewal rates or decreased revenues, any of which would adversely affect our business operations and financial results. You should consider our business and prospects in light of the risks and difficulties we encounter in this new and unproven market.

We have a short operating history, which makes it difficult to evaluate our future prospects and may increase the risk that we will not be successful.

We have a short operating history, which limits our ability to forecast our future operating results and subjects us to a number of uncertainties, including our ability to plan for and model future growth. We have encountered and will continue to encounter risks and uncertainties frequently experienced by growing companies in developing industries. If our assumptions regarding these uncertainties, which we use to plan our business, are incorrect or change in reaction to changes in our markets, or if we do not address these risks successfully, our operating and financial results could differ materially from our expectations and our business could suffer. Moreover, although we have experienced rapid growth historically, we may not continue to grow as rapidly in the future. Any success that we may experience in the future will depend in large part on our ability to, among other things:

• maintain and expand our customer base and the ways in which our customers use our software;
• increase revenues from existing customers through increased or broader use of our software within their organizations;
• improve the performance and capabilities of our software through research and development;
• continue to develop our cloud-based service, Splunk Storm;
• successfully expand our business domestically and internationally;
• successfully compete with other companies, open source initiatives and custom development efforts that are currently in, or may in the future enter, the markets for our software;
• continue to invest in our application development platform to foster an ecosystem of developers and users to expand the use cases of our software;
• generate leads and convert users of the trial version of our software to paying customers;
• prevent users from circumventing the terms of their software licenses;
• maintain and enhance our website infrastructure to minimize interruptions or slower than expected download times when accessing our software from our website;
• process, store and use our customers' data in compliance with applicable governmental regulations and other legal obligations related to data privacy; and
• hire, integrate and retain world class talent.

If we fail to address the risks and difficulties we face including those described elsewhere in this "Risk Factors" section, our business will be adversely affected and our operating results will suffer.

**Our future operating results may fluctuate significantly, and our recent operating results may not be a good indication of our future performance.**

Our revenues and operating results could vary significantly from period to period as a result of various factors, many of which are outside of our control. For example, we typically enter into perpetual license agreements, whereby we generally recognize the license fee portion of the arrangement upfront, assuming all revenue recognition criteria are satisfied. Our customers also have the choice of entering into term licenses for our software, whereby the license fee is recognized ratably over the license term. At the beginning of each quarter, we do not know the ratio between perpetual licenses and term licenses that we will enter into during the quarter. As a result, our operating results could be significantly impacted by unexpected shifts in the ratio between perpetual licenses and term licenses. In addition, the sizes of our licenses vary greatly, and a single, large perpetual license in a given period could distort our operating results. Comparing our revenues and operating results on a period-to-period basis may not be meaningful, and you should not rely on our past results as an indication of our future performance.

We may not be able to accurately predict our future revenues or results of operations. In particular, since the beginning of fiscal 2011, more than 70% of the revenues we recognize each quarter has been attributable to sales made in that same quarter with the balance of the revenues being attributable to sales made in prior quarters in which the related revenues were not recognized upfront. As a result, our ability to forecast revenues on a quarterly or longer term basis is extremely limited. We base our current and future expense levels on our operating plans and sales forecasts, and our operating costs are expected to be relatively fixed in the short-term. As a result, we may not be able to reduce our costs sufficiently to compensate for an unexpected shortfall in revenues, and even a small shortfall in revenues could disproportionately and adversely affect our financial results for that quarter.

In addition to other risk factors described elsewhere in this "Risk Factors" section, factors that may cause our operating results to fluctuate from quarter to quarter include:

• the timing of our sales during the quarter, particularly because a large portion of our sales occur toward the end of the quarter, and the loss or delay of a few large contracts may have a significant adverse impact on our operating results;
• the mix of revenues attributable to larger transactions as opposed to smaller transactions and the impact that a change in mix may have on the overall average selling price of our software;
• the mix of revenues attributable to perpetual and term licenses, maintenance and professional services and training, which may impact our gross margins and operating income;
• the renewal and usage rates of our customers;
changes in the competitive dynamics of our market;

• changes in customers’ budgets and in the timing of their purchasing decisions;

• customers delaying purchasing decisions in anticipation of new software or software enhancements by us or our competitors;

• customer acceptance of and willingness to pay for new versions of our software or new solutions for specific product and end markets;

• our ability to control costs, including our operating expenses;

• the timing of satisfying revenue recognition criteria;

• our ability to qualify and compete for government contracts;

• the collectibility of receivables from customers and resellers, which may be hindered or delayed if these customers or resellers experience financial distress; and

• general economic conditions, both domestically and internationally, as well as economic conditions specifically affecting industries in which our customers participate.

Many of these factors are outside our control, and the variability and unpredictability of such factors could result in our failing to meet or exceed our financial expectations for a given period. We believe that quarter-to-quarter comparisons of our revenues, operating results and cash flows may not necessarily be indicative of our future performance.

If we fail to effectively manage our growth, our business and operating results could be adversely affected.

Although our business has experienced significant growth, we cannot provide any assurance that our business will continue to grow at the same rate or at all. We have experienced and may continue to experience rapid growth in our headcount and operations, which has placed and will continue to place significant demands on our management and our operational and financial infrastructure. As of October 31, 2011, nearly half of our employees had been with us for less than one year. As we continue to grow, we must effectively integrate, develop and motivate a large number of new employees, while maintaining the effectiveness of our business execution and the beneficial aspects of our corporate culture. In particular, we intend to continue to make directed and substantial investments to expand our research and development, sales and marketing, and general and administrative organizations, as well as our international operations.

To effectively manage growth, we must continue to improve our operational, financial and management controls, and our reporting systems and procedures by, among other things:

• improving our key business applications, processes and IT infrastructure to support our business needs;

• enhancing information and communication systems to ensure that our employees and offices around the world are well-coordinated and can effectively communicate with each other and our growing base of customers;

• enhancing our internal controls to ensure timely and accurate reporting of all of our operations and financial results; and

• appropriately documenting our IT systems and our business processes.

These systems enhancements and improvements will require significant capital expenditures and allocation of valuable management and employee resources. If we fail to implement these improvements effectively, our ability to manage our expected growth, ensure uninterrupted operation of key business systems and comply with the rules and regulations that are applicable to public reporting companies will be
impaired. Additionally, if we do not effectively manage the growth of our business and operations, the quality of our software could suffer, which could negatively affect our brand, operating results and overall business.

We have a history of losses, and we may not be profitable in the future.

We have incurred net losses in each year since our inception, including net losses of $14.8 million in fiscal 2009, $7.5 million in fiscal 2010, $3.8 million in fiscal 2011 and $9.7 million in the nine months ended October 31, 2011. As a result, we had an accumulated deficit of $52.7 million at October 31, 2011. Because the market for our software is rapidly evolving and has not yet reached widespread adoption, it is difficult for us to predict our operating results. We expect our operating expenses to increase over the next several years as we hire additional personnel, particularly in sales and marketing, expand and improve the effectiveness of our distribution channels, and continue to develop features and applications, or apps, for our software. In addition, as we grow and as we become a newly public company, we will incur additional significant legal, accounting and other expenses that we did not incur as a private company. If our revenues do not increase to offset these increases in our operating expenses, we may not be profitable in future periods. Our historical revenue growth has been inconsistent and should not be considered indicative of our future performance. Further, in future periods, our revenue growth could slow or our revenues could decline for a number of reasons, including slowing demand for our software, increasing competition, a decrease in the growth of our overall market, or our failure, for any reason, to continue to capitalize on growth opportunities. Any failure by us to sustain or increase profitability on a consistent basis, could cause the value of our common stock to materially decline.

Because we derive substantially all of our revenues and cash flows from one software product, failure of this product to satisfy customer demands or to achieve increased market acceptance would adversely affect our business, results of operations, financial condition and growth prospects.

We derive and expect to continue to derive substantially all of our revenues and cash flows from Splunk Enterprise. As such, the market acceptance of our software is critical to our continued success. Demand for our software is affected by a number of factors beyond our control, including continued market acceptance of our software by referenceable accounts for existing and new use cases, the timing of development and release of new products by our competitors, technological change, and growth or contraction in our market. In addition, users of software that provides operational intelligence may seek a cloud-based service and, to date, we have not offered a cloud-based service on a commercial basis. We expect the proliferation of machine data to lead to an increase in the data analysis demands of our customers, and our software may not be able to scale and perform to meet those demands. If we are unable to continue to meet customer demands or to achieve more widespread market acceptance of our software, our business, results of operations, financial condition and growth prospects will be materially and adversely affected.

We face intense competition in our markets, and we may be unable to compete effectively for sales opportunities.

Although our product targets the new and emerging market for software that provides operational intelligence, we compete against a variety of large software vendors and smaller specialized companies, open source initiatives and custom development efforts, which provide solutions in the specific markets we address. Our principal competitors include:

- IT departments of potential customers which have undertaken custom software development efforts to analyze and manage their machine data;
- security and systems management vendors, including BMC Software, CA, Compuware, HP, IBM, Intel, Microsoft and Quest Software;
- web analytics vendors, including Adobe Systems, Google, IBM and Webtrends;
• business intelligence vendors, including EMC, IBM, Oracle and SAP;
• companies targeting the big data market by commercializing open source software, such as Hadoop; and
• small specialized vendors, which provide complementary solutions in enterprise data analytics, data warehousing and big data technologies that may compete with our software.

The principal competitive factors in our markets include product features, performance and support, product scalability and flexibility, ease of deployment and use, total cost of ownership and time to value. Some of our actual and potential competitors have advantages over us, such as longer operating histories, significantly greater financial, technical, marketing or other resources, stronger brand and business user recognition, larger intellectual property portfolios and broader global distribution and presence. Further, competitors may be able to offer products or functionality similar to ours at a more attractive price than we can by integrating or bundling their software products with their other product offerings. In addition, our industry is evolving rapidly and is becoming increasingly competitive. Larger and more established companies may focus on operational intelligence and could directly compete with us. For example, companies may commercialize open source software, such as Hadoop, in a manner that competes with our product or causes potential customers to believe that such product and our software perform the same function. If companies move a greater proportion of their data and computational needs to the cloud, new competitors may emerge which offer services comparable to ours or that are better suited for cloud-based data, and the demand for our product may decrease. Smaller companies could also launch new products and services that we do not offer and that could gain market acceptance quickly.

In recent years, there have been significant acquisitions and consolidation by and among our actual and potential competitors. We anticipate this trend of consolidation will continue, which will present heightened competitive challenges to our business. In particular, consolidation in our industry increases the likelihood of our competitors offering bundled or integrated products, and we believe that it may increase the competitive pressures we face with respect to our software. If we are unable to differentiate our product from the integrated or bundled products of our competitors, such as by offering enhanced functionality, performance or value, we may see decreased demand for those solutions, which would adversely affect our business, results of operations, financial condition and cash flows. Further, it is possible that continued industry consolidation may impact customers’ perceptions of the viability of smaller or even medium-sized software firms and consequently their willingness to use software solutions from such firms. Similarly, if customers seek to concentrate their software purchases in the product portfolios of a few large providers, we may be at a competitive disadvantage regardless of the performance and features of our software. We believe that in order to remain competitive at the large enterprise level, we will need to develop and expand relationships with resellers and large system integrators that provide a broad range of products and services. If we are unable to compete effectively, our business, results of operations, financial condition and cash flows could be materially and adversely affected.

If customers do not expand their use of our software beyond the current predominant use cases, our ability to grow our business and operating results may be adversely affected.

Most of our customers currently use our software to support application management, IT operations, security and compliance functions. Our ability to grow our business depends in part on our ability to persuade current and future customers to expand their use of our software to additional use cases, such as facilities management, supply chain management, business analytics and customer usage analytics. If we fail to achieve market acceptance of our software for these applications, or if a competitor establishes a more widely adopted solution for these applications, our ability to grow our business and operating results will be adversely affected. In addition, as the amount of data indexed by our software for a given customer grows, that customer must agree to higher license fees for our software or limit the amount of data indexed in order to stay within the limits of its existing license. If their fees grow significantly, customers may react
adversely to this pricing model, particularly if they perceive that the value of our software has become eclipsed by such fees or otherwise. If customers react adversely to our pricing model, our ability to grow our business and operating results could be adversely affected.

**If we do not effectively expand and train our sales force, we may be unable to add new customers or increase sales to our existing customers and our business will be adversely affected.**

We continue to be substantially dependent on our sales force to obtain new customers and to drive additional use cases among our existing customers. We believe that there is significant competition for sales personnel with the skills and technical knowledge that we require. Our ability to achieve significant revenue growth will depend, in large part, on our success in recruiting, training and retaining sufficient numbers of sales personnel to support our growth. New hires require significant training and may take significant time before they achieve full productivity. Our recent hires and planned hires may not become productive as quickly as we expect, and we may be unable to hire or retain sufficient numbers of qualified individuals in the markets where we do business or plan to do business. In addition, as we continue to grow rapidly, a large percentage of our sales force is new to the company and our product. If we are unable to hire and train sufficient numbers of effective sales personnel, or the sales personnel are not successful in obtaining new customers or increasing sales to our existing customer base, our business will be adversely affected.

**Our sales cycle is long and unpredictable, particularly with respect to large customers, and our sales efforts require considerable time and expense.**

Our operating results may fluctuate, in part, because of the resource intensive nature of our sales efforts, the length and variability of the sales cycle of our software offerings and the short-term difficulty in adjusting our operating expenses. Our operating results depend in part on sales to large customers and conversions of users that have downloaded the trial version of our software into paying customers. The length of our sales cycle, from initial evaluation to delivery of and payment for the software, varies substantially from customer to customer. Our sales cycle can extend to more than a year for large customers. It is difficult to predict exactly when, or even if, we will make a sale with a potential customer or if a user that has downloaded the trial version of our software will upgrade to the paid version of our software. As a result, large individual sales have, in some cases, occurred in quarters subsequent to those we anticipated, or have not occurred at all. The loss or delay of one or more large transactions in a quarter could impact our operating results for that quarter and any future quarters for which revenue from that transaction is delayed. As a result, our operating results will suffer if revenues fall below our expectations in a particular quarter, which could cause the price of our common stock to decline.

**Our business and growth depend substantially on customers renewing their maintenance agreements with us. Any decline in our customer renewals could adversely affect our future operating results.**

While most of our software is sold under perpetual license agreements, all of our maintenance and support agreements are sold on a term basis. In addition, we also enter into term license agreements for our software. In order for us to improve our operating results, it is important that our existing customers renew their term licenses, if applicable, and maintenance and support agreements when the initial contract term expires. Our customers have no obligation to renew their term licenses or maintenance or maintenance and support contracts with us after the initial terms have expired. Our customers’ renewal rates may decline or fluctuate as a result of a number of factors, including their satisfaction or dissatisfaction with our software, our pricing, the effects of economic conditions or reductions in our customers’ spending levels. If our customers do not renew their agreements with us or renew on terms less favorable to us, our revenues may decline.
Incorrect or improper implementation or use of our software could result in customer dissatisfaction and negatively affect our business, results of operations, financial condition and growth prospects.

Our software is deployed in a wide variety of technology environments. Increasingly, our software has been deployed in large scale, complex technology environments, and we believe our future success will depend on our ability to increase sales of our software for use in such deployments. We often must assist our customers in achieving successful implementations for large, complex deployments. If we or our customers are unable to implement our software successfully, or unable to do so in a timely manner, customer perceptions of our company may be impaired, our reputation and brand may suffer, and customers may choose not to increase their use of our software. In addition, our software imposes server load and index storage requirements for implementation. If our customers do not have the server load capacity or the storage capacity required, they may not be able to effectively implement and use our software and, therefore, may not choose to increase their use of our software.

Our customers and third-party partners may need training in the proper use of and the variety of benefits that can be derived from our software to maximize its potential. If our software is not implemented or used correctly or as intended, inadequate performance may result. Because our customers rely on our software and maintenance support to manage a wide range of operations, the incorrect or improper implementation or use of our software, our failure to train customers on how to efficiently and effectively use our software, or our failure to provide maintenance services to our customers, may result in negative publicity or legal claims against us. Also, as we continue to expand our customer base, any failure by us to properly provide these services will likely result in lost opportunities for follow-on sales of our software and services.

Our international sales and operations subject us to additional risks that can adversely affect our operating results and financial condition.

In fiscal 2011 and the first nine months of fiscal 2012, we derived 21% and 24% of our revenues, respectively, from customers outside the United States, and we are continuing to expand our international operations as part of our growth strategy. We currently have sales personnel and sales and support operations in the United States and certain countries across Europe and Asia. However, our sales organization outside the United States is substantially smaller than our sales organization in the United States, and we rely heavily on resellers for non-U.S. sales. Our ability to convince customers to expand their use of our software or renew their maintenance agreements with us is directly correlated to our direct engagement with the customer. To the extent we are unable to engage with non-U.S. customers effectively with our limited sales force capacity or our indirect sales model, we may be unable to grow sales to existing customers to the same degree we have experienced in the United States.

Our international operations subject us to a variety of risks and challenges, including:

- increased management, travel, infrastructure and legal compliance costs associated with having multiple international operations;
- reliance on channel partners;
- longer payment cycles and difficulties in collecting accounts receivable or satisfying revenue recognition criteria, especially in emerging markets;
- increased financial accounting and reporting burdens and complexities;
- general economic conditions in each country or region;
- economic uncertainty around the world, including recent sovereign debt issues in Europe;
- compliance with foreign laws and regulations and the risks and costs of non-compliance with such laws and regulations;
compliance with U.S. laws and regulations for foreign operations, including the Foreign Corrupt Practices Act, the U.K. Bribery Act, import and export control laws, tariffs, trade barriers, economic sanctions and other regulatory or contractual limitations on our ability to sell our software in certain foreign markets, and the risks and costs of non-compliance;

• heightened risks of unfair or corrupt business practices in certain geographies and of improper or fraudulent sales arrangements that may impact financial results and result in restatements of financial statements and irregularities in financial statements;

• fluctuations in currency exchange rates and related effect on our operating results;

• difficulties in repatriating or transferring funds from or converting currencies in certain countries;

• the need for localized software and licensing programs;

• reduced protection for intellectual property rights in some countries and practical difficulties of enforcing rights abroad; and

• compliance with the laws of numerous foreign taxing jurisdictions and overlapping of different tax regimes.

Any of these risks could adversely affect our international operations, reduce our international revenues or increase our operating costs, adversely affecting our business, operating results and financial condition and growth prospects.

In addition, compliance with laws and regulations applicable to our international operations increases our cost of doing business in foreign jurisdictions. We may be unable to keep current with changes in government requirements as they change from time to time. Failure to comply with these regulations could have adverse effects on our business. In many foreign countries it is common for others to engage in business practices that are prohibited by our internal policies and procedures or U.S. regulations applicable to us. Although we implemented policies and procedures designed to ensure compliance with these laws and policies, there can be no assurance that all of our employees, contractors, channel partners and agents will comply with these laws and policies. Violations of laws or key control policies by our employees, contractors, channel partners or agents could result in delays in revenue recognition, financial reporting misstatements, fines, penalties, or the prohibition of the importation or exportation of our software and services and could have a material adverse effect on our business and results of operations.

We are subject to governmental export and import controls that could subject us to liability or impair our ability to compete in international markets.

Our products are subject to U.S. export controls, and we incorporate encryption technology into certain of our products. These encryption products and the underlying technology may be exported outside of the United States only with the required export authorizations, including by license, a license exception or other appropriate government authorizations, including the filing of an encryption registration. We shipped our encryption products prior to obtaining the required export authorizations. Accordingly, we have not fully complied with applicable encryption controls in the Export Administration Regulations. We are in the process of remediating our export compliance procedures to prevent such violations from recurring.

Furthermore, U.S. export control laws and economic sanctions prohibit the shipment of certain products and services to countries, governments, and persons targeted by U.S. sanctions. While we are taking precautions to prevent our products and services from being shipped to U.S. sanctions targets, we believe that certain of our products that are available at no cost have been downloaded by persons in countries that are the subject of U.S. embargoes. These free downloads were likely made in violation of U.S. export control and sanctions laws. Based upon our inquiry to date, we believe that we have not had any paying customers in countries sanctioned by the U.S. Government, and have instituted procedures,
including IP blocking, that are intended to prevent any downloads from being made into sanctioned countries in the future. In addition, we had not been screening our customers against the U.S. Government lists of prohibited persons, including the Treasury Department's List of Specially Designated Nationals and the Commerce Department's List of Denied Persons. Based upon our inquiry to date, we believe that we do not have any paying customers on any U.S. Government lists of prohibited persons. We are in the process of screening our non-paying customers to determine if we have permitted any free downloads to any prohibited persons. We are also instituting a process for screening all paying and non-paying customers against U.S. Government lists of prohibited persons going forward.

We are continuing to review this matter and new or different facts may be discovered in the course of our inquiry. In January 2012, we filed Initial Notifications of Voluntary Self Disclosures with the U.S. Department of Commerce's Bureau of Industry and Security and the U.S. Department of Treasury's Office of Foreign Assets Control concerning these potential violations. Once we complete our review, we will supplement the Initial Notifications by filing Final Disclosures with both agencies. If we are found to be in violation of U.S. sanctions or export control laws, it could result in fines or penalties for us and for individuals, including civil penalties of up to $250,000 or twice the value of the transaction, whichever is greater, per violation, and in the event of conviction for a criminal violation, fines of up to $1 million and possible incarceration for responsible employees and managers for willful and knowing violations. The voluntary disclosure processes with OFAC and BIS are in the initial stages, and we cannot predict when OFAC and BIS will complete their reviews or what enforcement action, if any, they will take.

We also note that if our channel partners fail to obtain appropriate import, export or re-export licenses or permits, we may also be adversely affected, through reputational harm as well as other negative consequences including government investigations and penalties. We presently incorporate export control compliance requirements in our channel partner agreements. Complying with export control and sanctions regulations for a particular sale may be time-consuming and may result in the delay or loss of sales opportunities.

In addition, various countries regulate the import of certain encryption technology, including import permitting and licensing requirements, and have enacted laws that could limit our ability to distribute our products or could limit our customers' ability to implement our products in those countries. Changes in our products or future changes in export and import regulations may create delays in the introduction of our products in international markets, prevent our customers with international operations from deploying our products globally or, in some cases, prevent the export or import of our products to certain countries, governments, or persons altogether. Any change in export or import regulations, economic sanctions or related legislation, or change in the countries, governments, persons or technologies targeted by such regulations, could result in decreased use of our products by, or in our decreased ability to export or sell our products to, existing or potential customers with international operations. Any decreased use of our products or limitation on our ability to export or sell our products would likely adversely affect our business, financial condition and results of operations.

If we are unable to maintain successful relationships with our channel partners, our business, operating results and financial condition could be adversely affected.

In addition to our direct sales force, we use strategic indirect channel partners, such as distribution partners and resellers, to license and support our software. We derive a substantial portion of our revenues from sales of our software through our channel network, particularly in the EMEA and APAC regions and for sales to government agencies. We expect that sales through channel partners will continue to grow as a portion of our revenues for the foreseeable future.
Our agreements with our channel partners are generally non-exclusive, meaning our channel partners may offer customers the products of several different companies, including products that compete with ours. If our channel partners do not effectively market and sell our software, choose to use greater efforts to market and sell their own products or those of our competitors, or fail to meet the needs of our customers, our ability to grow our business and sell our software may be adversely affected. Our channel partners may cease marketing our software with limited or no notice and with little or no penalty. The loss of a substantial number of our channel partners, our possible inability to replace them, or the failure to recruit additional channel partners could materially and adversely affect our results of operations. In addition, sales by channel partners are more likely than direct sales to involve collectibility concerns, in particular sales by our channel partners in developing markets, and accordingly, variations in the mix between revenues attributable to sales by channel partners and revenues attributable to direct sales may result in fluctuations in our operating results.

Our ability to achieve revenue growth in the future will depend in part on our success in maintaining successful relationships with our channel partners, and to help our channel partners enhance their ability to independently sell and deploy our software. If we are unable to maintain our relationships with these channel partners, or otherwise develop and expand our indirect distribution channel, our business, results of operations, financial condition or cash flows could be adversely affected. In addition, sales by channel partners are more likely than direct sales to involve collectibility concerns, in particular sales by our channel partners in developing markets, and accordingly, variations in the mix between revenues attributable to sales by channel partners and revenues attributable to direct sales may result in fluctuations in our operating results.

We employ a unique pricing model which subjects us to various challenges that could make it difficult for us to derive expected value from our customers.

We charge our customers for their use of our software based on the customers' estimated daily indexing capacity. As the amount of machine data within our customers' organizations grows, we may face pressure from our customers regarding our pricing, which could adversely affect our revenues and operating margins. Furthermore, while our software can measure and limit customer usage, such limitations may be improperly circumvented or otherwise bypassed by certain users. Similarly, we provide our customers with an encrypted key for enabling their use of our software. To the extent that a customer improperly copies and distributes the encrypted key to others or uses the encrypted key to install our software on multiple machines, we may not be able to capture the full value for the use of our software. Our enterprise license is meant for our customers' internal use only. If customers improperly make our software available to their customers, for example, through a cloud or managed service offering, it may cannibalize our end user sales or commoditize our software in the market. Additionally, if a customer that has received a volume discount from us offers our software to its end customers, we may experience price erosion and be unable to capture the appropriate value from those end customers.

Our license agreements generally provide that we can audit our customers' use of our software to ensure compliance with the terms of our license agreement. However, a customer may resist or refuse to allow us to audit their usage, in which case we may have to pursue legal recourse to enforce our rights under the license agreement, which would require us to spend money, distract management and potentially adversely affect our relationship with our customers and users.

Interruptions or performance problems associated with our technology and infrastructure, and our reliance on SaaS technologies from third parties, may adversely affect our business and operating results.

Our continued growth depends in part on the ability of our existing and potential customers to access our website and download our software or encrypted access keys for our software within an acceptable amount of time. We have experienced, and may in the future experience, website 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 website 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 our website performance, especially during
peak usage times and as our software becomes more complex and our user traffic increases. If our website is unavailable or if our users are unable to download our software or encrypted access keys within a reasonable amount of time or at all, our business would be negatively affected. We expect to continue to make significant investments to maintain and improve website performance and to enable rapid releases of new features and apps for our software. 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 adversely affected.

In addition, we rely heavily on hosted, Software-as-a-Service, or SaaS, technologies from third parties in order to operate critical functions of our business, including ERP services from NetSuite and CRM services from salesforce.com. If these services become unavailable due to extended outages, interruptions or because they are no longer available on commercially reasonable terms or prices, our expenses could increase, our ability to manage our finances could be interrupted and our processes for managing sales of our software and supporting our customers could be impaired until equivalent services, if available, are identified, obtained and implemented, all of which could adversely affect our business.

Our systems are also vulnerable to damage or interruption from catastrophic occurrences such as earthquakes, floods, fires, power loss, telecommunication failures, terrorist attacks and similar events. Our U.S. corporate offices and certain of the facilities we lease to house our computer and telecommunications equipment are located in the San Francisco Bay Area, a region known for seismic activity. Despite any precautions we may take, the occurrence of a natural disaster or other unanticipated problems at our hosting facilities could result in interruptions, performance problems or failure of our infrastructure.

One of our marketing strategies is to offer a trial version of our software, and we may not be able to realize the benefits of this strategy.

We offer a trial version of our software to users free of charge as part of our overall strategy of developing the market for software that provides operational intelligence and promoting additional penetration of our software in the markets in which we compete. Some users never convert from the trial version to the paid version of our software. Further, we depend on individuals within an organization who download the trial version of our software being able to convince managers and decision-makers within their organization to convert to a paid version of our software. To the extent that these users do not become or lead to others who become paying customers, we will not realize the intended benefits of this marketing strategy and our ability to grow our revenues will be adversely affected.

If customers demand software that provides operational intelligence via a "Software-as-a-Service" business model, our business could be adversely affected.

Software-as-a-Service, or SaaS, is a model of software deployment in which a software provider typically licenses an application to customers for use as a service on demand through web browser technologies. While we do not currently offer a commercial version of our product through a SaaS model, we are investing in the development of Splunk Storm, our cloud-based service (currently in beta) that provides a subset of our software's capabilities but is tailored for supporting machine data processing in the cloud. A SaaS business model can require a vendor to undertake substantial capital investments and develop related sales and support resources and personnel. In recent years, companies have begun to expect that key software, such as CRM and ERP systems, be provided through a SaaS model. If customers were to require that we provide our product via a SaaS deployment, we would need to direct a significant portion of our capital investments to implement this alternative business model, which would negatively affect our gross margins. Even if we make these investments, we may be unsuccessful in implementing a SaaS business model. Moreover, sales of a potential future SaaS offering could cannibalize sales of Splunk Enterprise. In addition, the change to a SaaS model would result in changes in the manner in which we
recognize revenues. Changes in revenue recognition would affect our operating results and could have an adverse effect on our business, results of operations, financial condition and cash flows.

Our business depends, in part, on sales to the public sector, and significant changes in the contracting or fiscal policies of the public sector could have a material adverse effect on our business.

We derive a portion of our revenues from contracts with federal, state, local and foreign governments, and we believe that the success and growth of our business will continue to depend on our successful procurement of government contracts. Factors that could impede our ability to maintain or increase the amount of revenues derived from government contracts, include:

- changes in fiscal or contracting policies;
- decreases in available government funding;
- changes in government programs or applicable requirements;
- the adoption of new laws or regulations or changes to existing laws or regulations;
- potential delays or changes in the government appropriations or other funding authorization processes; and
- delays in the payment of our invoices by government payment offices.

The occurrence of any of the foregoing could cause governments and governmental agencies to delay or refrain from purchasing our software in the future or otherwise have an adverse effect on our business, results of operations, financial condition and cash flows.

Failure to comply with laws or regulations applicable to our business could cause us to lose customers in the public sector or negatively impact our ability to contract with the public sector.

We must comply with laws and regulations relating to the formation, administration and performance of contracts with the public sector, including U.S. federal, state and local governmental bodies, which affect how we and our channel partners do business in connection with governmental agencies. These laws and regulations may impose added costs on our business, and failure to comply with these or other applicable regulations and requirements, including non-compliance in the past, could lead to claims for damages from our channel partners, penalties, termination of contracts, loss of exclusive rights in our intellectual property, and temporary suspension or permanent debarment from government contracting. Any such damages, penalties, disruptions or limitations in our ability to do business with the public sector could have a material adverse effect on our business, results of operations, financial condition and cash flows.

Real or perceived errors, failures or bugs in our software could adversely affect our operating results and growth prospects.

Because our software is complex, undetected errors, failures or bugs may occur, especially when new versions or updates are released. Our software is often installed and used in large-scale computing environments with different operating systems, system management software, and equipment and networking configurations, which may cause errors or failures of our software or other aspects of the computing environment into which it is deployed. In addition, deployment of our software into complicated, large-scale computing environments may expose undetected errors, failures or bugs in our software. Despite testing by us, errors, failures or bugs may not be found in our software until it is released to our customers. In the past, we have discovered software errors, failures and bugs in some of our offerings after their introduction. Real or perceived errors, failures or bugs in our software could result in negative publicity, loss of or delay in market acceptance of our software, loss of competitive position or
claims by customers for losses sustained by them. In such an event, we may be required, or may choose, for customer relations or other reasons, to expend additional resources in order to help correct the problem.

In addition, if an actual or perceived failure of our software occurs in a customer's deployment, regardless of whether the failure is attributable to our software, the market perception of the effectiveness of our software could be adversely affected. Alleviating any of these problems could require significant expenditures of our capital and other resources and could cause interruptions, delays or cessation of our licensing, which could cause us to lose existing or potential customers and could adversely affect our operating results and growth prospects.

**If our new software and software enhancements do not achieve sufficient market acceptance, our results of operations and competitive position will suffer.**

We spend substantial amounts of time and money to research and develop new and enhanced versions of our existing software to incorporate additional features, improve functionality or other enhancements in order to meet our customers’ rapidly evolving demands. In addition, we continue to invest in solutions that can be deployed on top of our core engine to target specific cases and to cultivate our community of application developers and users. When we develop a new or enhanced version of an existing product, we typically incur expenses and expend resources upfront to market, promote and sell the new offering. Therefore, when we develop and introduce new or enhanced products, they must achieve high levels of market acceptance in order to justify the amount of our investment in developing and bringing them to market. For example, if our cloud-based service, Splunk Storm, does not garner widespread market adoption and implementation, our operating results and competitive position could suffer.

Further, we may make changes to our software that our customers do not like, find useful or agree with. We may also discontinue certain features, begin to charge for certain features that are currently free or increase fees for any of our features or usage of our software.

Our new software or software enhancements and changes to our existing software could fail to attain sufficient market acceptance for many reasons, including:

- failure to predict market demand accurately in terms of software functionality and to supply software that meets this demand in a timely fashion;
- defects, errors or failures;
- negative publicity about their performance or effectiveness;
- delays in releasing our new software or enhancements to our existing software to the market;
- introduction or anticipated introduction of competing products by our competitors;
- poor business conditions for our end-customers, causing them to delay IT purchases; and
- reluctance of customers to purchase software incorporating open source software.

If our new software or enhancements and changes do not achieve adequate acceptance in the market, our competitive position will be impaired, and our revenues will be diminished. The adverse effect on our operating results may be particularly acute because of the significant research, development, marketing, sales and other expenses we will have incurred in connection with the new software or enhancements.

**If we are not able to maintain and enhance our brand, our business and operating results may be adversely affected.**

We believe that maintaining and enhancing the “Splunk” brand identity is critical to our relationships with our customers and channel partners and to our ability to attract new customers and channel partners. The successful promotion of our brand will depend largely upon our marketing efforts, our ability to continue to offer high-quality software and our ability to successfully differentiate our software from that
of our competitors. Our brand promotion activities may not be successful or yield increased revenues. In addition, independent industry analysts often provide reviews of our product, as well as those of our competitors, and perception of our product in the marketplace may be significantly influenced by these reviews. If these reviews are negative, or less positive as compared to those of our competitors’ products and services, our brand may be adversely affected.

Moreover, it may be difficult to maintain and enhance our brand in connection with sales through channel or strategic partners. The promotion of our brand requires us to make substantial expenditures, and we anticipate that the expenditures will increase as our market becomes more competitive, as we expand into new markets and as more sales are generated through our channel partners. To the extent that these activities yield increased revenues, these revenues may not offset the increased expenses we incur. If we do not successfully maintain and enhance our brand, our business may not grow, we may have reduced pricing power relative to competitors with stronger brands, and we could lose customers and channel partners, all of which would adversely affect our business, results of operations, financial condition and cash flows.

**Our future performance depends in part on proper use of our community website, Splunkbase, and support from third-party software developers.**

Our software enables third-party software developers to build apps on top of our machine data engine. We operate a community website that we call Splunkbase for sharing these third party apps, including add-ons and extensions. While we expect Splunkbase to support our sales and marketing efforts, it also presents certain risks to our business, including:

- third-party developers may not continue developing or supporting the software apps that they share on Splunkbase;
- we cannot provide any assurance that these apps meet the same quality standards that we apply to our own development efforts, and, to the extent they contain bugs or defects, they may create disruptions in our customers' use of our software or negatively affect our brand;
- we do not currently provide support for software apps developed by third-party software developers, and users may be left without support and potentially cease using our software if the third-party software developers do not provide support for these apps;
- these third-party software developers may not possess the appropriate intellectual property rights to develop and share their apps; and
- some of these developers may use the insight they gain using our software and from documentation publicly available on our website to develop competing products.

Many of these risks are not within our control to prevent, and our brand may be damaged if these apps, add-ons and extensions do not perform to our customers' satisfaction and that dissatisfaction is attributed to us.

**If poor advice or misinformation is spread through Splunk Answers, users of our software may experience unsatisfactory results from using our software, which could adversely affect our reputation and our ability to grow our business.**

In addition, as part of Splunkbase, we host a community site called Splunk Answers for sharing knowledge about how to perform certain functions with our software. Our users are increasingly turning to Splunk Answers for support in connection with their use of our software. We do not review or test the information that non-Splunk employees post on Splunk Answers to ensure its accuracy or efficacy in resolving technical issues. Therefore, we cannot ensure that all the information listed on Splunk Answers is accurate or that it will not adversely affect the performance of our software. Furthermore, users who post
such information on Splunk Answers may not have adequate rights to the information to share it publicly, and we could be the subject of intellectual property claims based on our hosting of such information. If poor advice or misinformation is spread among users of Splunk Answers, our customers or other users of our software may experience unsatisfactory results from using our software, which could adversely affect our reputation and our ability to grow our business.

**Failure to protect our intellectual property rights could adversely affect our business.**

Our success depends, in part, on our ability to protect proprietary methods and technologies that we develop under patent and other intellectual property laws of the United States, so that we can prevent others from using our inventions and proprietary information. If we fail to protect our intellectual property rights adequately, our competitors might gain access to our technology, and our business might be adversely affected. However, defending our intellectual property rights might entail significant expenses. Any of our patent rights, copyrights, trademarks or other intellectual property rights may be challenged by others or invalidated through administrative process or litigation. As of December 31, 2011, we had one issued U.S. patent covering our machine data technology. We also had two provisional patent applications pending and nine utility patent applications pending for examination in the United States. Finally, we also had five utility patent applications pending for examination in non-U.S. jurisdictions, all of which are counterparts of our U.S. utility patent applications. Our issued patent, and any patents issued in the future, may not provide us with any competitive advantages or may be challenged by third parties, and our patent applications may never be granted. Additionally, the process of obtaining patent protection is expensive and time-consuming, and we may not be able to prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. Even if issued, there can be no assurance that these patents will adequately protect our intellectual property, as the legal standards relating to the validity, enforceability and scope of protection of patent and other intellectual property rights are uncertain.

Any patents that are issued may subsequently be invalidated or otherwise limited, allowing other companies to develop offerings that compete with ours, which could adversely affect our competitive business position, business prospects and financial condition. In addition, issuance of a patent does not guarantee that we have a right to practice the patented invention. Patent applications in the United States are typically not published until 18 months after filing or, in some cases, not at all, and publications of discoveries in industry-related literature lag behind actual discoveries. We cannot be certain that we were the first to use the inventions claimed in our issued patents or pending patent applications or otherwise used in our software, that we were the first to file for protection in our patent applications, or that third parties do not have blocking patents that could be used to prevent us from marketing or practicing our patented software or technology. Effective patent, trademark, copyright and trade secret protection may not be available to us in every country in which our software is available. The laws of some foreign countries may not be as protective of intellectual property rights as those in the United States (in particular, some foreign jurisdictions do not permit patent protection for software), and mechanisms for enforcement of intellectual property rights may be inadequate. Additional uncertainty may result from changes to intellectual property legislation enacted in the United States (including the recent "America Invents Act") and other national governments and from interpretations of the intellectual property laws of the United States and other countries by applicable courts and agencies. Accordingly, despite our efforts, we may be unable to prevent third parties from infringing upon or misappropriating our intellectual property.

We rely in part on trade secrets, proprietary know-how and other confidential information to maintain our competitive position. Although we endeavor to enter into non-disclosure agreements with our employees, licensees and others who may have access to this information, we cannot assure you that these agreements or other steps we have taken will prevent unauthorized use, disclosure or reverse engineering of our technology. Moreover, third parties may independently develop technologies or products that compete with ours, and we may be unable to prevent this competition.
We might be required to spend significant resources to monitor and protect our intellectual property rights. We may initiate claims or litigation against third parties for infringement of our proprietary rights or to establish the validity of our proprietary rights. Litigation also puts our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing. Additionally, we may provoke third parties to assert counterclaims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially viable. Any litigation, whether or not it is resolved in our favor, could result in significant expense to us and divert the efforts of our technical and management personnel, which may adversely affect our business, results of operations, financial condition and cash flows.

We have been, and may in the future be, subject to intellectual property rights claims by third parties, which are extremely costly to defend, could require us to pay significant damages and could limit our ability to use certain technologies.

Companies in the software and technology industries, including some of our current and potential competitors, 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. In addition, many of these companies have the capability to dedicate substantially greater resources to enforce their intellectual property rights and to defend claims that may be brought against them. The litigation may involve patent holding companies or other adverse patent owners that have no relevant product revenues and against which our patents may therefore provide little or no deterrence. We have received, and may in the future receive, notices that claim we have misappropriated, misused, or infringed other parties' intellectual property rights, and, to the extent we gain greater market visibility, we face a higher risk of being the subject of intellectual property infringement claims, which is not uncommon with respect to the enterprise software market. In this regard, we are currently involved in a dispute with respect to the Splunk trademark in the European Union. There may be third-party intellectual property rights, including issued or pending patents, that cover significant aspects of our technologies or business methods. Any intellectual property claims, with or without merit, could be very time-consuming, could be expensive to settle or litigate and could divert our management's attention and other resources. These claims could also subject us to significant liability for damages, potentially including treble damages if we are found to have willfully infringed patents or copyrights. These claims could also result in our having to stop using technology found to be in violation of a third party's rights. We might be required to seek a license for the intellectual property, which may not be available on reasonable terms or at all. Even if a license were available, we could be required to pay significant royalties, which would increase our operating expenses. As a result, we may be required to develop alternative non-infringing technology, which could require significant effort and expense. If we cannot license or develop technology for any infringing aspect of our business, we would be forced to limit or stop sales of our software and may be unable to compete effectively. Any of these results would adversely affect our business, results of operations, financial condition and cash flows.

Our use of "open source" software could negatively affect our ability to sell our software and subject us to possible litigation.

We use open source software in our software and expect to continue to use open source software in the future. We may face claims from others claiming ownership of, or seeking to enforce the terms of, an open source license, including by demanding release of the open source software, derivative works or our proprietary source code that was developed using such software. These claims could also result in litigation, require us to purchase a costly license or require us to devote additional research and development resources to change our software, any of which would have a negative effect on our business and operating results. In addition, if the license terms for the open source code change, we may be forced to re-engineer our software or incur additional costs. Finally, we cannot assure you that we have not
incorporated additional open source software in our software in a manner that is inconsistent with our current policies and procedures.

If our security measures are breached or unauthorized access to customer data is otherwise obtained, our software may be perceived as not being secure, customers may reduce the use of or stop using our software, and we may incur significant liabilities.

Our software involves the storage and transmission of data, and security breaches could result in the loss of this information, litigation, indemnity obligations and other liability. While we have taken steps to protect the confidential information that we have access to, including confidential information we may obtain through our customer support services or customer usage of Splunk Storm, our cloud-based service currently in beta, we do not have the ability to monitor or review the content that our customers store, and therefore, we have no direct control over the substance of the content. Therefore, if customers use our software for the transmission or storage of personally identifiable information and our security measures are breached as a result of third-party action, employee error, malfeasance or otherwise, our reputation could be damaged, our business may suffer, and we could incur significant liability. Because techniques used to obtain unauthorized access or sabotage systems change frequently and generally are not identified until they are launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures. Any or all of these issues could negatively impact our ability to attract new customers and increase engagement by existing customers, cause existing customers to elect to not renew their subscriptions, or subject us to third-party lawsuits, regulatory fines or other action or liability, thereby adversely affecting our operating results.

Because our software could be used to collect and store personal information, domestic and international privacy concerns could result in additional costs and liabilities to us or inhibit sales of our software.

Personal privacy has become a significant issue in the United States and in many other countries where we offer our software. The regulatory framework for privacy issues worldwide is rapidly evolving and is likely to remain uncertain for the foreseeable future. Many federal, state and foreign government bodies and agencies have adopted or are considering adopting laws and regulations regarding the collection, use and disclosure of personal information. In the United States, these include rules and regulations promulgated under the authority of the Federal Trade Commission, the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and state breach notification laws. Internationally, virtually every jurisdiction in which we operate has established its own data security and privacy legal framework with which we or our customers must comply, including the Data Protection Directive established in the European Union and the Federal Data Protection Act recently implemented in Germany.

In addition to government regulation, privacy advocates and industry groups may propose new and different self-regulatory standards that either legally or contractually apply to us. Because the interpretation and application of privacy and data protection laws are still uncertain, it is possible that these laws may be interpreted and applied in a manner that is inconsistent with our existing data management practices or the features of our software. If so, in addition to the possibility of fines, lawsuits and other claims, we could be required to fundamentally change our business activities and practices or modify our software, which could have an adverse effect on our business. Any inability to adequately address privacy concerns, even if unfounded, or comply with applicable privacy or data protection laws, regulations and policies, could result in additional cost and liability to us, damage our reputation, inhibit sales and adversely affect our business.

Furthermore, the costs of compliance with, and other burdens imposed by, the laws, regulations, and policies that are applicable to the businesses of our customers may limit the use and adoption of, and reduce the overall demand for, our software. Privacy concerns, whether valid or not valid, may inhibit market adoption of our software particularly in certain industries and foreign countries.
Federal, state and industry regulations as well as self-regulation related to privacy and data security concerns pose the threat of lawsuits and other liability.

We may collect and utilize demographic and other information, including personally identifiable information, from and about users (such as customers, potential customers, and others) as they interact with Splunk over the internet and otherwise provide us with information whether via our website, through email, or through other means. Users may provide personal information to us in many contexts such as when signing up for certain services, registering for seminars, participating in a survey, when answering questions on Splunk Answers, when posting reviews or otherwise commenting on Splunk apps, when using other community or social networking features, when participating in polls or when signing up to receive e-mail newsletters.

Within the United States, various federal and state laws and regulations govern the collection, use, retention, sharing and security of the data we receive from and about users. Outside of the United States, various jurisdictions actively regulate and enforce laws regarding the collection, retention, transfer, and use (including loss and unauthorized access) of personal information. Privacy advocates and government bodies have increasingly scrutinized the ways in which companies link personal identities and data associated with particular users or devices with data collected through the internet, and we expect such scrutiny to continue to increase. Loss, retention or misuse of certain information and alleged violations of laws and regulations relating to privacy and data security, and any relevant claims, may expose us to potential liability and may require us to expend significant resources on data security and in responding to and defending such allegations and claims.

**If we are unable to attract and retain key personnel, our business could be adversely affected.**

We depend on the continued contributions of our senior management and other key personnel, the loss of whom could adversely affect our business. 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. We do not maintain a key-person life insurance policy on any of our officers or other employees.

Our future success also depends on our ability to identify, attract and retain highly skilled technical, managerial, finance and other personnel, particularly in our sales and marketing, research and development, general and administrative, and professional service departments. For example, we are actively recruiting a Senior Vice President of Product Development, an important role that we will need to fill as we continue to grow. We face intense competition for qualified individuals from numerous software and other technology companies. In addition, competition for qualified personnel, particularly software engineers, is particularly intense in the San Francisco Bay Area, where our headquarters are located. We may incur significant costs to attract and retain them, and we may lose new employees to our competitors or other technology companies before we realize the benefit of our investment in recruiting and training them. As we move into new geographies, we will need to attract and recruit skilled personnel in those areas. If we are unable to attract and retain suitably qualified individuals who are capable of meeting our growing technical, operational and managerial requirements, on a timely basis or at all, our business will be adversely affected.

Volatility or lack of performance in our stock price may also affect our ability to attract and retain our key employees. Many of our senior management personnel and other key employees have become, or will soon 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 vested options have significantly appreciated in value relative to the original purchase prices of the shares or the exercise prices of the options, or, conversely, if the exercise prices of the options that they hold are significantly above the market price of our common stock. If we are unable to retain our employees, or if we need to increase our compensation expenses to retain our employees, our business, results of operations, financial condition and cash flows would be adversely affected.

28
Prolonged economic uncertainties or downturns could materially adversely affect our business.

Current or future economic downturns could adversely affect our business and results of operations. Negative conditions in the general economy both in the United States and abroad, including conditions resulting from financial and credit market fluctuations and terrorist attacks on the United States, Europe, Asia Pacific or elsewhere, could cause a decrease in corporate spending on enterprise software in general and negatively affect the rate of growth of our business.

General worldwide economic conditions have experienced a significant downturn and continue to remain unstable. These conditions make it extremely difficult for our customers and us to forecast and plan future business activities accurately, and they could cause our customers to reevaluate their decision to purchase our product, which could delay and lengthen our sales cycles or result in cancellations of planned purchases. Furthermore, during challenging economic times our customers may face issues in gaining timely access to sufficient credit, which could result in an impairment of their ability to make timely payments to us. If that were to occur, we may be required to increase our allowance for doubtful accounts, which would adversely affect our financial results.

We have a significant number of customers in the business services, financial services, healthcare and pharmaceuticals, high technology, manufacturing, media and entertainment, online services, retail, telecommunications and travel and transportation industries. A substantial downturn in any of these industries may cause firms to react to worsening conditions by reducing their capital expenditures in general or by specifically reducing their spending on information technology. Customers in these industries may delay or cancel information technology projects or seek to lower their costs by renegotiating vendor contracts. To the extent purchases of our software are perceived by customers and potential customers to be discretionary, our revenues may be disproportionately affected by delays or reductions in general information technology spending. Also, customers may choose to develop in-house software as an alternative to using our products. Moreover, competitors may respond to market conditions by lowering prices and attempting to lure away our customers. In addition, the increased pace of consolidation in certain industries may result in reduced overall spending on our software.

We cannot predict the timing, strength or duration of any economic slowdown, instability or recovery, generally or within any particular industry. If the economic conditions of the general economy or industries in which we operate worsen from present levels, our business, results of operations, financial condition and cash flows could be adversely affected.

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

We intend to continue to make investments to support our business growth and may require additional funds to respond to business challenges, including the need to develop new features or enhance our software, improve our operating infrastructure or acquire complementary businesses and technologies. Accordingly, we may need to engage in equity or debt financings to secure additional funds. If we raise additional funds through future issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing that we may secure in the future could involve restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. We may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly impaired, and our business may be adversely affected.
Future acquisitions could disrupt our business and adversely affect our results of operations, financial condition and cash flows.

We may choose to expand by making acquisitions that could be material to our business, results of operations, financial condition and cash flows. Our ability as an organization to successfully acquire and integrate technologies or businesses is unproven. Acquisitions involve many risks, including the following:

- an acquisition may negatively affect our results of operations, financial condition or cash flows because it may require us to incur charges or assume substantial debt or other liabilities, may cause adverse tax consequences or unfavorable accounting treatment, may expose us to claims and disputes by third parties, including intellectual property claims and disputes, or may not generate sufficient financial return to offset additional costs and expenses related to the acquisition;
- we may encounter difficulties or unforeseen expenditures in integrating the business, technologies, products, personnel or operations of any company that we acquire, particularly if key personnel of the acquired company decide not to work for us;
- an acquisition may disrupt our ongoing business, divert resources, increase our expenses and distract our management;
- an acquisition may result in a delay or reduction of customer purchases for both us and the company acquired due to customer uncertainty about continuity and effectiveness of service from either company;
- we may encounter difficulties in, or may be unable to, successfully sell any acquired products;
- an acquisition may involve the entry into geographic or business markets in which we have little or no prior experience or where competitors have stronger market positions;
- our use of cash to pay for acquisition would limit other potential uses for our cash;
- if we incur debt to fund such acquisition, such debt may subject us to material restrictions on our ability to conduct our business as well as financial maintenance covenants; and
- to the extent that we issue a significant amount of equity securities in connection with future acquisitions, existing stockholders may be diluted and earnings per share may decrease.

The occurrence of any of these risks could have a material adverse effect on our business, results of operations, financial condition and cash flows.

If currency exchange rates fluctuate substantially in the future, the results of our operations, which are reported in U.S. dollars, could be adversely affected.

As we continue to expand our international operations, we become more exposed to the effects of fluctuations in currency exchange rates. Our sales contracts are denominated in U.S. dollars, and therefore substantially all of our revenues are not subject to foreign currency risk. However, a strengthening of the U.S. dollar could increase the real cost of our software to our customers outside of the United States, which could adversely affect our business, results of operations, financial condition and cash flows. We incur expenses for employee compensation and other operating expenses at our non-U.S. locations in the local currency. Fluctuations in the exchange rates between the U.S. dollar and other currencies could result in the dollar equivalent of such expenses being higher. This could have a negative impact on our reported operating results. To date, we have not engaged in any hedging strategies, and any such strategies, such as forward contracts, options and foreign exchange swaps related to transaction exposures that we may implement to mitigate this risk may not eliminate our exposure to foreign exchange fluctuations.
The enactment of legislation implementing changes in the U.S. taxation of international business activities or the adoption of other tax reform policies could materially impact our financial position and results of operations.

Recent changes to U.S. tax laws, including limitations on the ability of taxpayers to claim and utilize foreign tax credits and the deferral of certain tax deductions until earnings outside of the United States are repatriated to the United States, as well as changes to U.S. tax laws that may be enacted in the future, could impact the tax treatment of our foreign earnings. Due to expansion of our international business activities, any changes in the U.S. taxation of such activities may increase our worldwide effective tax rate and adversely affect our financial position and results of operations.

Our ability to use our net operating losses to offset future taxable income may be subject to certain limitations.

In general, under Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, a corporation that undergoes an "ownership change" is subject to limitations on its ability to utilize its pre-change net operating losses ("NOLs") to offset future taxable income. Our existing NOLs may be subject to limitations arising from previous ownership changes, and if we undergo an ownership change in connection with or after this offering, our ability to utilize NOLs could be further limited by Section 382 of the Code. Future changes in our stock ownership, some of which are outside of our control, could result in an ownership change under Section 382 of the Code. Furthermore, our ability to utilize NOLs of companies that we may acquire in the future may be subject to limitations. There is also a risk that due to regulatory changes, such as suspensions on the use of NOLs, or other unforeseen reasons, our existing NOLs could expire or otherwise be unavailable to offset future income tax liabilities. For these reasons, we may not be able to utilize a material portion of the NOLs reflected on our balance sheet, even if we attain profitability.

Taxing authorities may successfully assert that we should have collected or in the future should collect sales and use, value added or similar taxes, and we could be subject to liability with respect to past or future sales, which could adversely affect our results of operations.

We do not collect sales and use, value added and similar taxes in all jurisdictions in which we have sales, based on our belief that such taxes are not applicable. Sales and use, value added and similar tax laws and rates vary greatly by jurisdiction. Certain jurisdictions in which we do not collect such taxes may assert that such taxes are applicable, which could result in tax assessments, penalties and interest, and we may be required to collect such taxes in the future. Such tax assessments, penalties and interest or future requirements may adversely affect our results of operations.

Our international operations subject us to potentially adverse tax consequences.

We generally conduct our international operations through wholly owned subsidiaries and report our taxable income in various jurisdictions worldwide based upon our business operations in those jurisdictions. We are in the process of organizing our corporate structure to more closely align with the international nature of our business activities. Our intercompany relationships are subject to complex transfer pricing regulations administered by taxing authorities in various jurisdictions. The relevant taxing authorities may disagree with our determinations as to the income and expenses attributable to specific jurisdictions. If such a disagreement were to occur, and our position were not sustained, we could be required to pay additional taxes, interest and penalties, which could result in one-time tax charges, higher effective tax rates, reduced cash flows and lower overall profitability of our operations. We believe that our financial statements reflect adequate reserves to cover such a contingency, but there can be no assurances in that regard.
We could be subject to additional tax liabilities.

We are subject to federal, state and local taxes in the United States and numerous foreign jurisdictions. Significant judgment is required in evaluating our tax positions and our worldwide provision for taxes. During the ordinary course of business, there are many activities and transactions for which the ultimate tax determination is uncertain. We recently discovered that we have not complied with various tax rules and regulations in certain foreign jurisdictions. We are working to resolve these matters. In addition, our tax obligations and effective tax rates could be adversely affected by changes in the relevant tax, accounting and other laws, regulations, principles and interpretations, including those relating to income tax nexus, by our earnings being lower than anticipated in jurisdictions where we have lower statutory rates and higher than anticipated in jurisdictions where we have higher statutory rates, by changes in foreign currency exchange rates, or by changes in the valuation of our deferred tax assets and liabilities. We may be audited in various jurisdictions, and such jurisdictions may assess additional taxes against us. Although we believe our tax estimates are reasonable, the final determination of any tax audits or litigation could be materially different from our historical tax provisions and accruals, which could have a material adverse effect on our operating results or cash flows in the period or periods for which a determination is made.

Risks Related to Ownership of Our Common Stock and this Offering

There has been no prior market for our common stock and an active market may not develop or be sustained and investors may not be able to resell their shares at or above the initial public offering price.

There has been no public market for our common stock prior to this offering. The initial public offering price for our common stock will be determined through negotiations between the underwriters and us and may vary from the market price of our common stock following this offering. If you purchase shares of our common stock in this offering, you may not be able to resell those shares at or above the initial public offering price. An active or liquid market in our common stock may not develop upon completion of this offering or, if it does develop, it may not be sustainable.

Our stock price may be volatile or may decline regardless of our operating performance resulting in substantial losses for investors purchasing shares in this offering.

The trading prices of the securities of technology companies have been highly volatile. The market price of our common stock may fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

• actual or anticipated fluctuations in our operating results;
• the financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;
• failure of securities analysts to initiate or maintain coverage of our company, changes in financial estimates by any securities analysts who follow our company, or our failure to meet these estimates or the expectations of investors;
• ratings changes by any securities analysts who follow our company;
• announcements by us or our competitors of significant technical innovations, acquisitions, strategic partnerships, joint ventures or capital commitments;
• changes in operating performance and stock market valuations of other technology companies generally, or those in our industry in particular;
• price and volume fluctuations in the overall stock market, including as a result of trends in the economy as a whole;
• any major change in our board of directors or management;
lawsuits threatened or filed against us; and

other events or factors, including those resulting from war, incidents of terrorism or responses to these events.

In addition, the stock markets, and in particular the market on which our common stock will be listed, have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many technology companies. Stock prices of many technology companies have fluctuated in a manner unrelated or disproportionate to the operating performance of those companies. In the past, stockholders have instituted securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business and adversely affect our business, results of operations, financial condition and cash flows.

*If securities or industry analysts do not publish research or reports about our business, or publish negative reports about our business, our share 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, our market and our competitors. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our shares or change their opinion of our shares, our share price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

*We may invest or spend the proceeds of this offering in ways with which you may not agree or in ways which may not yield a return.*

We expect to use the net proceeds we receive from this offering for capital expenditures and for general corporate purposes, including working capital, sales and marketing activities, product development, and general and administrative matters. We may also use a portion of the net proceeds to acquire complementary businesses, products, services or technologies. We do not have any agreements or commitments for any acquisitions at this time. Our management will have considerable discretion in the application of the net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. The net proceeds may be used for corporate purposes that do not increase the value of our business, which could cause our stock price to decline.

*Substantial future sales of shares of our common stock could cause the market price of our common stock to decline.*

The market price of shares of our common stock could decline as a result of substantial sales of our common stock, particularly sales by our directors, executive officers and significant stockholders, a large number of shares of our common stock becoming available for sale or the perception in the market that holders of a large number of shares intend to sell their shares. After this offering, we will have outstanding shares of our common stock, based on the number of shares outstanding as of , 2012. This includes the shares included in this offering, which may be resold in the public market immediately. The remaining shares, or % of our outstanding shares after this offering, are currently restricted as a result of lock-up agreements but will be able to be sold in the near future as set forth below.

After this offering, the holders of an aggregate of shares of our common stock as of , 2012 will have rights, subject to some conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or our stockholders. Substantially all of these shares are subject to lock-up agreements restricting their sale for 180 days after the date of this prospectus, subject to potential extension in the event we release earnings results or a material event relating to us occurs near the end of the lock-up period. We
also intend to register shares of common stock that we may issue under our employee equity incentive plans. Once we register these shares, they will be able to be sold freely in the public market upon issuance, subject to existing lock-up agreements. Morgan Stanley & Co. LLC may, in its sole discretion, permit our officers, directors, employees and current stockholders who are subject to the 180-day contractual lock-up to sell shares prior to the expiration of the lock-up agreements. The 180-day lock-up period is subject to extension in some circumstances.

**Purchasers in this offering will experience immediate and substantial dilution in the book value of their investment.**

The initial public offering price per share will be substantially higher than the pro forma net tangible book value per share of our common stock outstanding prior to this offering. As a result, investors purchasing common stock in this offering will experience immediate dilution of $ per share. This dilution is due in large part to the fact that our earlier investors paid substantially less than the initial public offering price when they purchased their shares of common stock. In addition, we have issued options to acquire common stock at prices significantly below the initial public offering price. To the extent outstanding options are ultimately exercised, there will be further dilution to investors in this offering. In addition, if the underwriters exercise their option to purchase additional shares from us or if we issue additional equity securities, you will experience additional dilution.

**The requirements of being a public company may strain our resources, divert management's attention and affect our ability to attract and retain executive management and qualified board members.**

As a public company, we will be subject to the reporting requirements of the Securities Exchange Act of 1934, or the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Act, the listing requirements of the and other applicable securities rules and regulations. Compliance with these rules and regulations will increase our legal and financial compliance costs, make some activities more difficult, time-consuming or costly and increase demand on our systems and resources. The Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and operating results. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. In order to maintain and, if required, improve our disclosure controls and procedures and internal control over financial reporting to meet this standard, significant resources and management oversight may be required. As a result, management's attention may be diverted from other business concerns, which could adversely affect our business and operating results. Although we have already hired additional employees to comply with these requirements, we may need to hire more employees in the future or engage outside consultants, which will increase our costs and expenses.

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be adversely affected.

We also expect that being a public company and these new rules and regulations will make it more expensive for us to obtain director and officer liability insurance, and we may be required to accept
reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified members of our board of directors, particularly to serve on our audit committee and compensation committee, and qualified executive officers.

As a result of disclosure of information in this prospectus and in filings required of a public company, our business and financial condition will become more visible, which we believe may result in threatened or actual litigation, including by competitors and other third parties. If such claims are successful, our business and operating results could be adversely affected, and even if the claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert the resources of our management and adversely affect our business and operating results.

As a result of becoming a public company, we will be obligated to develop and maintain proper and effective internal control over financial reporting. We may not complete our analysis of our internal control over financial reporting in a timely manner, or these internal controls may not be determined to be effective, which may adversely affect investor confidence in our company and, as a result, the value of our common stock.

We will be required, pursuant to Section 404 of the Sarbanes–Oxley Act, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting for the fiscal year ended January 31, 2014. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting, as well as a statement that our independent registered public accounting firm has issued an opinion on our internal control over financial reporting.

We are in the very early stages of the costly and challenging process of compiling the system and processing documentation necessary to perform the evaluation needed to comply with Section 404. We may not be able to complete our evaluation, testing and any required remediation in a timely fashion. During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal controls are effective.

If we are unable to assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an opinion on the effectiveness of our internal controls, we could lose investor confidence in the accuracy and completeness of our financial reports, which would cause the price of our common stock to decline, and we may be subject to investigation or sanctions by the SEC.

We do not intend to pay dividends for the foreseeable future.

We have never declared or paid any cash dividends on our common stock and do not intend to pay any cash dividends in the foreseeable future. We anticipate that we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our board of directors. Accordingly, 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 investments.
Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of our company more difficult, limit attempts by our stockholders to replace or remove our current management and limit the market price of our common stock.

Provisions in our certificate of incorporation and bylaws, as amended and restated in connection with this offering, may have the effect of delaying or preventing a change of control or changes in our management. Our amended and restated certificate of incorporation and bylaws include provisions that:

- authorize our board of directors to issue, without further action by the stockholders, shares of undesignated preferred stock with terms, rights and preferences determined by our board of directors;
- require that any action to be taken by our stockholders be effected at a duly called annual or special meeting and not by written consent;
- specify that special meetings of our stockholders can be called only by our board of directors, the Chairman of our board of directors, or our Chief Executive Officer;
- establish an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations of persons for election to our board of directors;
- establish that our board of directors is divided into three classes, Class I, Class II and Class III, with each class serving three-year staggered terms;
- prohibit cumulative voting in the election of directors;
- provide that our directors may be removed only for cause;
- provide that vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum; and
- require the approval of our board of directors or the holders of a supermajority of our outstanding shares of capital stock to amend our bylaws and certain provisions of our certificate of incorporation.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any “interested” stockholder for a period of three years following the date on which the stockholder became an “interested” stockholder.

Our directors, executive officers and significant stockholders will continue to have substantial control over us after this offering and could delay or prevent a change in corporate control.

After 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, % of our outstanding common stock. As a result, these stockholders, acting 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, acting together, would have the ability to control the management and affairs of our company. Accordingly, this concentration of ownership might adversely affect the market price of our common stock by:

- delaying, deferring or preventing a change in control of the company;
- 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 the company.
SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements that are based on our management's beliefs and assumptions and on information currently available to our management. The forward-looking statements are contained principally in "Prospectus Summary," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business" and "Compensation Discussion and Analysis." Forward-looking statements include information concerning:

- our financial performance, including our revenues, cost of revenues, operating expenses, ability to generate positive cash flow and ability to attain and sustain profitability;
- our ability to effectively manage our growth;
- our ability to diversify our sources of revenues;
- our ability to attract and retain customers;
- our ability to drive increased use cases for our software with new and existing customers;
- our ability to introduce and successfully commercialize Splunk Storm and other new products and services;
- our ability to displace existing products in established markets;
- our ability to adapt to changing market conditions;
- the effects of increased competition in our markets;
- our ability to successfully enter new markets and manage our international expansion; and
- our ability to attract and retain qualified employees and key personnel.

Forward-looking statements include all statements that are not historical facts and can be identified by terms such as "anticipates," "believes," "could," "seeks," "estimates," "expects," "intends," "may," "plans," "potential," "predicts," "projects," "should," "will," "would" or similar expressions and the negatives of those terms.

Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. We discuss these risks in greater detail in "Risk Factors" and elsewhere in this prospectus. Given these uncertainties, you should not place undue reliance on these forward-looking statements. Also, forward-looking statements represent our management's beliefs and assumptions only as of the date of this prospectus. You should read this prospectus and the documents that we have filed as exhibits to the registration statement, of which this prospectus is a part, completely and with the understanding that our actual future results may be materially different from what we expect.

Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

This prospectus also contains estimates and other information concerning our industry, including market size and growth rates, that are based on industry publications, surveys and forecasts, including those generated by IDC and Gartner. This information involves a number of assumptions and limitations. The industry in which we operate is subject to a high degree of uncertainty and risk due to variety of factors, including those described in "Risk Factors." These and other factors could cause results to differ materially from those expressed in these publications.
USE OF PROCEEDS

We estimate that the net proceeds from our sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the front cover of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, will be approximately $ million, or $ million if the underwriters' over-allotment option is exercised in full. A $1.00 increase (decrease) in the assumed initial public offering price would increase (decrease) the net proceeds to us from this offering by $ million, assuming the number of shares offered by us, as set forth on the front cover of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions. We will not receive any proceeds from the sale of common stock by the selling stockholders.

We currently intend to use the net proceeds we receive from this offering primarily for capital expenditures and for general corporate purposes, including working capital, sales and marketing activities, product development, and general and administrative matters. We may also use a portion of the net proceeds for the acquisition of, or investment in, technologies, solutions or businesses that complement our business, although we have no present commitments or agreements to enter into any acquisitions or investments. We will have broad discretion over the uses of the net proceeds in this offering. Pending these uses, we intend to invest the net proceeds from this offering in short-term, investment-grade interest-bearing securities such as money market accounts, certificates of deposit, commercial paper and guaranteed obligations of the U.S. government.

DIVIDEND POLICY

We have never declared or paid cash dividends on our common stock. We currently intend to retain all available funds and any future earnings for use in the operation of our business and do not anticipate paying any dividends on our common stock in the foreseeable future. Our loan and security agreement restricts our ability to pay cash dividends on our common stock and we may also enter into credit agreements or other borrowing arrangements in the future that will restrict our ability to declare or pay cash dividends on our common stock. Any future determination to declare dividends will be made at the discretion of our board of directors and will depend on our financial condition, operating results, capital requirements, general business conditions and other factors that our board of directors may deem relevant.
CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of October 31, 2011 on:

- an actual basis;
- on a pro forma basis to reflect the exercise and conversion to common stock of a warrant to purchase 200,000 shares of our Series A preferred stock, which occurred subsequent to October 31, 2011, the conversion of the Series C preferred stock warrants into warrants to purchase our common stock in connection with this offering, and the automatic conversion of all outstanding shares of our convertible preferred stock into 56,730,194 shares of our common stock prior to the completion of this offering; and
- on a pro forma as adjusted basis to reflect our receipt of the net proceeds from our sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the front cover of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses.

The information below is illustrative only, and our capitalization following the completion of this offering will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing as well as our actual expenses. You should read this table together with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and the related notes appearing elsewhere in this prospectus.

(1) A $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the range set forth on the front cover of this prospectus, would increase (decrease) each of cash and cash equivalents, additional paid-in capital, total stockholders' equity and total capitalization by $ million, assuming that the number of shares offered by us, as set forth on the front cover of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.
The number of shares of our common stock to be outstanding after this offering is based on 79,350,595 shares of our common stock outstanding as of October 31, 2011, which includes the exercise of a warrant to purchase 200,000 shares of our Series A preferred stock, which occurred subsequent to October 31, 2011, and excludes:

- 19,430,429 shares of common stock issuable upon the exercise of options outstanding as of October 31, 2011, with a weighted average exercise price of $1.39 per share;
- 3,328,000 shares of common stock issuable upon the exercise of options granted after October 31, 2011, with an exercise price of $4.82 per share;
- 469,557 shares of common stock issuable upon the exercise of outstanding warrants to purchase shares of Series C preferred stock with an exercise price of $1.56 per share; and
- unallocated shares of common stock reserved for future issuance under our stock-based compensation plans, consisting of 2,462,856 shares of common stock reserved for future issuance under our 2003 Equity Incentive Plan, which shares will be added to the shares to be reserved under our 2012 Equity Stock Incentive Plan, shares of common stock reserved for future issuance under our 2012 Equity Stock Incentive Plan, which will become effective in connection with this offering, and shares of common stock reserved for future issuance under our 2012 Employee Stock Purchase Plan, which will become effective in connection with this offering, and shares that become available under our 2012 Equity Stock Incentive Plan and 2012 Employee Stock Purchase Plan, pursuant to provisions thereof that automatically increase the share reserves under the plans each year, as more fully described in “Management—Employee Benefit Plans.”
If you invest in our common stock, your interest will be diluted to the extent of the difference between the amount per share paid by purchasers of shares of common stock in this initial public offering and the pro forma as adjusted net tangible book value per share of common stock immediately after this offering.

As of October 31, 2011, our net tangible book value was approximately $\_\_\_\_, or $\_\_\_\_\_\_ per share of common stock. Net tangible book value per share represents the amount of our total tangible assets less our total liabilities, divided by the shares of common stock outstanding as of October 31, 2011, assuming the conversion of all outstanding shares of our convertible preferred stock and Series C preferred stock warrants into common stock, and the exercise of the Series A preferred stock warrants.

After giving effect to our sale of shares of common stock in this offering at an assumed initial public offering price of $\_\_\_\_\_\_ per share, the midpoint of the price range set forth on the front cover of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses, our pro forma as adjusted net tangible book value as of October 31, 2011 would have been $\_\_\_\_\_\_ per share. This represents an immediate increase in pro forma as adjusted net tangible book value of $\_\_\_\_\_\_ per share to existing stockholders and an immediate dilution of $\_\_\_\_\_\_ per share to new investors purchasing shares in this offering.

The following table illustrates this dilution:

| Assumed initial public offering price per share | $\_\_\_\_\_\_ | 
| Net tangible book value per share as of October 31, 2011 | $\_\_\_\_\_\_ | 
| Increase per share attributable to this offering | $\_\_\_\_\_\_ | 
| Pro forma as adjusted net tangible book value per share after this offering | $\_\_\_\_\_\_ | 
| Net tangible book value dilution per share to new investors in this offering | $\_\_\_\_\_\_ | 

A $1.00 increase (decrease) in the assumed initial public offering price of $\_\_\_\_\_\_ per share, the midpoint of the price range set forth on the front cover of this prospectus, would increase (decrease) our pro forma net tangible book value, as adjusted to give effect to this offering, by $\_\_\_\_\_\_ per share and the dilution in pro forma as adjusted net tangible book value per share to new investors in this offering by $\_\_\_\_\_\_ per share, assuming the number of shares offered by us, as set forth on the front cover of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses.

If the underwriters exercise their over-allotment option in full, sales by us in this offering will reduce the percentage of shares held by existing stockholders to % and will increase the number of shares held by our new investors to , or %. 

The following table summarizes, on a pro forma as adjusted basis as of October 31, 2011, assuming the conversion of all outstanding shares of our convertible preferred stock into common stock, the total number of shares of common stock purchased from us, the total consideration paid to us, and the average price per share paid to us by existing stockholders and by new investors purchasing shares in this offering at the initial public offering price of $\_\_\_\_\_\_ per share, the midpoint of the price range set forth on the
front cover of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses:

<table>
<thead>
<tr>
<th>Shares Purchased</th>
<th>Total Consideration</th>
<th>Average Price Per Share</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percent</td>
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<tr>
<td>Existing stockholders</td>
<td></td>
<td></td>
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<tr>
<td>New investors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>%$</td>
</tr>
</tbody>
</table>

Each $1.00 increase (decrease) in the assumed public offering price of $ per share, the midpoint of the price range set forth on the front cover of this prospectus, would increase (decrease) total consideration paid by new investors, total consideration paid by all stockholders and the average price per share paid by all stockholders by $ million, $ million and $, respectively, assuming the number of shares offered by us, as set forth on the front cover of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses.

Sales of shares of common stock by the selling stockholders in this offering will reduce the number of shares of common stock held by existing stockholders to $, or approximately % of the total shares of common stock outstanding after this offering, and will increase the number of shares held by new investors to $, or approximately % of the total shares of common stock outstanding after this offering.

The foregoing discussion and tables exclude:

- 19,430,429 shares of common stock issuable upon the exercise of options outstanding as of October 31, 2011, with a weighted average exercise price of $1.39 per share;
- 3,328,000 shares of common stock issuable upon the exercise of options granted after October 31, 2011, with an exercise price of $4.82 per share;
- 469,557 shares of common stock issuable upon exercise of outstanding warrants with an exercise price of $1.56 per share; and
- unallocated shares of common stock reserved for future issuance under our stock-based compensation plans, consisting of 2,462,856 shares of common stock reserved for future issuance under our 2003 Equity Incentive Plan, which shares will be added to the shares to be reserved under our 2012 Equity Stock Incentive Plan, shares of common stock reserved for future issuance under our 2012 Equity Stock Incentive Plan, which will become effective in connection with this offering, and shares of common stock reserved for future issuance under our 2012 Employee Stock Purchase Plan, which will become effective in connection with this offering, and shares that become available under our 2012 Equity Stock Incentive Plan and 2012 Employee Stock Purchase Plan, pursuant to provisions thereof that automatically increase the share reserves under the plans each year, as more fully described in “Management—Employee Benefit Plans.”

To the extent that any outstanding options are exercised, new investors will experience further dilution. In addition, we may grant more options or warrants in the future.
SELECTED CONSOLIDATED FINANCIAL DATA

The following selected consolidated financial data should be read together with our financial statements and accompanying notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing elsewhere in this prospectus. The selected financial data in this section is not intended to replace our financial statements and the related notes. Our historical results are not necessarily indicative of our future results.

We derived the consolidated statements of operations data for fiscal 2009, 2010 and 2011 and the consolidated balance sheet data as of January 31, 2010 and 2011 from our audited consolidated financial statements appearing elsewhere in this prospectus. The consolidated balance sheet data as of January 31, 2009 is derived from our audited consolidated financial statements, which are not included in this prospectus. The consolidated statements of operations data for fiscal 2008 and the consolidated balance sheet data as of January 31, 2008 are derived from our unaudited consolidated financial statements, which are not included in this prospectus. The consolidated statements of operations data for the fiscal year ended December 31, 2006, and the consolidated balance sheet data as of December 31, 2006 are derived from our audited consolidated financial statements, which are not included in this prospectus. The consolidated statements of operations data for the nine months ended October 31, 2010 and 2011 and the consolidated balance sheet data as of October 31, 2011 are derived from our unaudited consolidated financial statements appearing elsewhere in this prospectus.

### Consolidated Statement of Operations Data:

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<td><strong>(in thousands, except per share amounts)</strong></td>
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<td><strong>Consolidated Statement of Operations Data:</strong></td>
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<tr>
<td><strong>Revenues</strong></td>
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<tr>
<td>License</td>
<td>$1,065</td>
<td>$7,742</td>
<td>$14,948</td>
<td>$27,183</td>
<td>$49,926</td>
<td>$32,255</td>
<td>$55,494</td>
</tr>
<tr>
<td>Maintenance and services</td>
<td>3</td>
<td>1,330</td>
<td>3,208</td>
<td>7,817</td>
<td>16,319</td>
<td>11,209</td>
<td>22,267</td>
</tr>
<tr>
<td><strong>Total revenues</strong></td>
<td>1,068</td>
<td>9,072</td>
<td>18,156</td>
<td>35,000</td>
<td>66,245</td>
<td>43,464</td>
<td>77,761</td>
</tr>
<tr>
<td><strong>Cost of revenues</strong></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>License</td>
<td>4</td>
<td>46</td>
<td>86</td>
<td>102</td>
<td>228</td>
<td>123</td>
<td>712</td>
</tr>
<tr>
<td>Maintenance and services</td>
<td>40</td>
<td>1,418</td>
<td>2,711</td>
<td>3,188</td>
<td>6,428</td>
<td>4,214</td>
<td>7,458</td>
</tr>
<tr>
<td><strong>Total cost of revenues</strong></td>
<td>127</td>
<td>1,464</td>
<td>2,797</td>
<td>3,290</td>
<td>6,656</td>
<td>4,337</td>
<td>8,170</td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>1,024</td>
<td>7,608</td>
<td>15,359</td>
<td>31,710</td>
<td>59,589</td>
<td>39,127</td>
<td>69,591</td>
</tr>
<tr>
<td><strong>Operating expenses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>3,072</td>
<td>5,198</td>
<td>8,479</td>
<td>14,025</td>
<td>9,181</td>
<td>16,227</td>
<td>16,227</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>3,377</td>
<td>7,739</td>
<td>17,281</td>
<td>24,072</td>
<td>39,909</td>
<td>25,663</td>
<td>48,337</td>
</tr>
<tr>
<td>General and administrative</td>
<td>1,516</td>
<td>1,610</td>
<td>4,626</td>
<td>6,426</td>
<td>8,349</td>
<td>6,261</td>
<td>13,108</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>7,965</td>
<td>14,547</td>
<td>30,427</td>
<td>39,013</td>
<td>62,883</td>
<td>41,105</td>
<td>77,672</td>
</tr>
<tr>
<td><strong>Operating loss</strong></td>
<td>7,965</td>
<td>14,547</td>
<td>30,427</td>
<td>39,013</td>
<td>62,883</td>
<td>41,105</td>
<td>77,672</td>
</tr>
<tr>
<td><strong>Loss before income taxes</strong></td>
<td>(6,624)</td>
<td>(6,576)</td>
<td>(14,736)</td>
<td>(7,372)</td>
<td>(3,081)</td>
<td>(1,946)</td>
<td>(9,666)</td>
</tr>
<tr>
<td><strong>Provision for income taxes</strong></td>
<td>50</td>
<td>2</td>
<td>36</td>
<td>79</td>
<td>125</td>
<td>80</td>
<td>50</td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td>$6,674</td>
<td>$6,576</td>
<td>$14,772</td>
<td>$7,451</td>
<td>$3,081</td>
<td>$2,026</td>
<td>$9,716</td>
</tr>
<tr>
<td><strong>Net loss per share:</strong></td>
<td>$ (0.55)</td>
<td>$ (0.53)</td>
<td>$ (1.14)</td>
<td>$ (0.52)</td>
<td>$ (0.21)</td>
<td>$ (0.12)</td>
<td>$ (0.48)</td>
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<tr>
<td><strong>Weighted-average shares outstanding:</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Basic and Diluted</td>
<td>12,066</td>
<td>12,399</td>
<td>12,911</td>
<td>14,392</td>
<td>17,738</td>
<td>17,492</td>
<td>20,069</td>
</tr>
<tr>
<td><strong>Pro forma net loss per share (unaudited)</strong>(2):</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic and Diluted</td>
<td>$ (0.05)</td>
<td>$ (0.12)</td>
<td>$ (0.12)</td>
<td>$ (0.12)</td>
<td>$ (0.12)</td>
<td>$ (0.12)</td>
<td>$ (0.12)</td>
</tr>
</tbody>
</table>
See Note 15 to our audited consolidated financial statements appearing elsewhere in this prospectus for an explanation of our pro forma basic and diluted net loss per share calculations.

Non-GAAP Financial Results

We believe that the use of non-GAAP operating loss is helpful for an investor to determine whether to invest in our common stock. In computing non-GAAP operating loss, we exclude stock-based compensation expense which represents non-cash charges for the fair value of stock options and other non-cash awards granted to employees. Because of varying available valuation methodologies, subjective assumptions and the variety of equity instruments that can impact a company’s non-cash operating expenses, we believe that providing a non-GAAP financial measure that excludes stock-based compensation expense allows for meaningful comparisons between our core business operating results and those of other companies, as well as providing us with an important tool for financial and operational decision making and for evaluating our own core business operating results over different periods of time.

Our non-GAAP operating loss may not provide information that is directly comparable to that provided by other companies in our industry, as other companies in our industry may calculate non-GAAP financial results differently, particularly related to non-recurring, unusual items. Our non-GAAP operating loss is not a measurement of financial performance under GAAP, and should not be considered as an
alternative to operating income or as an indication of operating performance or any other measure of performance derived in accordance with GAAP. We do not consider non-GAAP operating loss to be a substitute for, or superior to, the information provided by GAAP financial results.

The following table reflects the reconciliation of GAAP operating loss to non-GAAP operating loss.

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<tr>
<td></td>
<td></td>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GAAP operating loss</td>
<td>$ (6,941)</td>
<td>$ (6,939)</td>
<td>$ (15,068)</td>
<td>$ (7,303)</td>
<td>$ (3,294)</td>
<td>$ (1,978)</td>
<td>$ (8,081)</td>
</tr>
<tr>
<td>Non-GAAP adjustments</td>
<td></td>
<td>69</td>
<td>90</td>
<td>767</td>
<td>1,300</td>
<td>1,585</td>
<td>1,155</td>
</tr>
<tr>
<td>Employee stock-based compensation expense</td>
<td></td>
<td>69</td>
<td>90</td>
<td>767</td>
<td>1,300</td>
<td>1,585</td>
<td>1,155</td>
</tr>
<tr>
<td>Non-GAAP operating loss</td>
<td>$ (6,872)</td>
<td>$ (6,849)</td>
<td>$ (14,301)</td>
<td>$ (6,003)</td>
<td>$ (1,709)</td>
<td>$ (823)</td>
<td>$ (5,814)</td>
</tr>
</tbody>
</table>
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations together with the consolidated financial statements and related notes that are included elsewhere in this prospectus. This discussion contains forward looking statements based upon current expectations that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward looking statements as a result of various factors, including those set forth under "Risk Factors" or in other parts of this prospectus. The last day of our fiscal year is January 31. Our fiscal quarters end on April 30, July 31, October 31 and January 31. Fiscal 2012, our current fiscal year, will end on January 31, 2012.

Overview

Splunk provides an innovative software platform that enables organizations to gain real-time operational intelligence by harnessing the value of their data. Our software collects and indexes data at massive scale, regardless of format or source, and enables users to quickly and easily search, correlate, analyze, monitor and report on this data, all in real-time. Our software is designed to help users in various roles, including IT and business professionals, quickly analyze machine data and realize real-time visibility into and intelligence about their organization's operations.

We believe the market for software that provides operational intelligence presents a substantial opportunity as data grows in volume and diversity, creating new risks, opportunities and challenges for organizations. Since our inception, we have invested a substantial amount of resources developing our products and technology to address this market, specifically with respect to machine data.

Our software architecture is designed to accelerate adoption and return-on-investment for our customers. It does not require customization, long deployment cycles or extensive professional services commonly associated with traditional enterprise software applications. Users can simply download and install the software, typically in a matter of hours, connect to their relevant machine data sources and begin realizing operational intelligence. We also offer customers with complex IT infrastructure the ability to leverage the expertise of our professional services organization to deploy our software. We base our license fees on the estimated daily data indexing capacity our customers require. Prospective customers can download a trial version of our software that provides a full set of features but limited data indexing capacity. Following the 60-day trial period, prospective customers can purchase a license for our product or continue using our product with reduced features and limited data indexing capacity.

While we believe that there is a significant market opportunity for software that provides operational intelligence, this market is largely new and unproven. As a result, we often must educate prospective customers about the value of our products, which can result in lengthy sales cycles, particularly for larger prospective customers, as well as the incurrence of significant marketing expenses. Prospective customers may view purchases of our software as discretionary when compared to more traditional IT applications, and as a result, our sales may be adversely affected by downturns in general economic conditions more quickly and dramatically than other software providers. In addition, we primarily license our software under perpetual licenses whereby we generally recognize the license fee portion of these arrangements upfront. As a result, the timing of when we enter into large perpetual licenses may lead to fluctuations in our revenues and operating results because our expenses are largely fixed in the short-term.

We intend to continue investing for long-term growth. We have invested and expect to continue to invest heavily in our product development efforts to deliver additional compelling features, address customer needs and enable solutions that can address new end markets. In addition, we expect to continue to aggressively expand our sales and marketing organizations to market our software both in the United States and internationally. As a result, we do not expect to be profitable in the near future. We also intend to increase our investment in capital expenditures in future periods.
We were incorporated in California in 2003 and reincorporated in Delaware in 2006. From 2003 until 2005, our activities were focused on research and development that resulted in the commercial release of our software in 2005. Since then, we have opened sales and marketing offices in Hong Kong, Germany, Singapore and the United Kingdom. For the nine months ended October 31, 2011, 24% of our revenues were derived from customers located outside the United States. Our customers represent a wide variety of industries, including financial services, manufacturing, retail and technology, among others. As of October 31, 2011, we had over 3,300 customers, including a majority of the Fortune 100. Some of our customers include Bank of America, Comcast, salesforce.com and Zynga.

For fiscal 2009, 2010 and 2011, our revenues were $18.2 million, $35.0 million and $66.2 million, respectively, representing year-over-year growth of 93% for fiscal 2010 and 89% for fiscal 2011, and our net loss was $14.8 million, $7.5 million and $3.8 million, respectively. For the first nine months of fiscal 2011 and fiscal 2012, our revenues were $43.5 million and $77.8 million, respectively, representing year-over-year growth of 79%, and our net loss was $2.0 million and $9.7 million, respectively.

**Components of Operating Results**

**Revenues**

*License revenues.* License revenues reflect the revenues recognized from sales of licenses to new customers and additional licenses to existing customers. We are focused on acquiring new customers and increasing revenues from our existing customers as they realize the value of our software by indexing higher volumes of machine data and expanding the use of our software through additional use cases and broader deployment within their organizations. A substantial majority of our license revenues consists of revenues from perpetual licenses, under which we generally recognize the license fee portion of the arrangement upfront, assuming all revenue recognition criteria are satisfied. Customers can also purchase term license agreements, under which we recognize the license fee ratably, on a straight-line basis, over the term of the license.

*Maintenance and services revenues.* Maintenance and services revenues consist of revenues from maintenance agreements and, to a lesser extent, professional services and training. Typically, when purchasing a perpetual license, a customer also purchases one year of maintenance service for which we charge a percentage of the license fee. Customers with maintenance agreements are entitled to receive support and unspecified upgrades and enhancements when and if they become available during the maintenance period. We recognize the revenues associated with maintenance agreements ratably, on a straight-line basis, over the associated maintenance period. We have a professional services organization focused on helping some of our largest customers deploy our software in highly complex operational environments and train their personnel. We recognize the revenues associated with these professional services on a time and materials basis as we deliver the services or provide the training.

Professional services and training revenues as a percentage of total revenues were 6% for the nine months ended October 31, 2011. We have experienced continued growth in our professional services revenues primarily due to the deployment of our software with some customers that have large, highly complex IT environments.

We expect maintenance and services revenues to become a larger portion of our total revenues as our installed customer base grows.

**Cost of Revenues**

*Cost of license revenues.* Cost of license revenues includes all direct costs to deliver our product, including salaries, benefits, stock-based compensation, allocated overhead for facilities and IT, and amortization of acquired intangible assets. We recognize these expenses as they are incurred.
Cost of maintenance and services revenues. Cost of maintenance and services revenues includes salaries, benefits, stock-based compensation for our maintenance and services organization, allocated overhead for facilities and IT, and consulting services. We recognize expenses related to our maintenance and services organization as they are incurred.

Operating Expenses

Our operating expenses are classified into three categories: research and development, sales and marketing, and general and administrative. For each category, the largest component is personnel costs, which includes salaries, employee benefit costs, bonuses, commissions as applicable, and stock-based compensation. Operating expenses also include allocated overhead costs for depreciation of equipment, facilities and IT. Allocated costs for facilities consist of leasehold improvements and rent. Our allocated costs for IT include costs for compensation of our IT personnel and costs associated with our IT infrastructure. Operating expenses are generally recognized as incurred.

Research and development. Research and development expenses primarily consist of personnel and facility-related costs attributable to our research and development personnel. We have devoted our product development efforts primarily to enhancing the functionality and expanding the capabilities of our software. We expect that our research and development expenses will continue to increase as we increase our research and development headcount to further strengthen and enhance our software and invest in the development of our solutions and apps.

Sales and marketing. Sales and marketing expenses primarily consist of personnel and facility-related costs for our sales, marketing and business development personnel, commissions earned by our sales personnel, and the cost of marketing and business development programs. We expect that sales and marketing expenses will continue to increase as we continue to hire additional personnel and invest in marketing programs.

General and administrative. General and administrative expenses primarily consist of personnel and facility-related costs for our executive, finance, legal, human resources and administrative personnel, legal, accounting and other professional services fees, and other corporate expenses. We have recently incurred, and expect to continue to incur, additional expenses as we grow our operations and prepare to operate as a public company, including higher legal, corporate insurance and accounting expenses, and the additional costs of achieving and maintaining compliance with Section 404 of the Sarbanes-Oxley Act and related regulations. We also expect that general and administrative expenses will continue to increase as we expand our operations, including internationally.

Other Income (Expense), net

Other income (expense), net consists primarily of the changes in the fair value of our preferred stock warrants, interest expense on our outstanding debt and interest income on our cash balances.

Provision for Income Taxes

Provision for income taxes consists of state and foreign income taxes. Because we have generated net losses, we have fully reserved for any potential future benefits for loss carryforwards and research and development and other tax credits.

Results of Operations

The following tables set forth our results of operations for the periods presented and as a percentage of our total revenues for those periods. The period-to-period comparison of financial results is not necessarily indicative of financial results to be achieved in future periods, and the results for the first nine
months of fiscal 2012 are not necessarily indicative of results to be expected for the full year or for any other period.

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<tr>
<td><strong>Revenues</strong></td>
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<tr>
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<td>$55,494</td>
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<td>16,319</td>
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<tr>
<td><strong>Total revenues</strong></td>
<td>18,156</td>
<td>35,000</td>
<td>66,245</td>
<td>43,464</td>
<td>77,761</td>
<td></td>
<td></td>
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<tr>
<td><strong>Cost of revenues</strong></td>
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<tr>
<td>License</td>
<td>86</td>
<td>102</td>
<td>228</td>
<td>123</td>
<td>712</td>
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<tr>
<td>Maintenance and services</td>
<td>2,711</td>
<td>3,188</td>
<td>6,428</td>
<td>4,214</td>
<td>7,458</td>
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<td></td>
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<tr>
<td><strong>Total cost of revenues</strong></td>
<td>2,797</td>
<td>3,290</td>
<td>6,656</td>
<td>4,337</td>
<td>8,170</td>
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<tr>
<td><strong>Gross profit</strong></td>
<td>15,359</td>
<td>31,710</td>
<td>59,589</td>
<td>39,127</td>
<td>69,591</td>
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</tr>
<tr>
<td><strong>Operating expenses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>8,684</td>
<td>8,479</td>
<td>14,025</td>
<td>9,181</td>
<td>16,227</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>17,281</td>
<td>24,072</td>
<td>39,909</td>
<td>25,663</td>
<td>48,337</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administrative</td>
<td>4,462</td>
<td>6,462</td>
<td>8,949</td>
<td>6,261</td>
<td>13,108</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>30,427</td>
<td>39,013</td>
<td>62,883</td>
<td>41,105</td>
<td>77,672</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Operating loss</strong></td>
<td>(15,068)</td>
<td>(7,303)</td>
<td>(3,294)</td>
<td>(1,978)</td>
<td>(8,081)</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Other income (expense), net</td>
<td>332</td>
<td>(69)</td>
<td>(387)</td>
<td>32</td>
<td>(1,585)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Loss before income taxes</strong></td>
<td>(14,736)</td>
<td>(7,372)</td>
<td>(3,681)</td>
<td>(1,946)</td>
<td>(9,666)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>36</td>
<td>79</td>
<td>125</td>
<td>80</td>
<td>50</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td>$ (14,772)</td>
<td>(7,451)</td>
<td>(3,806)</td>
<td>(2,026)</td>
<td>(9,716)</td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Fiscal Year Ended January 31, (as % of revenues)</th>
<th></th>
<th>Fiscal Year Ended January 31, 2010</th>
<th>(as % of revenues)</th>
<th></th>
<th>Fiscal Year Ended January 31, 2011</th>
<th>(as % of revenues)</th>
<th></th>
<th>Nine Months Ended October 31, 2010</th>
<th>(as % of revenues)</th>
<th></th>
<th>Nine Months Ended October 31, 2011</th>
<th>(as % of revenues)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>License</td>
<td>82.3%</td>
<td>77.7%</td>
<td>75.4%</td>
<td>74.2%</td>
<td>71.4%</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance and services</td>
<td>17.7%</td>
<td>22.3%</td>
<td>24.6%</td>
<td>25.8</td>
<td>28.6%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total revenues</strong></td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
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<td></td>
</tr>
<tr>
<td><strong>Cost of revenues</strong></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>License</td>
<td>0.6%</td>
<td>0.4%</td>
<td>0.5%</td>
<td>0.4%</td>
<td>1.3%</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance and services</td>
<td>84.5%</td>
<td>40.8%</td>
<td>39.4%</td>
<td>37.6</td>
<td>33.5%</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total cost of revenues</strong></td>
<td>15.4%</td>
<td>9.4%</td>
<td>10.0%</td>
<td>10.0</td>
<td>10.5%</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>84.6%</td>
<td>90.6%</td>
<td>90.0%</td>
<td>90.0</td>
<td>89.5%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Operating expenses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>47.8%</td>
<td>24.2%</td>
<td>21.2%</td>
<td>21.1</td>
<td>20.9%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>95.2%</td>
<td>68.8%</td>
<td>60.2%</td>
<td>59.0</td>
<td>62.2%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administrative</td>
<td>24.6%</td>
<td>18.5%</td>
<td>13.5%</td>
<td>14.4</td>
<td>16.9%</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>167.6%</td>
<td>111.5%</td>
<td>94.9%</td>
<td>94.5</td>
<td>100.0%</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Operating loss</strong></td>
<td>(83.0)%</td>
<td>(20.9)%</td>
<td>(4.9)%</td>
<td>(4.5)</td>
<td>(10.5)%</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other income (expense), net</td>
<td>1.8%</td>
<td>(0.2)%</td>
<td>(0.6)%</td>
<td>—</td>
<td>(1.9)%</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Loss before income taxes</strong></td>
<td>(81.2)%</td>
<td>(21.1)%</td>
<td>(5.5)%</td>
<td>(4.5)</td>
<td>(12.4)%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>0.2%</td>
<td>0.2%</td>
<td>0.2%</td>
<td>0.2</td>
<td>0.1%</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td>(81.4)%</td>
<td>(21.3)%</td>
<td>(5.7)%</td>
<td>(4.7)%</td>
<td>(12.5)%</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

(1) Calculated as a percentage of the associated revenues.
First Nine Months of Fiscal 2011 and 2012

Revenues

<table>
<thead>
<tr>
<th>Revenues</th>
<th>Nine Months Ended</th>
<th>$</th>
<th>$</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>October 31</td>
<td>2010</td>
<td>2011</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>License</td>
<td></td>
<td>32,255</td>
<td>55,494</td>
<td>72.0%</td>
</tr>
<tr>
<td>Maintenance and services</td>
<td></td>
<td>11,209</td>
<td>22,267</td>
<td>98.7%</td>
</tr>
<tr>
<td>Total revenues</td>
<td></td>
<td>43,464</td>
<td>77,761</td>
<td>78.9%</td>
</tr>
</tbody>
</table>

| Percentage of revenues    |                  |         |         |          |
| License                   |                  |         |         |          |
| Maintenance and services  |                  |         |         |          |
| Total                     |                  |         |         |          |

Total revenues increased $34.3 million primarily due to growth in license revenues. The increase in license revenues was primarily driven by increases in our total number of customers, sales to existing customers and number of orders greater than $100,000. We had 97 and 188 orders greater than $100,000 in the first nine months of fiscal 2011 and 2012, respectively. The increase in maintenance and services revenues was due to increases in sales of maintenance agreements resulting from the growth of our installed customer base as well as sales of our professional services. We also experienced an increase in the proportion of our total revenues derived from customers outside the United States, which represented 20% and 24% of our total revenues in the first nine months of fiscal 2011 and 2012, respectively.

Cost of Revenues and Gross Margin

<table>
<thead>
<tr>
<th>Cost of revenues</th>
<th>Nine Months Ended</th>
<th>$</th>
<th>$</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>October 31</td>
<td>2010</td>
<td>2011</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>License</td>
<td></td>
<td>123</td>
<td>712</td>
<td>478.9%</td>
</tr>
<tr>
<td>Maintenance and services</td>
<td></td>
<td>4,214</td>
<td>7,458</td>
<td>77.0%</td>
</tr>
<tr>
<td>Total cost of revenues</td>
<td></td>
<td>4,337</td>
<td>8,170</td>
<td>88.4%</td>
</tr>
</tbody>
</table>

| Gross margin              |                  |         |         |          |
| License                   |                  | 99.6%   | 98.7%   |          |
| Maintenance and services  |                  | 62.4%   | 66.5%   |          |
| Total gross margin        |                  | 90.0%   | 89.5%   |          |

Total cost of revenues increased $3.8 million primarily due to the increase in cost of maintenance and services revenues. The increase in cost of maintenance and services revenues was primarily related to an increase of $1.6 million in salaries and benefits expense due to increased headcount, $0.9 million related to professional services expense and $0.4 million related to internal overhead costs allocations. Total gross margin was flat, although maintenance and services gross margin increased 4.1 percentage points due to increased leverage resulting from the increase in maintenance and services revenues as well as an increase in maintenance revenues as a percentage of total maintenance and services revenues.
Operating Expenses

<table>
<thead>
<tr>
<th>Operating expenses</th>
<th>2010</th>
<th>2011</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research and development</td>
<td>$9,181</td>
<td>$16,227</td>
<td>76.7%</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>25,663</td>
<td>48,337</td>
<td>88.4%</td>
</tr>
<tr>
<td>General and administrative</td>
<td>6,261</td>
<td>13,108</td>
<td>109.4%</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>$41,105</td>
<td>$77,672</td>
<td>89.0%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Percentage of revenues</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Research and development</td>
<td>21.1%</td>
<td>20.9%</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>59.0%</td>
<td>62.2%</td>
</tr>
<tr>
<td>General and administrative</td>
<td>14.4%</td>
<td>16.9%</td>
</tr>
<tr>
<td>Total</td>
<td>94.5%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

*Includes stock-based compensation of*

| Research and development            | $249     | $531     |
| Sales and marketing                 | 352      | 829      |
| General and administrative          | 512      | 824      |
| Total stock-based compensation      | $1,113   | $2,184   |

Research and development expense. Research and development expense increased $7.0 million primarily related to a $5.3 million increase in salaries and benefits as we increased headcount as part of our focus on further developing and enhancing our product. We also had increases of $1.0 million related to overhead costs and $0.4 million related to consulting fees.

Sales and marketing expense. Sales and marketing expense increased $22.7 million primarily related to a $15.9 million increase in salaries and benefits, as we increased headcount to expand our field sales organization, as well as commissions on increased customer orders. During the nine months ended October 31, 2011, we opened sales offices in Hong Kong and Singapore. We also had an increase in marketing related expenses of $3.3 million, primarily as a result of a significant increase in advertising. Additionally, we experienced increases in overhead costs of $1.6 million and travel expenses of $1.5 million.

General and administrative expense. General and administrative expense increased $6.8 million primarily related to a $1.9 million increase in salaries and benefits, as we increased headcount to support our overall growth. We also had an increase of $4.0 million in consulting and professional services fees related to accounting, legal and recruiting activities, and an increase of $0.6 million related to other office expenses.

Other Income (Expense), net

<table>
<thead>
<tr>
<th>Other income (expense), net</th>
<th>2010</th>
<th>2011</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$32</td>
<td>$(1,585)</td>
<td>NM</td>
</tr>
</tbody>
</table>

Other income (expense) decreased $1.6 million primarily due to $1.5 million of expense associated with the revaluation of our preferred stock warrants.
**Provision for Income Taxes**

We recorded income taxes that were principally attributable to state and foreign taxes.

**Fiscal 2009, 2010 and 2011**

**Revenues**

<table>
<thead>
<tr>
<th></th>
<th>Fiscal Year Ended January 31, (in thousands)</th>
<th>2009 to 2010 % Change</th>
<th>2010 to 2011 % Change</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>License</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$ 14,948</td>
<td>$ 27,183</td>
<td>$ 49,926</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Maintenance and services</strong></td>
<td>3,208</td>
<td>7,817</td>
<td>16,319</td>
</tr>
<tr>
<td><strong>Total revenues</strong></td>
<td>$ 18,156</td>
<td>$ 35,000</td>
<td>$ 66,245</td>
</tr>
</tbody>
</table>

Fiscal 2010 compared to fiscal 2011. Total revenues increased $31.2 million, or 89.3%, primarily due to the increase in license revenues. The increase in license revenues of $22.7 million was primarily driven by increases in our total number of customers, sales to existing customers and number of orders greater than $100,000. We had 151 orders greater than $100,000 in fiscal 2011 compared to 72 orders in fiscal 2010. The increase in maintenance and services revenues of $8.5 million was primarily due to increases in sales of maintenance agreements resulting from the growth of our installed customer base. We also experienced an increase in the proportion of our total revenues derived from customers outside the United States, which represented 19% and 21% of our total revenues in fiscal 2010 and 2011, respectively.

Fiscal 2009 compared to fiscal 2010. Total revenues increased $16.8 million, or 92.8%, primarily due to the increase in license revenues. The increase in license revenues of $12.2 million was primarily driven by increases in our total number of customers, sales to existing customers and number of orders greater than $100,000. We had 72 orders greater than $100,000 in fiscal 2010 compared to 36 orders in fiscal 2009. The increase in maintenance and services revenues of $4.6 million was primarily due to increases in sales of maintenance agreements resulting from the growth of our installed customer base. We also experienced an increase in the proportion of our total revenues derived from customers outside the United States, which represented 13% and 19% of our total revenues in fiscal 2009 and 2010, respectively.
Cost of Revenues and Gross Margin

Fiscal 2010 compared to fiscal 2011. Total cost of revenues increased $3.4 million primarily due to the increase in cost of maintenance and services revenues. The increase in cost of maintenance and services revenues of $3.2 million was primarily related to a $2.0 million increase in salaries and benefits expense due to increased headcount, $0.7 million in professional services fees and $0.3 million in travel expenses. Total gross margin was flat, although maintenance and services gross margin increased slightly due to increased leverage resulting from the increase in maintenance and services revenues as well as an increase in maintenance revenues as a percentage of total maintenance and services revenues.

Fiscal 2009 compared to fiscal 2010. Total cost of revenues increased $0.5 million primarily due to the increase in cost of maintenance and services revenues. The increase in cost of maintenance and services revenues was primarily related to an increase in salaries and benefits expense due to increased headcount, $0.7 million in professional services fees and $0.3 million in travel expenses. Total gross margin was flat, although maintenance and services gross margin increased slightly due to increased leverage resulting from the increase in maintenance and services revenues as well as an increase in maintenance revenues as a percentage of total maintenance and services revenues.

Operating Expenses

<table>
<thead>
<tr>
<th>Operating expenses</th>
<th>Fiscal Year Ended January 31,</th>
<th>2009 to 2010</th>
<th>2010 to 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td>% Change</td>
<td>% Change</td>
</tr>
<tr>
<td>Research and development</td>
<td>8,684</td>
<td>8,479</td>
<td>14,025</td>
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<tr>
<td>Sales and marketing</td>
<td>17,281</td>
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<td>39,909</td>
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<td>General and administrative</td>
<td>4,462</td>
<td>6,462</td>
<td>8,949</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>30,427</td>
<td>39,013</td>
<td>62,883</td>
</tr>
<tr>
<td>Percentage of revenues</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>47.8%</td>
<td>24.2%</td>
<td>21.2%</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>95.2</td>
<td>68.8</td>
<td>60.2</td>
</tr>
<tr>
<td>General and administrative</td>
<td>24.6</td>
<td>18.5</td>
<td>13.5</td>
</tr>
<tr>
<td>Total</td>
<td>167.6%</td>
<td>111.5%</td>
<td>94.9%</td>
</tr>
</tbody>
</table>

Includes stock-based compensation expense

<table>
<thead>
<tr>
<th>Operating expenses</th>
<th>Fiscal Year Ended January 31,</th>
<th>2009 to 2010</th>
<th>2010 to 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>96</td>
<td>215</td>
<td>347</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>176</td>
<td>382</td>
<td>495</td>
</tr>
<tr>
<td>General and administrative</td>
<td>484</td>
<td>672</td>
<td>684</td>
</tr>
<tr>
<td>Total stock-based compensation expense</td>
<td>756</td>
<td>1,269</td>
<td>1,526</td>
</tr>
</tbody>
</table>
Research and development expense

Fiscal 2010 compared to fiscal 2011. Research and development expense increased $5.5 million primarily due to a $4.5 million increase in salaries and benefits expense as we increased headcount as part of our focus on further developing and enhancing our product. We also had increases of $0.4 million related to consulting fees and $0.3 million related to overhead costs.

Fiscal 2009 compared to fiscal 2010. Research and development expense decreased $0.2 million primarily due to a decrease in consulting fees.

Sales and marketing expense

Fiscal 2010 compared to fiscal 2011. Sales and marketing expense increased $15.8 million primarily due to a $10.8 million increase in salaries and benefits expense as we expanded our field sales organization, as well as commissions on increased customer orders. Other increases included marketing-related expenses of $1.9 million, employee related expenses, such as recruiting, events and training, of $1.1 million, travel expenses of $0.8 million, overhead costs of $0.8 million, and consulting fees of $0.4 million.

Fiscal 2009 compared to fiscal 2010. Sales and marketing expense increased $6.8 million primarily due to a $6.0 million increase in salaries, commissions, and benefits expense as we expanded our field sales organization, including the opening of a sales office in Germany, and $0.4 million related to overhead costs.

General and administrative expense

Fiscal 2010 compared to fiscal 2011. General and administrative expense increased $2.5 million primarily due to a $0.5 million increase in salaries and benefits expense as we grew headcount to support our overall growth. We also had an increase in professional services fees of $1.1 million related to accounting, legal and recruiting activities, and $0.5 million related to office expenses.

Fiscal 2009 compared to fiscal 2010. General and administrative expense increased $2.0 million primarily due to salaries and benefits expense of $0.6 million, employee related expenses for recruiting, events and training of $0.5 million, $0.3 million related to other office expenses and $0.3 million related to sales tax expense.

Other Income (Expense), net

<table>
<thead>
<tr>
<th>Fiscal Year Ended January 31,</th>
<th>2009 to 2010</th>
<th>2010 to 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
<td>% Change</td>
<td>% Change</td>
</tr>
<tr>
<td>Other income (expense)</td>
<td>$ 332</td>
<td>$ (69)</td>
</tr>
</tbody>
</table>

Fiscal 2010 compared to fiscal 2011. The decrease in other income of $0.3 million was primarily related to the revaluation of our preferred stock warrants.

Fiscal 2009 compared to fiscal 2010. The decrease in other income of $0.4 million related to reduced interest income primarily related to higher yields on investments in fiscal 2009.

Provision for Income Taxes

<table>
<thead>
<tr>
<th>Fiscal Year Ended January 31,</th>
<th>2009 to 2010</th>
<th>2010 to 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
<td>% Change</td>
<td>% Change</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>$ 36</td>
<td>$ 79</td>
</tr>
</tbody>
</table>
In each of fiscal 2011, 2010 and 2009, we recorded income taxes that were principally attributable to state and foreign taxes.

Quarterly Results of Operations

The following tables set forth selected unaudited quarterly statements of operations data for the last seven fiscal quarters, as well as the percentage that each line item represents of total revenues. The information for each of these quarters has been prepared on the same basis as the audited annual financial statements included elsewhere in this prospectus and, in the opinion of management, includes all adjustments, which includes only normal recurring adjustments, necessary for the fair statement of the results of operations for these periods. This data should be read in conjunction with our audited consolidated financial statements and related notes included elsewhere in this prospectus. These quarterly operating results are not necessarily indicative of our operating results for any future period.

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</thead>
<tbody>
<tr>
<td>Revenues</td>
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<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>License</td>
<td>$9,179</td>
<td>$11,547</td>
<td>$11,529</td>
<td>$17,671</td>
<td>$14,546</td>
<td>$18,766</td>
<td>$22,182</td>
</tr>
<tr>
<td>Maintenance and services</td>
<td>3,009</td>
<td>3,746</td>
<td>4,454</td>
<td>5,110</td>
<td>6,093</td>
<td>7,183</td>
<td>8,991</td>
</tr>
<tr>
<td>Total revenues</td>
<td>12,188</td>
<td>15,293</td>
<td>15,983</td>
<td>22,781</td>
<td>20,639</td>
<td>25,949</td>
<td>31,173</td>
</tr>
<tr>
<td>Cost of revenues</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>License</td>
<td>37</td>
<td>43</td>
<td>43</td>
<td>105</td>
<td>136</td>
<td>423</td>
<td>153</td>
</tr>
<tr>
<td>Maintenance and services</td>
<td>1,119</td>
<td>1,476</td>
<td>1,619</td>
<td>2,214</td>
<td>1,868</td>
<td>2,550</td>
<td>3,040</td>
</tr>
<tr>
<td>Total cost of revenues(1)</td>
<td>1,156</td>
<td>1,519</td>
<td>1,662</td>
<td>2,319</td>
<td>2,004</td>
<td>2,973</td>
<td>3,193</td>
</tr>
<tr>
<td>Gross profit</td>
<td>11,032</td>
<td>13,774</td>
<td>14,321</td>
<td>20,462</td>
<td>18,635</td>
<td>22,976</td>
<td>27,980</td>
</tr>
<tr>
<td>Operating expenses</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development(1)</td>
<td>2,469</td>
<td>2,902</td>
<td>3,810</td>
<td>4,844</td>
<td>4,338</td>
<td>5,414</td>
<td>6,475</td>
</tr>
<tr>
<td>Sales and marketing(1)</td>
<td>7,629</td>
<td>8,646</td>
<td>9,387</td>
<td>14,247</td>
<td>12,768</td>
<td>16,390</td>
<td>19,179</td>
</tr>
<tr>
<td>General and administrative(1)</td>
<td>1,664</td>
<td>2,050</td>
<td>2,547</td>
<td>2,688</td>
<td>3,292</td>
<td>4,446</td>
<td>5,370</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>11,762</td>
<td>13,598</td>
<td>15,744</td>
<td>21,779</td>
<td>20,398</td>
<td>26,250</td>
<td>31,024</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>(730)</td>
<td>176</td>
<td>(1,423)</td>
<td>(1,317)</td>
<td>(1,763)</td>
<td>(3,274)</td>
<td>(3,044)</td>
</tr>
<tr>
<td>Other income (expense), net</td>
<td>12</td>
<td>23</td>
<td>(3)</td>
<td>(419)</td>
<td>(483)</td>
<td>(636)</td>
<td>(466)</td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>(718)</td>
<td>199</td>
<td>(1,426)</td>
<td>(1,736)</td>
<td>(2,246)</td>
<td>(3,910)</td>
<td>(3,510)</td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>30</td>
<td>30</td>
<td>20</td>
<td>45</td>
<td>—</td>
<td>—</td>
<td>50</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>$ (748)</td>
<td>$169</td>
<td>$(1,446)</td>
<td>$(1,781)</td>
<td>$(2,246)</td>
<td>$(3,910)</td>
<td>$(3,560)</td>
</tr>
</tbody>
</table>

(1) Includes stock-based compensation expense as follows:

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</tr>
</thead>
<tbody>
<tr>
<td>Cost of revenues</td>
<td>$10</td>
<td>$16</td>
<td>$16</td>
<td>$16</td>
<td>$19</td>
<td>$27</td>
<td>$37</td>
</tr>
<tr>
<td>Research and development</td>
<td>67</td>
<td>91</td>
<td>98</td>
<td>121</td>
<td>181</td>
<td>229</td>
<td>405</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>81</td>
<td>131</td>
<td>140</td>
<td>143</td>
<td>179</td>
<td>245</td>
<td>405</td>
</tr>
<tr>
<td>General and administrative</td>
<td>166</td>
<td>176</td>
<td>170</td>
<td>173</td>
<td>191</td>
<td>263</td>
<td>370</td>
</tr>
<tr>
<td>Total stock-based compensation</td>
<td>$324</td>
<td>$414</td>
<td>$417</td>
<td>$430</td>
<td>$510</td>
<td>$716</td>
<td>$1,041</td>
</tr>
</tbody>
</table>
The following table reflects the reconciliation of operating income (loss) measured in accordance with GAAP to non-GAAP operating income (loss).

### Other Financial Data:

<table>
<thead>
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</thead>
<tbody>
<tr>
<td>(in thousands)</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-GAAP operating income (loss)</td>
<td>$ (406)</td>
<td>$ 590</td>
<td>$ (1,006)</td>
<td>$ (887)</td>
<td>$ (1,253)</td>
<td>$ (2,558)</td>
<td>$ (2,003)</td>
</tr>
</tbody>
</table>

(1) We define non-GAAP operating income (loss) as net operating income (loss) plus stock-based compensation. Please see "Non-GAAP Financial Results" in the section titled "Selected Consolidated Financial Data" for more information.

The following table reflects the reconciliation of operating income (loss) measured in accordance with GAAP to non-GAAP operating income (loss).

### GAAP operating income (loss)

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<tbody>
<tr>
<td>(in thousands)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>GAAP operating income (loss)</td>
<td>$ (730)</td>
<td>$ 176</td>
<td>$ (1,423)</td>
<td>$ (1,317)</td>
<td>$ (1,763)</td>
<td>$ (3,274)</td>
<td>$ (3,044)</td>
</tr>
<tr>
<td>Non-GAAP adjustments</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee stock-based compensation expense</td>
<td>324</td>
<td>414</td>
<td>417</td>
<td>430</td>
<td>510</td>
<td>716</td>
<td>1,041</td>
</tr>
<tr>
<td>Non-GAAP operating income (loss)</td>
<td>$ (406)</td>
<td>$ 590</td>
<td>$ (1,006)</td>
<td>$ (887)</td>
<td>$ (1,253)</td>
<td>$ (2,558)</td>
<td>$ (2,003)</td>
</tr>
</tbody>
</table>

### Consolidated Statement of Operations Data:

#### Revenues

- **License**: 75.3%, 75.5%, 72.1%, 77.6%, 70.5%, 72.3%, 71.2%
- **Maintenance and services**: 24.7%, 24.5%, 27.9%, 22.4%, 29.5%, 27.7%, 28.8%

#### Cost of revenues

- **License**: 0.4%, 0.4%, 0.4%, 0.6%, 0.9%, 2.3%, 0.7%
- **Maintenance and services**: 37.2%, 39.4%, 36.3%, 43.3%, 30.7%, 35.5%, 33.8%

#### Gross profit

<table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>(as % of revenues)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Total cost of revenues</td>
<td>9.5%</td>
<td>9.9%</td>
<td>10.4%</td>
<td>10.2%</td>
<td>9.7%</td>
<td>11.5%</td>
<td>10.2%</td>
</tr>
<tr>
<td>Gross profit</td>
<td>90.5%</td>
<td>90.1%</td>
<td>89.6%</td>
<td>89.8%</td>
<td>90.3%</td>
<td>88.5%</td>
<td>89.8%</td>
</tr>
</tbody>
</table>

#### Operating expenses

- **Research and development**: 20.3%, 19.0%, 23.8%, 21.3%, 21.0%, 20.9%, 20.8%
- **Sales and marketing**: 62.6%, 56.5%, 58.7%, 62.5%, 61.9%, 63.2%, 61.5%
- **General and administrative**: 13.7%, 13.4%, 15.9%, 11.8%, 16.0%, 17.1%, 17.2%

#### Total operating expenses

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<tbody>
<tr>
<td>(as % of revenues)</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>96.6%</td>
<td>89.9%</td>
<td>98.4%</td>
<td>95.6%</td>
<td>98.9%</td>
<td>101.2%</td>
<td>99.5%</td>
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</table>

#### Operating income (loss)

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<tbody>
<tr>
<td>(as % of revenues)</td>
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</tr>
<tr>
<td>Operating income (loss)</td>
<td>(6.1)%</td>
<td>1.2%</td>
<td>(8.8)%</td>
<td>(5.8)%</td>
<td>(8.6)%</td>
<td>(12.7)%</td>
<td>(9.7)%</td>
</tr>
</tbody>
</table>

#### Loss before income taxes

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<tr>
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<tbody>
<tr>
<td>(as % of revenues)</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loss before income taxes</td>
<td>(5.9)%</td>
<td>1.3%</td>
<td>(8.9)%</td>
<td>(7.6)%</td>
<td>(10.9)%</td>
<td>(15.1)%</td>
<td>(11.2)%</td>
</tr>
</tbody>
</table>

#### Provision for income taxes

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</thead>
<tbody>
<tr>
<td>(as % of revenues)</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provision for income taxes</td>
<td>0.2%</td>
<td>0.2%</td>
<td>0.1%</td>
<td>0.2%</td>
<td>—</td>
<td>—</td>
<td>0.2%</td>
</tr>
</tbody>
</table>

#### Net income (loss)

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</thead>
<tbody>
<tr>
<td>(as % of revenues)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>(6.1)%</td>
<td>1.1%</td>
<td>(9.0)%</td>
<td>(7.8)%</td>
<td>(10.9)%</td>
<td>(15.1)%</td>
<td>(11.4)%</td>
</tr>
</tbody>
</table>

(1) This percentage is calculated as a percentage of the associated revenues.
Seasonality, Cyclicality and Quarterly Trends

Our quarterly results reflect seasonality in the sale of our products and services. Historically, a pattern of increased license sales in the fourth fiscal quarter has positively impacted sales activity in that period, which can make it difficult to achieve sequential revenue growth in the first fiscal quarter. Other than the third fiscal quarter of fiscal 2012, we have historically experienced relatively flat revenues in the third fiscal quarter compared to the second fiscal quarter. We expect these seasonal patterns to continue. Our gross margins and operating losses have been affected by these historical trends because the majority of our expenses are relatively fixed in the short term. The timing of revenues in relation to our expenses, much of which does not vary directly with revenues, has an impact on the cost of revenues, research and development expense, sales and marketing expense, and general and administrative expense as a percentage of revenues in each fiscal quarter during the year. The majority of our expenses are personnel-related and include salaries, stock-based compensation, benefits and incentive-based compensation plan expenses. As a result, we have not experienced significant seasonal fluctuations in the timing of expenses from period to period. Although these seasonal factors are common in the technology industry, historical patterns should not be considered a reliable indicator of our future sales activity or performance.

As is typical in the software industry, we expect a significant portion of our product license orders to be received in the last month of each fiscal quarter. We typically ship products shortly after the receipt of an order. We may have backlog consisting of product license orders that have not shipped and maintenance, professional and training services that have not been billed and for which the services have not yet been performed. Historically, our backlog has varied from quarter to quarter and has been immaterial to our total revenues.

Other than the first quarter of fiscal 2012, our total revenues have increased over the periods presented due to increased sales to new customers as well as incremental sales to existing customers that seek to increase their daily indexing capacity or expand the use of our software through additional use cases or broader deployment within their organizations. Total revenues decreased in the first quarter of fiscal 2012 and were relatively flat in the third quarter of fiscal 2011, primarily as a result of the seasonality of our business described above.

Other than the first quarter of fiscal 2012, research and development expenses increased sequentially in every quarter primarily due to increases in headcount-related expenses from continued hiring to develop and enhance our products. Research and development expenses modestly decreased on a sequential basis in the first quarter of fiscal 2012, primarily due to expenses recorded in connection with year-end bonuses to our research and development personnel in the fourth quarter of fiscal 2011.

Other than the first quarter of fiscal 2012, sales and marketing expenses increased sequentially in every quarter primarily due to increases in headcount-related expenses, as well as increased marketing programs and events. Increases in the fourth quarter of each fiscal year also relate to increased commissions earned on customer orders entered into at year-end. In the fourth quarter of fiscal 2011, the increase in sales and marketing expenses related to sales commission, year-end bonuses and increased branding expenses.

General and administrative expenses increased sequentially in every quarter primarily due to increases in headcount-related expenses, as well as increased consulting and professional services fees related to accounting, legal and recruiting activities to support growth in our business and additional costs incurred in preparation for our initial public offering.
Liquidity and Capital Resources

Since fiscal 2010 we have funded our operations primarily through cash generated from operations. Prior to fiscal 2010 we financed our operations through private sales of equity securities and to a lesser extent cash generated from operations. At October 31, 2011, our cash and cash equivalents of $23.0 million were held for working capital purposes and were invested primarily in money market funds. We intend to increase our investment in capital expenditures in fiscal 2013. We believe that our existing cash and cash equivalents will be sufficient to meet our anticipated cash needs for at least the next 12 months. Our future capital requirements will depend on many factors including our growth rate, the timing and extent of spending to support development efforts, the expansion of sales and marketing activities, the introduction of new and enhanced software and services offerings, and the continuing market acceptance of our products. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us if at all. If we are unable to raise additional capital when desired, our business, operating results and financial condition could be adversely affected.

Operating Activities

For the nine months ended October 31, 2011, cash inflows from our operating activities were $4.6 million, which reflects our net loss of $9.7 million, adjusted by non-cash charges of $5.4 million consisting primarily of $2.3 million for stock-based compensation, $1.5 million for the change in valuation of preferred stock warrants and $1.4 million for depreciation and amortization. Additional sources of cash inflows were from changes in our working capital, including a $14.3 million increase in deferred revenue, a $4.7 million increase in accrued compensation and accrued expenses and other liabilities, primarily due to increased headcount, partially offset by a $7.6 million increase in accounts receivable, due to increased sales, a $2.2 million increase in prepaid expenses and other current assets, and a $0.3 million decrease in accounts payable due to the timing of payments.

For the nine months ended October 31, 2010, cash inflows from our operating activities were $1.9 million, which reflects our net loss of $2.0 million, adjusted by non-cash charges of $2.1 million consisting primarily of $1.2 million for stock-based compensation and $0.7 million for depreciation and amortization. Additional sources of cash inflows were from changes in our working capital, including a $4.8 million increase in deferred revenue, a $3.6 million increase in accrued compensation and accrued expense and other liabilities, primarily due to increased headcount, partially offset by a $5.9 million increase in accounts receivable, due to increased sales, and a $0.7 million increase in prepaid expenses and other current assets.

For fiscal 2011, we generated $8.4 million of cash inflows from our operating activities, which reflects our net loss of $3.8 million, adjusted by non-cash charges of $3.4 million consisting primarily of $1.6 million

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</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$4,736</td>
<td>$11,805</td>
<td>$19,737</td>
<td>$13,462</td>
<td>$22,997</td>
<td>$23,000</td>
</tr>
<tr>
<td>Cash provided by (used in) operating activities</td>
<td>$(11,230)</td>
<td>$897</td>
<td>$8,379</td>
<td>$1,888</td>
<td>$4,615</td>
<td>$4,615</td>
</tr>
<tr>
<td>Cash provided by (used in) investing activities</td>
<td>2,277</td>
<td>4,719</td>
<td>(1,310)</td>
<td>(754)</td>
<td>(6,096)</td>
<td>(6,096)</td>
</tr>
<tr>
<td>Cash provided by financing activities</td>
<td>599</td>
<td>1,453</td>
<td>863</td>
<td>523</td>
<td>4,741</td>
<td>4,741</td>
</tr>
<tr>
<td>Net increase (decrease) in cash and cash equivalents</td>
<td>$(8,354)</td>
<td>$7,069</td>
<td>$7,932</td>
<td>$1,657</td>
<td>$3,260</td>
<td>$3,260</td>
</tr>
</tbody>
</table>
For stock-based compensation and $1.0 million for depreciation and amortization. Cash inflows included an increase of $11.0 million in deferred revenue, a $6.2 million increase in accrued compensation and accrued expenses and other liabilities, and a $0.5 million increase in accounts payable due to the timing of payments, primarily due to an increase in headcount, partially offset by an $8.0 million increase in accounts receivable associated with increased sales, and a $0.9 million increase in prepaid expenses and other current assets.

For fiscal 2010, cash inflows from our operating activities were $0.9 million, which reflects our net loss of $7.5 million, adjusted by non-cash charges of $2.6 million consisting primarily of $1.3 million for stock-based compensation and $0.9 million for depreciation and amortization. Additional sources of cash inflows were from changes in our working capital, including a $6.0 million increase in deferred revenue, a $1.5 million increase in accrued compensation and accrued expenses and other liabilities, and a $0.5 million increase in accounts payable due to the timing of payments, primarily due to an increase in headcount, partially offset by an $83.0 million increase in accounts receivable associated with increased sales.

For fiscal 2009, cash outflows from our operating activities were $11.2 million, which reflects our net loss of $14.8 million, adjusted by non-cash charges of $2.2 million consisting primarily of $0.8 million for depreciation and amortization and $0.8 million for stock-based compensation. Sources of cash inflows were changes in our working capital, including a $3.4 million increase in deferred revenue and a $1.4 million increase in accrued compensation and accrued expenses and other liabilities, primarily due to increased headcount. These increases were partially offset by a $2.9 million increase in accounts receivable associated with increased sales, and a $0.5 million increase in prepaid expenses and other current assets.

Investing Activities

Our investing activities consist primarily of capital expenditures to purchase property and equipment, sales of short-term investments and changes in our restricted cash. In the future, we expect to continue to invest in capital expenditures to support our expanding operations.

During the nine months ended October 31, 2011, cash used in investing activities of $6.1 million was primarily attributable to capital expenditures for technology hardware to support our growth during the period, as well as leasehold improvements on our corporate headquarters.

During the nine months ended October 31, 2010, cash used in investing activities of $0.8 million was primarily attributable to capital expenditures during the period.

During fiscal 2011, cash used in investing activities of $1.3 million was primarily attributable to capital expenditures for technology and software to support our corporate infrastructure.

During fiscal 2010, cash provided by investing activities of $4.7 million was attributable to $4.9 million from the sale of securities. This was partially offset by $0.4 million in capital expenditures related to the purchase of computer equipment to support the growth of our business.

During fiscal 2009, cash provided by investing activities of $2.3 million was attributable to $5.4 million from the sale of securities. This was partially offset by $2.2 million in capital expenditures and by a $1.0 million increase in restricted cash related to the lease of our headquarters in San Francisco.

Financing Activities

Cash provided by financing activities for the nine months ended October 31, 2011, nine months ended October 31, 2010 and for fiscal 2011, 2010 and 2009 was $4.7 million, $0.5 million, $0.9 million, $1.5 million and $0.6 million, respectively, and was primarily attributable to proceeds received from the exercises of stock options partially offset by payments related to our financing arrangements described below.
Loan and Security Agreement

In May 2009, we entered into a loan and security agreement with Silicon Valley Bank, which was most recently amended in February 2011. The agreement includes a revolving line of credit facility and a term loan facility described below. The agreement contains financial covenants and other customary affirmative and negative covenants. As part of the agreement, we granted the lender a security interest in our personal property, excluding intellectual property and other intangible assets. The agreement also contains customary events of default. We were in compliance with all covenants as of October 31, 2011.

The agreement provides for a revolving line of credit facility, which expires May 27, 2012, and a term loan facility, with each advance amortized over a period of 36 months with equal monthly payments of principal and interest. We may borrow up to $10.0 million under the revolving line of credit facility, subject to a borrowing base determined on eligible accounts receivable and subject to a total maximum outstanding amount of $10.0 million. As of October 31, 2011, we had no balance outstanding on the revolving line of credit. Interest on any drawdown under the revolving line of credit accrues at the prime rate plus 0.75% (4.75% as of October 31, 2011). In addition to the line of credit facility, a $3.0 million term loan facility was available for draw through June 30, 2011. As of October 31, 2011, we had $2.5 million outstanding in term debt consisting of $1.0 million due between October 31, 2011 and October 31, 2012 and $1.5 million due between October 31, 2012 and October 31, 2014. The interest rate for the term debt is fixed at 5.5%.

Contractual Payment Obligations

The following summarizes our contractual commitments and obligations as of January 31, 2011:

<table>
<thead>
<tr>
<th>Payments Due by Period</th>
<th>Total</th>
<th>Less Than 1 year</th>
<th>1-3 years</th>
<th>3-5 years</th>
<th>More Than 5 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating lease obligations</td>
<td>$5,959</td>
<td>$1,862</td>
<td>$3,319</td>
<td>$689</td>
<td>$89</td>
</tr>
</tbody>
</table>

Future operating lease obligations increased during the nine months ended October 31, 2011 for costs related to additional leases. During the nine months ended October 31, 2011, we executed amendments increasing the square footage of our headquarters in San Francisco. In addition, we entered into new operating lease agreements for our Cupertino and certain international locations. Payments associated with lease agreements increased by $3.4 million, of which $0.6 million is due by January 31, 2012, $2.6 million is due between January 31, 2012 and January 31, 2014, and $0.2 million is due between January 31, 2014 and January 31, 2015.

Off-Balance Sheet Arrangements

During fiscal 2009, 2010 and 2011 and the first nine months of fiscal 2012, we did not have any relationships with unconsolidated organizations or financial partnerships, such as structured finance or special purpose entities, that would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

Indemnification Arrangements

During the ordinary course of business, we include indemnification provisions within certain of our contracts. Pursuant to these agreements, we will indemnify, hold harmless and agree to reimburse the indemnified party for losses suffered or incurred by the indemnified party, generally parties with which we have commercial relations, in connection with certain intellectual property infringement claims by any third party with respect to our products and services. To date, there have not been any costs incurred in
connection with such indemnification clauses and therefore, there is no accrual of such amounts at January 31, 2010 and 2011 and October 31, 2011.

Critical Accounting Policies and Estimates

We prepare our consolidated financial statements in accordance with generally accepted accounting principles in the United States. The preparation of consolidated financial statements also requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, costs and expenses and related disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results could differ significantly from the estimates made by our management. To the extent that there are differences between our estimates and actual results, our future financial statement presentation, financial condition, results of operations and cash flows will be affected. We believe that the accounting policies discussed below are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management's judgments and estimates.

Revenue Recognition

We generate revenues primarily in the form of software license fees and related maintenance and services fees. License fees include perpetual license fees, term license fees and royalties. Maintenance and services primarily consist of fees for maintenance services (including support and unspecified upgrades and enhancements when and if they are available), training and professional services that are not essential to functionality.

We recognize revenues when all of the following conditions are met:

• there is persuasive evidence of an arrangement;
• the software or services have been delivered to the customer;
• the amount of fees to be paid by the customer is fixed or determinable; and
• the collection of the related fees is probable.

Signed agreements are used as evidence of an arrangement. If a contract signed by the customer does not exist, we have used a purchase order as evidence of an arrangement. In cases where both a signed contract and a purchase order exist, we consider the signed contract to be the final persuasive evidence of an arrangement. Electronic delivery occurs when we provide the customer with access to the software via a license key. We assess whether a fee is fixed or determinable at the outset of the arrangement, primarily based on the payment terms associated with the transaction. We do not generally offer extended payment terms with typical terms of payment due between 30 and 60 days from delivery of software. We assess collectibility of the fee based on a number of factors such as collection history and creditworthiness of the customer. If we determine that collectibility is not probable, revenue is deferred until collectibility becomes probable, generally upon receipt of cash.

When contracts contain multiple elements wherein vendor specific objective evidence ("VSOE") exists for all undelivered elements and the services, if any, are not essential to the functionality of the delivered elements, we account for the delivered elements in accordance with the "Residual Method."

Perpetual license arrangements are typically accompanied by maintenance agreements. Maintenance revenues consist of fees for providing software updates on a when and if available basis and technical support for software products ("post-contract support" or "PCS") for an initial term. Maintenance revenues are recognized ratably over the term of the agreement. We have established fair value for maintenance on perpetual licenses due to consistently priced standalone sales of maintenance.
Revenues related to term license fees are recognized ratably over the contract term beginning on the date the customer has access to the software license key and continuing through the end of the contract term. In these cases we do not have VSOE of fair value for maintenance as fees for support and maintenance are bundled with the license over the entire term of the contract.

License arrangements may also include professional services and training services, which are typically delivered early in the contract term. In determining whether professional services revenues should be accounted for separately from license revenues, we evaluate whether the professional services are considered essential to the functionality of the software using factors such as the nature of our software products; whether they are ready for use by the customer upon receipt; the nature of our implementation services, which typically do not involve significant customization to or development of the underlying software code; the availability of services from other vendors; whether the timing of payments for license revenues is coincident with performance of services; and whether milestones or acceptance criteria exist that affect the realizability of the software license fee. Substantially all of our professional services arrangements are billed on a time and materials basis and, accordingly, are recognized as the services are performed. Training revenues are recognized as training services are delivered. VSOE of fair value of professional and training services is based upon stand-alone sales of those services. Payments received in advance of services performed are deferred and recognized when the related services are performed.

We do not offer credits or refunds and therefore have not recorded any sales return allowance for any of the periods presented. Upon a periodic review of outstanding accounts receivable, amounts that are deemed to be uncollectible are written off against the allowance for doubtful accounts.

Stock-Based Compensation

We account for stock-based compensation in accordance with the authoritative guidance on stock compensation. Under the fair value recognition provisions of this guidance, stock-based compensation is measured at the grant date based on the fair value of the award and is recognized as expense, net of estimated forfeitures, over the requisite service period, which is generally the vesting period of the respective award.

Determining the fair value of stock-based awards at the grant date requires judgment. We use the Black-Scholes 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, the expected term of the options, our expected stock price volatility, risk-free interest rates, and expected dividends, which are estimated as follows:

* Fair value of our common stock. Because our stock is not publicly traded, we must estimate the fair value of common stock, as discussed in “Common stock valuations” below.

* Expected term. The expected term represents the period that our stock-based awards are expected to be outstanding. As we do not have sufficient historical experience for determining the expected term of the stock option awards granted, we have based our expected term on the simplified method available under U.S. GAAP.

* Expected volatility. As we do not have a trading history for our common stock, the expected stock price volatility for our common stock was estimated by taking the average historic price volatility for industry peers 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.
• **Risk-free 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.** We have never declared or paid any cash dividends and do not presently plan to pay cash dividends in the foreseeable future. Consequently, we used an expected dividend yield of zero.

If any of the assumptions used in the Black-Scholes 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 periods presented:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal Year Ended January 31,</th>
<th>Nine Months Ended October 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009</td>
<td>2010</td>
</tr>
<tr>
<td>Expected term (in years)</td>
<td>6.08</td>
<td>6.08</td>
</tr>
<tr>
<td>Expected volatility</td>
<td>57.9%-59.2%</td>
<td>59.2%</td>
</tr>
<tr>
<td>Risk-free rate</td>
<td>1.82%-3.36%</td>
<td>2.71%-2.94%</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

**Common stock valuations**

The fair value of the common stock underlying our stock options was determined by our board of directors, which intended all options granted to be exercisable at a price per share not less than the per share fair value of our common stock underlying those options on the date of grant. The valuations of our common stock were determined in accordance with the guidelines outlined in the American Institute of Certified Public Accountants Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*. The assumptions we use in the valuation model are based on future expectations combined with management judgment. In the absence of a public trading market, our board of directors with input from management exercised significant judgment and considered numerous 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:

• contemporaneous independent valuations performed at periodic intervals by an independent valuation firm;
• the prices, rights, preferences and privileges of our preferred stock relative to the common stock;
• the purchase of shares of common stock by several holders of our preferred stock from certain former employees in June and July 2011;
• our operating and financial performance and forecast;
• current business conditions;
• the hiring of key personnel;
• 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 technology companies; and
• the U.S. and global capital market conditions.
We granted stock options with the following exercise prices since February 1, 2011:

<table>
<thead>
<tr>
<th>Grant Date</th>
<th>Number of Options Granted</th>
<th>Common Stock Fair Value Per Share at Grant Date</th>
<th>Exercise Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 17, 2011</td>
<td>1,037,000</td>
<td>$2.14</td>
<td>$2.14</td>
</tr>
<tr>
<td>April 21, 2011</td>
<td>500,000</td>
<td>2.14</td>
<td>2.14</td>
</tr>
<tr>
<td>April 22, 2011</td>
<td>50,000</td>
<td>2.14</td>
<td>2.14</td>
</tr>
<tr>
<td>June 14, 2011</td>
<td>2,299,300</td>
<td>2.94</td>
<td>2.94</td>
</tr>
<tr>
<td>July 15, 2011</td>
<td>1,000,000</td>
<td>2.94</td>
<td>2.94</td>
</tr>
<tr>
<td>July 28, 2011</td>
<td>582,500</td>
<td>2.94</td>
<td>2.94</td>
</tr>
<tr>
<td>September 15, 2011</td>
<td>799,000</td>
<td>3.94</td>
<td>3.94</td>
</tr>
<tr>
<td>October 26, 2011</td>
<td>150,000</td>
<td>3.94</td>
<td>3.94</td>
</tr>
</tbody>
</table>

Based upon the assumed initial public offering price of $ per share, the aggregate intrinsic value of options outstanding as of January 31, 2012 was $ million, of which $ million related to vested options and $ million related to unvested options.

In order to determine the fair value of our common stock underlying option grants, we first engaged an independent valuation firm to determine our enterprise value and allocate that value to each element of our capital structure (preferred stock, common stock, warrants and options). Our enterprise value was estimated using the market-based approach using the comparable company method and the recent transaction method. The market-based approach considers multiples of financial metrics based on both acquisitions and trading multiples of a selected peer group of technology companies. These multiples are then applied to our financial metrics to derive a range of indicated values. The market based approach also estimates the implied enterprise value based on a transaction in a company's equity securities. Our indicated enterprise value at each valuation date was allocated to the shares of preferred stock, common stock, warrants and options using an option pricing method, or OPM. Estimates of the volatility were based on available information on the volatility of common stock of comparable, publicly traded companies.

Significant factors considered by our board of directors in determining the fair value of our common stock at these grant dates include:

**March and April 2011.**  In March and April 2011, the U.S. economy and the financial and stock markets were continuing to recover from the global financial crisis that began in 2008 and continued in 2009. During this period, we experienced a seasonal decline in sequential revenue growth, generating $20.7 million of revenues for the quarter ended April 30, 2011 compared to $22.8 million for the quarter ended January 31, 2011. However, our revenues exceeded our forecast, and, as a result, we increased our forecast of revenues for the remainder of fiscal 2012. During this period we also hired our first general counsel.

Our board of directors considered these improved market conditions, especially for technology companies, our better than anticipated operating performance and reduced operating risk in our business when it determined the fair value of our common stock. In addition, our board of directors considered our enterprise value and related allocation of our enterprise value to each element of our capital structure as detailed in a report from an independent valuation firm using the methods described below.

After consideration of all of these factors, we determined to use a market approach weighing public company comparables at 50% and mergers and acquisitions comparables at 50%. A discount rate of 25% was applied, based on the industry cost of capital for newly public companies in the technology industry. The enterprise value was then allocated to the common stock utilizing an OPM with the following assumptions: a time to liquidity event of two years, a risk free rate of 0.58% and volatility of 52% over the time to a liquidity event. The results of the OPM were reduced by a discount for lack of marketability of
June and July 2011. In June and July 2011, the U.S. economy and the financial and stock markets were continuing to recover. During this period, we experienced sequential revenue growth, generating $26.0 million of revenues for the quarter ended July 31, 2011 compared to $20.7 million for the quarter ended April 30, 2011, which exceeded our forecast. As a result of these positive operating results, we increased our forecast of revenues for fiscal 2012. During this period we also hired our first chief financial officer.

Our board of directors considered these improved market conditions, our better than anticipated operating performance, reduced operating risk in our business, the hiring of our first chief financial officer, and a shorter time to expected exit when it determined the fair value of our common stock. In addition, our board of directors considered our enterprise value and related allocation of our enterprise value to each element of our capital structure as detailed in a report from an independent valuation firm using the methods described below.

After consideration of all of these factors, we determined to use a market approach weighing public company comparables at 50% and mergers and acquisitions comparables at 50%. A discount rate of 25% was applied, based on the industry cost of capital for newly public companies in the technology industry. The enterprise value was then allocated to the common stock utilizing an OPM with the following assumptions: a time to liquidity event of 1.75 years, a risk free rate of 0.51% and volatility of 42% over the time to a liquidity event. The results of the OPM were reduced by a discount for lack of marketability of 20%. This resulted in our board of directors determining that the fair value of our common stock was $2.14 per share.

September and October 2011. In September and October 2011, the U.S. economy and the financial and stock markets began to stabilize from the uncertainty and high volatility that they experienced in the late summer of 2011. During this period, we experienced sequential revenue growth, generating $31.2 million of revenues for the quarter ended October 31, 2011 compared to $26.0 million for the quarter ended July 31, 2011, which exceeded our forecast. As a result of these positive operating results, we increased our forecast of revenues for fiscal 2012.

Our board of directors considered these improved market conditions, especially for technology companies, our better than anticipated operating performance, reduced operating risk in our business, and a shorter time to expected exit when it determined the fair value of our common stock. In addition, our board of directors considered our enterprise value and related allocation of our enterprise value to each element of our capital structure as detailed in a report from an independent valuation firm using the methods described below.

After consideration of all of these factors, we determined to use a market approach weighing public company comparables at 37.5%, mergers and acquisitions comparables at 37.5%, and the recent transaction method at 25%. The recent transaction method was added as a valuation methodology due to the purchase by existing preferred stock investors of 46,812 shares of common stock held by some of our former employees. Based on the terms and parties involved in the transaction, a 25% weighing was deemed appropriate as an indication of our value. A discount rate of 25% was applied, based on the industry cost of capital for newly public companies in the technology industry. The enterprise value was then allocated to the common stock utilizing an OPM with the following assumptions: a time to liquidity event of 1.25 years, a risk free rate of 0.24% and volatility of 38% over the time to a liquidity event. The results of the OPM were reduced by a discount for lack of marketability of 15%. This resulted in our board of directors determining that the fair value of our common stock was $3.94 per share.
Income Taxes

Income taxes are accounted for under the asset and liability method in accordance with authoritative guidance for income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying accounts of existing assets and liabilities and their respective tax basis and operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

We adopted the provisions of ASC 740-10, Accounting for Uncertainty in Income Tax, on February 1, 2009. There was no impact upon adoption of ASC 740-10 as our liability recognized under previous accounting guidance was consistent with that required under the new guidance. We have adopted the accounting policy that interest expense and penalties relating to income tax position are classified within the provision for income taxes.

Quantitative and Qualitative Disclosures about Market Risk

We are exposed to financial market risks, primarily changes in interest rates.

Interest Rate Risk

Our exposure to market risk for changes in interest rates primarily relates to our investments and any variable rate indebtedness.

The primary objective of our investment activities is to preserve principal while maximizing yields without significantly increasing risk. This objective is accomplished by making diversified investments, consisting only of investment grade securities.

Any draws under our revolving credit facility bear interest at a variable rate tied to the prime rate. As of October 31, 2011, we had no outstanding debt under our revolving credit facility.

Inflation

We do not believe that inflation had a material effect on our business, financial condition or results of operations in the last three fiscal years or in the nine months ended October 31, 2011. 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.

Recent Accounting Pronouncements

In May 2011, the FASB further amended its guidance related to fair value measurements in order to achieve common fair value measurements between U.S. GAAP and International Financial Reporting Standards. The amendments in the updated guidance explain how to measure fair value. They do not require additional fair value measurements and are not intended to establish valuation standards or affect valuation practices outside of financial reporting. The amendments change the wording used to describe many of the requirements in U.S. GAAP for measuring fair value and for disclosing information about fair value measurements. For many of the requirements, the updated guidance should not result in a change in the application of previous fair value measurement guidance. The updated guidance is effective during interim and annual periods beginning after December 15, 2011. We do not expect the adoption of this guidance on February 1, 2012 to have a significant impact on our consolidated financial statements.
In June 2011, the FASB updated its guidance related to the presentation of comprehensive income. Under the updated guidance, an entity has the option to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In both choices, an entity is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income, and a total amount for comprehensive income. The updated guidance eliminates the option to present the components of other comprehensive income as part of the statement of changes in stockholders' equity. The updated guidance does not change the items that must be reported in other comprehensive income or when an item of other comprehensive income must be reclassified to net income. The updated guidance will be effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2011, with early adoption permitted. The updated guidance must be applied retrospectively. We do not expect the adoption of this guidance on February 1, 2012 to have a significant impact on our consolidated financial statements.
BUSINESS

Overview

Splunk provides an innovative software platform that enables organizations to gain real-time operational intelligence by harnessing the value of their data. Our software collects and indexes data at massive scale, regardless of format or source, and enables users to quickly and easily search, correlate, analyze, monitor and report on this data, all in real time. Our software addresses the risks, challenges and opportunities organizations face with increasingly large and diverse data sets, commonly referred to as big data, and is specifically tailored for machine-generated data. Machine data is produced by nearly every software application and electronic device in an organization and contains a definitive, time-stamped record of various activities, such as transactions, customer and user activities, and security threats. Our software is designed to help users in various roles, including IT and business professionals, quickly analyze their machine data and realize real-time visibility into and intelligence about their organization’s operations. This operational intelligence enables organizations to improve service levels, reduce costs, mitigate security risks, demonstrate and maintain compliance and gain new insights that enable them to drive better business decisions.

The core of our software is a proprietary machine data engine, comprised of collection, indexing, search and data management capabilities. Our software can collect and index terabytes of information daily irrespective of format or source. Our machine data engine uses our innovative data architecture that enables dynamic, schema creation on the fly, allowing users to run queries on data without having to understand the structure of the data prior to collection and indexing. Our machine data fabric for data collection and indexing delivers speed and scalability when processing massive amounts of machine data. Our software leverages improvements in the cost and performance of commodity computing and can be deployed in a wide variety of computing environments, from a single laptop to large globally distributed data centers.

To extend our software's functionality, customers can deploy additional solutions as well as lightweight applications, or apps, on top of our core data engine. Our apps, which are available for download via our Splunkbase website, provide incremental functionality in the form of pre-built data inputs, searches, reports, alerts and dashboards, and are generally available for free. We, along with a number of third-party developers and customers, have developed over 300 apps for specific use cases in our core and adjacent markets. We also build and deliver a select number of packaged solutions that provide more robust functionality targeting a specific end market or use case. We currently provide Splunk for Enterprise Security and Splunk for PCI Compliance and have made available, through a controlled preview, Splunk for VMware. These packaged solutions and apps allow our customers to further extend the value of their machine data using our software. We provide APIs and SDKs in various programming languages that enable developers to leverage our machine data engine and its broad capabilities in their own software. In addition to our packaged solutions and apps, we are investing in the development of Splunk Storm, which is a cloud-based service currently in beta that provides a subset of our software's capabilities, but is tailored for machine data in the cloud. Our online user communities, Splunkbase and Splunk Answers, provide our customers with an environment to share these apps, collaborate on the use of our software and provide community-based support. We believe this user-driven ecosystem results in greater use of our software and drives cost-effective marketing, increased brand awareness and viral adoption of our product.

Our software is designed to accelerate adoption and return-on-investment for our customers. It does not require customization, long deployment cycles or extensive professional services commonly associated with traditional enterprise software applications. Users can simply download and install the software, typically in a matter of hours, to connect to their relevant machine data sources and begin realizing operational intelligence. We also offer customers with complex IT infrastructure the ability to leverage the expertise of our professional services organization to deploy our software.
As of October 31, 2011, we had over 3,300 customers, including a majority of the Fortune 100. Some of our customers include Bank of America, Comcast, salesforce.com and Zynga. Our customers pay license fees based on their estimated indexing capacity needs. For fiscal 2009, 2010 and 2011, our revenues were $18.2 million, $35.0 million and $66.2 million, respectively, representing year-over-year growth of 93% for fiscal 2010 and 89% for fiscal 2011, and our net loss was $14.8 million, $7.5 million and $3.8 million, respectively. For the first nine months of fiscal 2011 and fiscal 2012, our revenues were $43.5 million and $77.8 million, respectively, representing year-over-year growth of 79%, and our net loss was $2.0 million and $9.7 million, respectively.

**Industry Background**

*The Increasing Use, Diversity and Complexity of Technology are Generating Explosive Data Growth.*

Organizations have broadly deployed business applications and related IT infrastructure to automate processes and improve performance in sales, marketing, customer support, human resources, product development, engineering, finance and operations. As more business processes involving employees, customers, partners, suppliers and other constituents are transacted through software and web-based applications, the amount of digital information produced by these applications and the hardware devices that run them has grown substantially.

According to IDC, the volume of digital information created and replicated worldwide will grow approximately 45% annually from 1.8 trillion gigabytes in 2011 to 7.9 trillion gigabytes in 2015. The large and diverse data sets that make up this digital information are often referred to as big data and are generally categorized into business application data, human-generated content and machine data.

- **Business application data** is the digital information used by organizations to conduct their daily operations, such as payroll, supply chain and financial data. Most business applications rely on traditional relational database technology and software that have pre-defined data structures, or schema for organizing, storing, accessing and reporting on structured data.

- **Human-generated content** is the digital information derived from human-to-human interactions, including email communications, spreadsheets and documents, and in recent years, mobile text messages, video, photos, recorded audio and social media messaging. Human-generated content typically comes in the form of unstructured data, which means that it is not optimized for storage in a relational database.

- **Machine data** is produced by nearly every software application and electronic device. The applications, servers, network devices, desktop and laptop computers, mobile devices and various other systems that organizations have deployed to support their operations are continuously generating information relating to their status and activities. Machine data can be found in a variety of formats such as application log files, call detail records, clickstream data associated with user web interactions, data files, system configuration files, alerts and tickets. It is generated by both machine-to-machine as well as human-to-machine interactions. Outside of an organization's traditional IT infrastructure, every processor-based system, including HVAC controllers, smart electrical meters, GPS devices and RFID tags, and many consumer-oriented systems, such as mobile devices, automobiles and medical devices that contain embedded electronic devices, are also continuously generating machine data. Machine data can be structured or unstructured.

The increasing complexity of IT infrastructures driven by the adoption of virtual servers and desktops, as well as cloud-based services and mobile technologies, has accelerated the growth of machine data. For example, according to Gartner, the number of x86 server instances deployed globally per year, including virtual servers, is expected to grow from 19.4 million in 2010 to over 59.3 million in 2015. Additionally, according to IDC, the number of internet-enabled access devices globally is expected to grow from 2.3 billion devices in 2010 to over 4.6 billion devices in 2015.
**Machine Data is a Strategic Asset that Organizations can Leverage to Gain Operational Intelligence.**

As organizations have become highly reliant on their technology assets, they require end-to-end visibility, analytics, and real-time intelligence across all of their applications, services and IT infrastructure to achieve required service levels, manage costs, mitigate security risks, demonstrate and maintain compliance and gain new insights to drive better business decisions. Machine data provides a definitive, time-stamped record of current and historical activity and events within and outside an organization, including application and system performance, user activity, system configuration changes, electronic transaction records, security alerts, error messages and device locations. Machine data in a typical enterprise is generated in a multitude of formats and structures, as each software application or hardware device records and creates machine data associated with their specific use. Machine data also varies among vendors and even within the same vendor across product types, families and models.

The table below illustrates the type of machine data created and the business and IT insights that can be derived when a single web visitor makes a purchase in a typical ecommerce environment:

<table>
<thead>
<tr>
<th>Action</th>
<th>Machine Data Example (subset of information generated)</th>
<th>Illustrative Business / IT Insights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer adds product to ecommerce / website shopping cart</td>
<td>Product Action User session User browser Information</td>
<td>- Customer demand - Shopping cart activity - Website troubleshooting</td>
</tr>
<tr>
<td>Customer completes transaction through credit card purchase</td>
<td>User (user id) User email User city Product</td>
<td>- Customer behavior - Inventory updates - Fraud heuristics analysis - Real-time product sales tracking</td>
</tr>
<tr>
<td>Web server attempts to write to database</td>
<td>Response error Connection error Software error creating the error</td>
<td>- Nature of application error - Source of error</td>
</tr>
</tbody>
</table>

The illustration above is an example of the type and amount of valuable information generated by a single website visitor that is recorded in the machine data of IT systems. A typical ecommerce site serving thousands of users a day will generate gigabytes of machine data which can be used to provide significant insights into the IT infrastructure and business operations. As this information is constantly being generated by IT systems, enterprises have the opportunity to realize real-time intelligence about their operations by analyzing machine data.

**Existing IT and Business Intelligence Solutions are Unable to Fully Unlock the Value of Machine Data.**

While machine data has always been generated by computing environments, many organizations have failed to recognize the value of this data or have encountered challenges extracting value from it. As a result, diverse, heterogeneous machine data is largely ignored and restricted to ad hoc use at the time of troubleshooting IT failures or errors.

A number of IT management products are available to analyze log files and other information related to specific devices, applications or use cases. However, these point solutions are generally narrowly scoped to only work with specific data formats and systems and are unable to correlate machine data from multiple sources, formats and systems for both historical and real-time analysis without significant configuration. Because each point solution targets a specific use case or data format, multiple point solutions are required to understand, cross-correlate and take advantage of the multitude of machine data.
sets available to an organization. This can lead to significant IT management complexity as well as significant capital and IT resource expenditures.

While computing environments have always generated large amounts of machine data, current legacy IT operations management, security and compliance and business intelligence technologies, such as relational databases, online analytical processing (OLAP) engines and other analytical tools are built on software optimized for structured data, namely data where the structure is known and can thus be placed into pre-defined relational databases. Most of today's enterprise applications are architected for managing data in legacy relational databases. However, because machine data exists in a variety of formats and can be structured or unstructured, these legacy systems are not optimized to address the massive amounts of dynamic machine data generated within an organization. According to IDC, nearly 90% of data growth over the next few years, across IT and other operating environments, will come from unstructured content, a tangible portion of which will be machine data. Unstructured data generally, and machine data in particular, is extremely diverse and complex. Legacy data tools, which are generally designed to handle structured data, need to be re-architected to effectively address the complexity of machine data. If either the analysis or the format of the data changes, the legacy systems need to re-collect and normalize the data, and the application that leveraged the database need to modify their structure to handle the new data formats. Many legacy solutions are also expensive to install and maintain, often needing extended deployment and update cycles that require significant professional services, extensive training and technical support over several months, and sometimes years.

Point products as well as legacy IT systems were not built to address the challenges and opportunities of machine data. Moreover, existing solutions and systems are not architected to take advantage of recent improvements in the price and performance of computing and storage systems, and in many cases require significant investment in computing hardware. Because of these limitations, these solutions and systems are unable to fully leverage the information and value in machine data to provide historical and real-time operational intelligence across a wide variety of use cases.

Our Opportunity

We believe there is a large opportunity to help organizations unlock the value of machine data. Organizations need to capture the value locked in their machine data to enable more effective application management, IT operations management, security and compliance, and to derive intelligence and insight across the organization. Our software enables users to realize real-time operational intelligence across their business.

We believe software that provides operational intelligence addresses several established markets that in aggregate have been estimated by Gartner to be approximately $32 billion in 2012. Specifically, Gartner expects the market that our products address for IT operations, which includes application management, to be approximately $18.6 billion in 2012; the market that our products address for business intelligence, including web analytics software, to be approximately $12.5 billion in 2012; and the market that our products address for security information and event management software to be approximately $1.3 billion in 2012. Beyond these areas, we believe software that provides operational intelligence can address a wide variety of additional markets in areas such as online marketing optimization, video-on-demand analytics, RFID tracking and scientific applications using time-series data.

Our Solution

Our mission is to make machine data accessible, usable and valuable to everyone in an organization. Splunk enables organizations to gain real-time operational intelligence by harnessing the value of their machine data. Splunk's intuitive, browser-based approach to analyzing machine data makes our software easy to use and extend, allowing both technical and non-technical users to, with minimal training, use our products. Our customers leverage our software for various use cases, including infrastructure and
operations management, applications management, security and compliance, business and web analytics, and scientific applications, among many others. Our software helps users derive new insights from machine data that can be used to, among others, improve service levels, reduce operational costs, mitigate security risks, demonstrate and maintain compliance and gain new insights that enable them to drive better business decisions. The result is a new level of operational visibility enabling more informed business decisions that can provide significant competitive advantage for our customers.

**Key Benefits**

**Real-time operational intelligence and visibility.** Our software collects and indexes data at massive scale, regardless of the format or source, and enables users to quickly and easily search, correlate, analyze, monitor and report on this data, all in real time. Our software enables users to identify problems, get answers and gain new business insights and intelligence from machine data significantly faster than traditional application management, IT operations management, security and compliance and business intelligence tools.

**Compelling return on investment and lower total cost of ownership.** Our software enables customers to improve their customer service levels and systems availability, reduce operational costs, improve security and compliance, and increase business insights. Although our data engine can index terabytes of data daily, it does not require the high-end hardware, software, extensive professional services or other capital intensive IT investments commonly associated with traditional enterprise software. Our community of users, through Splunkbase and Splunk Answers, drives additional value to fellow users through pre-built apps and free, online technical support.

**Fast time to value.** Unlike traditional relational databases or business and IT applications, our software does not require custom implementations or long deployment cycles. While some enterprises leverage our professional services team to deploy our software in large, highly complex IT environments, most users simply download and install the software, typically in a matter of hours, to connect to the relevant machine data sources and begin realizing operational intelligence. Given our software's ease-of-use, our professional services engagements are typically short in duration and last from a few days to up to several weeks, significantly shorter than the professional services engagements associated with traditional enterprise software.

**Ease of use.** While we utilize complex data structures and algorithms in our machine data engine, we abstract that complexity to provide a compelling, intuitive interface similar to that of an internet search engine. Our software can be accessed through a standard web browser and requires limited training, saving on time and cost as well as making it accessible to the broader set of non-technical users. In addition, we provide flexible and easy-to-use tools to create ad-hoc searches, reports and custom dashboards to visualize business and operational activity and trends derived from machine data.

**Highly scalable and flexible data engine.** Our machine data engine, machine data fabric and broad technology stack are built to be highly flexible and scalable, allowing our customers to index terabytes of data daily and search petabytes of historical data. Our software can operate in a single data center or globally across multiple data centers both inside and outside an organization, and all from a single user interface. This architecture also allows for flexible deployment of additional commodity hardware as needed.

**Open, extensible platform.** Our machine data engine is a powerful, extensible platform on which custom reports, dashboards and applications can be run to analyze machine data for specific use cases. Splunk provides software development kits (SDKs) and application programming interfaces (APIs) free of charge, making it easy for developers to leverage our platform. Splunk, as well as a number of customers and third-party developers, have developed numerous applications for specific use cases across application management, IT operations management, security and compliance and business intelligence. Some...
customers have started to utilize our platform and its SDKs/APIs to address machine data challenges outside of our core markets, including health data monitoring, fraud detection and smart grid management, among others.

Our Growth Strategy

Our goal is to make our software the platform for delivering operational intelligence and real-time business insights from machine data. The key elements of our strategy are to:

   **Extend our technology leadership position.** We intend to continue to invest in research and development to enhance our software, including our machine data engine and associated packaged solutions, to maintain and increase our technological leadership. We also plan to expand into adjacent product and technology areas that enable organizations to further unlock the value of their machine data. For example, we are actively investing in Splunk Storm, a cloud-based service that provides a subset of capabilities relative to our current software, and is tailored for machine data in the cloud.

   **Continue to expand our direct and indirect sales organization, including our channel relationships, to acquire new customers.** We intend to increase investments in our sales and marketing organizations to drive efficient acquisition of new customers across geographies and industries. We plan to expand our sales operations globally to support new and existing customers in these regions. We will continue to invest in and foster the growth of our channel relationships, particularly outside the United States where channel partners provide greater sales leverage and play a greater role in the sales process.

   **Further penetrate our existing customer base.** We intend to cultivate incremental sales from our existing customers by driving increased use of our software within organizations. In particular, we seek to upsell existing customers for additional deployments and new use cases which will drive higher daily indexing needs. We believe our existing customer base serves as a strong source of incremental revenues given the horizontal applicability of our software and the growing machine data volumes our customers face.

   **Develop additional solutions in adjacent markets as well as products that enable organizations to use our software in different ways, such as Splunk Storm, our cloud-based service.** We believe there is a significant opportunity to provide additional solutions that leverage our core machine data engine to help organizations understand and unlock the value of their machine data in specific end markets and use cases. For example, our Splunk Enterprise Security solution enables customers to effectively target enterprise security events. We plan to invest in both our core machine data engine as well as end-market specific packaged solutions to drive Splunk market penetration, expand our addressable market opportunity and make Splunk a more targeted solution for the machine data problems our customers and prospects encounter.

   **Grow our user communities and partner ecosystem to increase awareness of our brand, target new use cases, drive operational leverage and deliver more targeted, higher value solutions.** We believe our user community has the potential to provide significant operating leverage by delivering apps that extend our software's functionality to new use cases. We also intend to add additional OEM and strategic relationships to enable new sales channels for our software as well as extend our integration with third party products. In addition, we seek to utilize OEM vendors and managed service providers to invest in and create customized application functionality based on our machine data engine.

   **Become the developer platform for machine data.** We intend to continue our investments in SDKs and APIs that help software developers leverage the functionality of our machine data engine. Our SDKs enable developers to build solutions that deeply integrate the functionality of our machine data engine and machine data fabric as well as access the data stored in the data indexes. We intend to promote and extend
the capabilities of our platform to customers who wish to build sophisticated applications and interfaces that leverage our software.

Splunk Technology

Key Technologies

We believe our investments in our product and key technologies drive significant competitive differentiation. The key technologies of our software, described below, have been built to address today's explosive growth in machine data. Our software has been architected to handle large volumes of machine data at a massive scale with minimal overhead, enabling robust throughput in a high availability environment. Our software platform is highly flexible and is able to collect and index large amounts of heterogeneous data formats, from physical, virtual and/or cloud environments.

Schema-on-the-fly. Our software collects and indexes data irrespective of source and format. Rather than requiring that data be input into a pre-defined structure, our software's innovative schema-on-the-fly technology creates structure as it searches the data from a single query. This allows users to ask new and different questions at any time without having to re-architect a schema as would be required in a relational database. Our software builds schema in real time and does not require any user intervention or pre-defined knowledge about the data it is processing. Our software allows different users to run a variety of queries, regardless of changes in format to the data being input into the system.

Machine data fabric. Our software provides robust machine data collection and indexing on terabytes of data daily. Our software enables users to process machine data no matter the infrastructure topology, from a single machine to a globally distributed, virtualized IT infrastructure. This machine data fabric allows customers to address the complexities of handling massive amounts of real-time, dynamic, heterogeneous machine data. Our APIs enable users to forward data from our software to other parts of their IT network, creating a machine data fabric across the organization irrespective of whether the data is used by our software for analysis and reporting or as a conduit to other systems.

Search language. Our software provides a comprehensive, intuitive and powerful proprietary search language that is specifically designed for working with machine data. Our search language supports basic arithmetic operations to refine searches and conduct calculations with the results of a query in real time. Powerful statistical and reporting commands native to our search language let users perform more robust calculations and analysis. Our software can also learn about the structure of the machine data through the searches users conduct. This learning mechanism allows users to leverage the machine data structure and knowledge garnered by previous Splunk searches. And finally, our search language makes it easier for us to distribute large work loads to the Splunk machine data fabric.

Features and Functionality

Our software contains the following features and functionality:

- Universally collect, index, store and archive any machine data, from any source. Our software processes machine data in real time from any source, format or location. This includes live data generated by hardware devices and software applications.
- Search and investigate. Our software lets users search real-time and historical machine data simultaneously.
- User-friendly interface. Our software uses an intuitive, user-friendly, customizable interface that enables users to understand and adopt the product. The interface also provides type-ahead and contextual help to accelerate adoption and usage.
Table of Contents

- **Knowledge store.** Users can store knowledge about events, fields, transactions, patterns, statistics and key-value pairs so others who utilize the Splunk instance can leverage this information.

- **Monitor and alert.** Users can save searches so they can be run automatically to raise real-time alerts that trigger actions such as sending emails, running scripts, or posting to an RSS feed.

- **Report and analyze.** Users can create ad hoc reports on real-time and historical data to analyze business and IT data trends.

- **Custom dashboards and views.** Our software enables users to create custom dashboards that integrate multiple charts and views of real-time data to satisfy the needs of different users in different roles.

- **Platform extensibility.** Our software serves as an extensible platform through the use of its APIs and SDKs. The APIs and SDKs enable developers to leverage our machine data engine and its broad capabilities to build their own applications.

- **Role-based access and controls.** Splunk incorporates role-based access controls and authentication, integrated with existing enterprise-wide security policies, to help secure the data stored within our indexes as well as control users’ activities in our software.

**Splunk Architecture**

Splunk’s technology has been internally developed since our inception. The diagram below describes the various components of Splunk’s technology architecture:

![Splunk Architecture Diagram](image)

**Collection.** Our software collects machine data from a number of different sources across a distributed environment including servers, network devices, desktop and laptop computers, mobile devices and various other systems that organizations have deployed to support their operations. Our software acts as a recording mechanism, collecting, storing and making available all of the machine data that it receives.

**Indexing.** Our proprietary indexing technology allows for real-time indexing of any data collected by our software regardless of its source or format and without the use of any specific parsers or data connectors. Our software indexes the data intelligently and stores the data in a scalable storage format,
which can reside on commodity servers and storage devices. Our software stores both the raw data and the index in an efficient, compressed, flat file format.

**Search.** Our software enables users to search through the massive amounts of machine data that have been indexed and stored. At its most basic level, the search engine allows users to type and search for keywords or data fields that are of interest. This foundational capability forms the basis for deriving business insights from our dashboards and customized views. Users can leverage our search language and functionality to filter through indexed data and refine search results to obtain more precise information.

**Core functions.** Our software's core functionality includes alerts, access control, statistics and correlation capabilities. With our software's granular, role-based access, an administrator can control various aspects of a given user's search including the data to which the user has access as well as what portions of the data may be visible in results. Search results and reports can be defined according to a particular user's business function and level of access. Different users can see completely different views on the same data, depending on what's important to them.

**SDKs and APIs.** Our SDKs allow third-party software developers to build apps on top of our software. Our APIs allow users to access the machine data stored within the Splunk instance as well as access machine data engine functionality from third party software.

**Solutions.** We internally develop robust packaged solutions that target specific end markets and run on top of our machine data engine. We currently provide Splunk for Enterprise Security and Splunk for PCI Compliance and have made available, through a controlled preview, Splunk for VMware. Over time, we believe these packaged solutions will enable us to target new end markets with highly focused and compelling offerings that can disrupt existing point products, increase adoption of our machine data engine, expand our total addressable market and ultimately drive license revenues.

**Apps.** We provide the ability for users to write their own lightweight apps using standard Web technologies, such as HTML and CSS, as well as our query language, to provide incremental functionality targeting a particular use case. To date, we have over 300 apps available for download via our Splunkbase website, with nearly 100 developed by third parties.

**Splunk Deployments**

Our software can be deployed in a variety of environments ranging from a single laptop to a distributed enterprise IT environment handling massive amounts of data. Our customers use Splunk forwarders, indexers, and search heads to create a machine data fabric that allows for the efficient, secure and real-time collection and indexing of machine data regardless of network, data center or IT
infrastructure topology. The diagram below shows a representative Splunk deployment topology in a distributed environment making use of our machine data fabric:

- **Splunk forwarders** perform, in real-time, secure, distributed lossless data collection from tens of thousands of heterogeneous sources and deliver the raw data to the indexer. Forwarders are not always required as customers can use syslogs, scripts or our APIs to send machine data to indexers.

- **Splunk indexers** store the raw data collected and create a data index to enable fast searching.

- **Splunk search heads** deliver the user interface and distributes the search request to the indexers. They coordinate search activities in parallel across multiple indexers, consolidating different components of the results and presenting them to the user.

This distributed machine data processing architecture illustrated above provides near-linear scalability, resulting in the ability to index and search across many petabytes of data. Our software can operate in a single data center or globally across multiple data centers both inside and outside an organization, and all from a single user interface. This architecture also allows for flexible deployment of hardware, as commodity hardware can be added as needed.
Customers

Our customer base has grown from approximately 450 customers at the end of fiscal 2008 to over 3,300 customers in more than 75 countries, including a majority of the Fortune 100, as of October 31, 2011. Our customers count consists of organizations that have purchased our software; we exclude users of our trial software from our customer count. We provide products and services to customers of varying sizes, including enterprises, educational institutions and government agencies. Our business is not dependent on any particular customer as no customer represented more than 10% of our revenues in fiscal 2009, 2010 or 2011 or in the nine months ended October 31, 2011. Our current customer base spans numerous industry verticals, including cloud and online services; education; financial services; government; healthcare/pharmaceuticals; industrials/manufacturing; media/entertainment; retail/ecommerce; technology and telecommunications.

Partner and Developer Ecosystem

We have OEM relationships with a select group of partners who integrate our software into their product offerings to provide additional reporting, monitoring and analytic capabilities within their own products. With respect to our OEM relationships, we provide our partners with a limited use license to expose certain data and analytics functionalities in their products, for which they pay us a royalty.

We have partnered with several leading technology companies to build Splunk apps that allow users to capture data and gain insights into the partner's respective products. Several technology partners offer apps for free via Splunkbase. These apps typically consist of collections of reports, dashboards and data extractions which put our software in context for users of those specific technologies and allows them to easily and quickly understand the performance of their IT systems or correlate this data with other data sources.

We engage with service providers to enable specific service offerings, or offer our software as a hosted service. These services are typically offered by these service providers on a subscription basis, and we are paid on a royalty basis.

We offer a developer license that allows third party developers to build software using Splunk's existing developer framework and we have published information about our API to enable developers to build new user interfaces on top of our core engine. We are creating additional SDKs based on various programming languages to make our software more extensible and allow developers to build applications and services on our platform that extend its functionality.

Splunk Community

Our online communities provide us with a rapidly growing network of active users who promote the usage of our software and provide technical support to each other.

Our online communities include Splunkbase, our online apps repository, Splunk Answers, our community collaboration site, and Splunk Dev, where developers can download SDKs, access API documentation and see sample code for building software on our core engine. We also maintain active communities on leading social internet platforms, including Facebook and LinkedIn.

Splunkbase. Users and partners contribute and share custom lightweight apps and add-ons that run on our software. Generally, these lightweight apps provide pre-built functionality that addresses specific use cases. To date, we have over 300 apps available for download on Splunkbase, of which nearly 100 are developed by third parties. We do not receive any revenues from the sale of apps by third party application providers, as most apps posted to Splunkbase are free.

Splunk Answers. Users ask questions in an online community forum and share best practices about how to build searches, create data visualizations and configure and deploy our software. While our
product, support, engineering and professional services teams participate in the Splunk Answers forum, as of October 31, 2011, approximately 70% of questions appearing on Splunk Answers were answered by non-Splunk personnel, largely the result of a growing, active user community.

Splunk Dev. In addition to documentation about the Splunk API and SDKs, our developer portal contains documentation about best practices for building machine data output into third party software.

We also promote and support offline meetings for our community, including regional user group meetings and an annual user conference.

Sales and Marketing

Our sales and marketing organizations work together closely to drive market awareness, build a strong sales pipeline, and cultivate customer relationships to drive revenue growth.

Sales

We sell our software through direct field sales, direct inside sales and indirect channel sales. We gather prospects through a broad range of marketing programs and events and through users who download our trial software from our website. Our inside sales team handles lead qualifications as well as smaller transactions, while larger or more complex transactions are handled by our globally distributed direct field sales teams. Our sales engineers help define customer use cases and on pre-sales qualification and evaluation.

We maintain a distributor and reseller partner network, or channel, that often co-sells with our field sales organization, especially in EMEA and APAC. Our channel provides us with additional sales leverage by sourcing new prospects, providing technical support to existing customers, upselling for additional use cases and daily indexing capacities, and maintenance renewals. This channel expands our geographic sales reach worldwide, particularly in key international markets such as Japan and China. As of October 31, 2011, we had over 200 channel partners worldwide. Historically, the majority of EMEA and APAC sales have been fulfilled through channel partners and we expect this trend to continue for the near term.

In addition to acquiring new customers, our sales teams are responsible for driving renewals of existing contracts as well as increased adoption of our software by existing customers. To accomplish this, our field sales teams work closely with our inside sales team to drive expanded licenses and additional use cases within existing customers. Our field sales teams are organized geographically across the Americas, Europe, Middle East and Africa (EMEA), and Asia Pacific (APAC). We intend to invest in our international sales organization to drive greater market penetration in EMEA and APAC. We also have a dedicated sales team focused on government customers, which covers U.S. federal, state and local government entities.

Marketing

We focus our marketing efforts on increasing Splunk's brand and product awareness, driving viral adoption, communicating product advantages and business benefits, and generating leads for our sales force and channel partners. We market our software as a targeted solution for specific use cases and as an enterprise solution for machine data. We engage with existing customers to provide community-based education and awareness and to promote expanded use of our software within these customers. We host Splunk Live! events annually across our sales regions to engage with both existing customers and new prospects as well as drive product training. We host an annual worldwide user and partner conference (.CONF) as another way to support the Splunk community to foster collaboration and help our customers drive further business results from our software.

79
Customer Support and Professional Services

While users can easily download, install and deploy our software on their own, certain enterprise customers that have large, highly complex IT environments or deployment requirements, may choose to leverage our customer support and professional services organization. Many users leverage the community-based support of Splunkbase and Splunk Answers before engaging with our customer support or services organizations. Some of our certified partners also provide limited, first level support and professional services before a customer reaches out to our internal Splunk customer support and professional services teams.

Maintenance and Customer Support

Our customers typically purchase one year of software maintenance and support as part of their initial purchase of our products, with an option to renew their maintenance agreements. These maintenance agreements provide customers the right to receive unspecified software updates, maintenance releases and patches, and access to our technical support services during the term of the agreement.

We maintain a customer support organization that offers multiple service levels for our customers based on their needs. These customers receive guaranteed response times, direct telephonic support and access to online support portals. Our highest levels of support provide 24x7x365 support for critical issues, a dedicated resource to manage the account and quarterly reviews of the customer's deployments. Our customer support organization has global capabilities, delivering support in multiple languages with deep expertise in both our software as well as complex IT environments and associated third party infrastructure.

Professional Services

We provide consulting, training and implementation services to customers through our professional services team. They are typically utilized by large enterprises looking to deploy our software across their large, disparate and complex IT infrastructure. We generally provide these services at the time of initial installation to help the customer with configuration and implementation. Given our software's ease-of-use, our professional services engagements are typically short in duration and last from a few days to up to several weeks, significantly shorter than the professional services engagements associated with traditional enterprise software.

Research and Development

We invest substantial resources in research and development to enhance our software, develop new end market specific solutions and apps, conduct software and quality assurance testing and improve our core technology. Our technical staff monitors and tests our software on a regular basis, and we maintain a regular release process to refine, update, and enhance our existing products.

Research and development expense totaled $8.7 million, $8.5 million and $14.0 million for fiscal 2009, 2010 and 2011, respectively and $16.2 million for the nine months ended October 31, 2011.

Intellectual Property

We rely on patent, trademark, copyright and trade secrets laws, confidentiality procedures and contractual provisions to protect our technology. As of December 31, 2011, we had one issued U.S. patent covering our machine data web technology, two provisional patent applications and nine utility patent applications pending for examination in the United States. We also had five utility patent applications pending for examination in non-U.S. jurisdictions, all of which are counterparts of our U.S. utility patent applications. We also license software from third parties for integration into our products, including open source software and other software available on commercially reasonable terms.

80
Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our products or obtain and use information that we regard as proprietary. We generally enter into confidentiality agreements with our employees, consultants, vendors and customers, and generally limit access to and distribution of our proprietary information. However, we cannot assure you that the steps taken by us will prevent misappropriation of our technology. In addition, the laws of some foreign countries do not protect our proprietary rights to as great an extent as the laws of the United States, and many foreign countries do not enforce these laws as diligently as government agencies and private parties in the United States.

Our industry is characterized by the existence of a large number of patents and frequent claims and related litigation regarding patent and other intellectual property rights. In particular, leading companies in the technology industry have extensive patent portfolios. From time-to-time, third parties, including certain of these leading companies, have asserted and may assert patent, copyright, trademark and other intellectual property rights against us, our channel partners or our customers.

**Competition**

We compete against a variety of large software vendors and smaller specialized companies, open source initiatives and custom development efforts, which provide solutions in the specific markets we address. Our principal competitors include:

- IT departments of potential customers which have undertaken custom software development efforts to analyze and manage their machine data;
- security and systems management vendors, including BMC Software, CA, Compuware, HP, IBM, Intel, Microsoft and Quest Software;
- web analytics vendors, including Adobe Systems, Google, IBM and Webtrends;
- business intelligence vendors, including EMC, IBM, Oracle and SAP;
- companies targeting the big data market by commercializing open source software, such as Hadoop; and
- small specialized vendors, which provide complementary solutions in enterprise data analytics, data warehousing and big data technologies that may compete with our software.

The principal competitive factors in our markets are product features, performance and support, product scalability and flexibility, ease of deployment and use, total cost of ownership and time to value. We believe we generally compete favorably on the basis of these factors. However, some of our actual and potential competitors have advantages over us, such as longer operating histories, significantly greater financial, technical, marketing or other resources, stronger brand and business user recognition, larger intellectual property portfolios and broader global distribution and presence. In addition, our industry is evolving rapidly and is becoming increasingly competitive. Larger and more established companies may focus on operational intelligence and could directly compete with us. Smaller companies could also launch new products and services that we do not offer and that could gain market acceptance quickly.

**Employees**

As of October 31, 2011, our total headcount was 433 employees. None of our U.S. employees is represented by a labor union with respect to his or her employment with us. Employees in certain European countries have the benefits of collective bargaining arrangements at the national level. We have not experienced any work stoppages.
Facilities

Our corporate headquarters occupy approximately 58,000 square feet in San Francisco, California under leases that expire in October 2013. As of October 31, 2011, we also leased approximately 11,000 square feet of office space in Cupertino, California to support our expanding business operations and hiring needs. As of October 31, 2011, we also lease smaller regional offices for sales, support and some product development in Seattle, Plano and Bethesda in the United States, and outside of the United States in Germany, Hong Kong, Singapore and the United Kingdom. While we believe our facilities are sufficient and suitable for the operations of our business today, we are in the process of adding new facilities and expanding our existing facilities as we add employees and expand into additional markets.

Legal Proceedings

From time to time, we are a party to litigation and subject to claims incident to the ordinary course of business. Although the results of litigation and claims cannot be predicted with certainty, we currently believe that the final outcome of these matters will not have a material adverse effect on our business. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.
MANAGEMENT

Executive Officers and Directors

The following table sets forth the names, ages and positions of our executive officers, key employees and directors as of December 31, 2011:

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Executive Officers</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Godfrey R. Sullivan</td>
<td>58</td>
<td>President, Chief Executive Officer and Chairman</td>
</tr>
<tr>
<td>David F. Conte</td>
<td>45</td>
<td>Senior Vice President and Chief Financial Officer</td>
</tr>
<tr>
<td>Erik M. Swan</td>
<td>47</td>
<td>Chief Technology Officer and Director</td>
</tr>
<tr>
<td>Leonard R. Stein</td>
<td>55</td>
<td>Senior Vice President, General Counsel and Secretary</td>
</tr>
<tr>
<td>Thomas E. Schodorf</td>
<td>53</td>
<td>Senior Vice President, Field Operations</td>
</tr>
<tr>
<td><strong>Key Employees</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Robin K. Das</td>
<td>52</td>
<td>Chief Architect</td>
</tr>
<tr>
<td>Christina F.R.L. Noren</td>
<td>37</td>
<td>Senior Vice President, Solutions</td>
</tr>
<tr>
<td>Douglas Harr</td>
<td>51</td>
<td>Chief Information Officer</td>
</tr>
<tr>
<td>Sheren Bouchakian</td>
<td>42</td>
<td>Vice President, Human Resources</td>
</tr>
<tr>
<td>William B. Gaylord</td>
<td>44</td>
<td>Vice President, Business and Corporate Development</td>
</tr>
<tr>
<td>Lionel Hartmann</td>
<td>42</td>
<td>Vice President, Customer Support and Technical Documentation</td>
</tr>
<tr>
<td>Steven R. Sommer</td>
<td>56</td>
<td>Chief Marketing Officer and Senior Vice President, Marketing</td>
</tr>
</tbody>
</table>

| **Non-Employee Directors** | | |
| John G. Connors(1)(3) | 52 | Director                                           |
| David M. Hornik(1)   | 43 | Director                                           |
| Thomas M. Neustaetter(2) | 59 | Director                                           |
| Graham V. Smith(1)   | 51 | Director                                           |
| Nicholas G. Sturiale(2)(3) | 47 | Director                                           |
| Scott Thompson(2)    | 54 | Director                                           |

(1) Member of the Audit Committee
(2) Member of the Compensation Committee
(3) Member of the Nominating and Corporate Governance Committee

Executive Officers

Godfrey R. Sullivan has served as our President, Chief Executive Officer and a member of our board of directors since September 2008, and as our Chairman since December 2011. Prior to joining us, Mr. Sullivan was with Hyperion Solutions Corporation, a performance management software company acquired by Oracle Corporation, from October 2001 to April 2007, where he served in various executive roles, most recently as President and Chief Executive Officer and as a member of the board of directors from July 2004 until April 2007. Mr. Sullivan has served as a member of the board of directors of Citrix Systems, Inc., an enterprise software company, since February 2005 and Informatica Corporation, a data integration software provider, since January 2008. Mr. Sullivan holds a B.B.A. from Baylor University.

Our board of directors believes that Mr. Sullivan possesses specific attributes that qualify him to serve as a director, including the perspective and experience he brings as our Chief Executive Officer and his experience as an executive and as a member of the board of directors of other companies in the enterprise software industry. Our board of directors also believes that he brings historical knowledge, operational expertise and continuity to the board of directors.
David F. Conte has served as our Senior Vice President and Chief Financial Officer since July 2011. Prior to joining us, Mr. Conte served as Chief Financial Officer at IronKey, Inc., an internet security and privacy company, from June 2009 to July 2011. From October 2007 to May 2009, Mr. Conte was engaged in various personal investing activities. Previously, Mr. Conte served as Chief Financial Officer of Opsware, Inc., a software company, from July 2006 until September 2007 when Opsware was acquired by Hewlett-Packard Company. He also served as Opsware's Vice President of Finance from March 2003 to July 2006 and as Corporate Controller from October 1999 to March 2003. Mr. Conte began his career at Ernst & Young LLP. Mr. Conte holds a B.A. in business economics from the University of California, Santa Barbara.

Erik M. Swan co-founded our company and has served as our Chief Technology Officer since November 2003 and as a member of our board of directors since October 2003. Prior to joining us, Mr. Swan served as Chief Technology Officer at CommerceFlow, Inc., an information technology and services company, from January 2001 to October 2003. Previously, Mr. Swan served as Vice President of Engineering at Disney Internet Group, a division of The Walt Disney Company, from January 2000 to January 2001. Mr. Swan studied computer science at the California Polytechnic State University, San Luis Obispo.

Our board of directors believes that Mr. Swan possesses specific attributes that qualify him to serve as a director, including the perspective and experience he brings as our Chief Technology Officer. Our board of directors also believes that he brings historical knowledge, operational expertise and continuity to the board of directors, as well as deep expertise in our technology.

Leonard R. Stein has served as our Senior Vice President and General Counsel since April 2011. Prior to joining us, Mr. Stein served in various executive positions including President and Chief Legal Officer at Jackson Family Enterprises, Inc., a luxury wine maker, from May 2004 to August 2010. Mr. Stein served as Chief Legal Officer and Chief Compliance Officer at Overture Services, Inc., an internet commercial search services company, from April 2003 until it was acquired by Yahoo! Inc., in October 2003. Mr. Stein holds a B.A. in economics from Yale College, an M.A. in economics from Yale University Graduate School and a J.D. from Harvard Law School.

Thomas E. Schodorf has served as our Senior Vice President, Field Operations since October 2009. Prior to joining us, Mr. Schodorf was a consultant to computer software companies from November 2008 to October 2009. Mr. Schodorf was with BMC Software, Inc., a software company, from July 1991 to October 2008, where he served in various sales positions, most recently as Vice President, General Manager from December 2007 to October 2008. Mr. Schodorf holds a B.S.B.A. in Finance from Ohio State University and an M.B.A. in Finance from the University of Dayton.

Key Employees

Robin K. Das co-founded our company and has served as our Chief Architect since January 2005. He also served as our Vice President, Product Development from November 2003 to January 2005 and as a member of our board of directors from October 2003 to August 2004. Previously, Mr. Das has been a large-scale, distributed software architect and engineer for both early-stage ventures and large companies, including Avolent Inc., an application software provider, Lotus Development, a software company, and Sun Microsystems, Inc., a computer systems company. Mr. Das studied computer science at Indiana University.

Christina F.R.L. Noren has served as our Senior Vice President, Solutions since May 2006. She also served as our Vice President, Product Management from April 2005 to May 2006. Prior to joining us, Ms. Noren served as Vice President, Product Management at SenSage, Inc. (formerly Addamark Technologies, Inc.), a security intelligence and event management provider, from May 2003 to March 2005 and as its Senior Director, Systems Consulting from January 2002 to May 2003. Ms. Noren holds a B.A. in International Business and a B.F.A. in Art from Dominican University of California.
Douglas Harr has served as our Chief Information Officer since December 2010. Prior to joining us, Mr. Harr was a consulting partner with The StrataFusion Group, Inc., a business consulting and technology services firm, from December 2009 to December 2010. From March 2006 to December 2009, Mr. Harr served as Chief Information Officer at Actian Corporation (formerly Ingres Corporation), an open source database company. Mr. Harr holds a B.S. in Business Administration from California Polytechnic State University, San Luis Obispo.

Sheren Bouchakian has served as our Vice President, Human Resources since November 2008. Prior to joining us, Ms. Bouchakian served as the Vice President of Human Resources at Jump Associates, a design consulting company, from October 2007 to October 2008. From September 2005 to October 2007, Ms. Bouchakian served as the Vice President of Human Resources at WageWorks Inc., a benefits management company. Ms. Bouchakian holds a B.S. in Business from Seton Hall University.

William B. Gaylord has served as our Vice President, Business and Corporate Development since February 2010. Prior to joining us, Mr. Gaylord was engaged as an independent consultant advising software companies and worked on various venture capital fund raising efforts from June 2007 to January 2010. Previously, Mr. Gaylord served as Vice President of Corporate Development at Hyperion Solutions Corporation, a performance management software company, from March 2005 to May 2007 and as its Vice President of Marketing and Business Development from April 2002 to March 2005. Mr. Gaylord holds an A.B. in History from Dartmouth College and an M.B.A. from Columbia Business School.

Lionel Hartmann has served as our Vice President, Customer Support and Technical Documentation since September 2007. Prior to joining us, Mr. Hartmann served as the Vice President of Technical Support at ArcSight, Inc., a security and compliance management company acquired by Hewlett-Packard Company, from October 2005 to September 2007. Mr. Hartmann holds an M.S. in Economics and International Studies from Paris I—La Sorbonne University and a Master in Organization and Internal Auditing from the ISGA program at the Business School Group of Marseilles, France.

Steven R. Sommer joined our company in June 2008 and serves as our Chief Marketing Officer and Senior Vice President, Marketing. Prior to joining us, Mr. Sommer served as Vice President, Marketing at WideOrbit Inc., a software company, from December 2007 to May 2008. From November 2006 to August 2007, Mr. Sommer served as Vice President Global Marketing at SuccessFactors, Inc., a business execution software company. Mr. Sommer holds B.S. degrees in Chemical Engineering and Management from the Massachusetts Institute of Technology and an M.B.A. from Harvard Business School.

Non-Employee Directors

John G. Connors has served as a member of our board of directors since August 2007. Since May 2005, Mr. Connors has been a partner at Ignition Partners, LLC, a venture capital firm. Prior to joining Ignition Partners, Mr. Connors served in various management positions at Microsoft Corporation from January 1989 to January 2005, including most recently as Senior Vice President and Chief Financial Officer from December 1999 to January 2005. Mr. Connors has served as a member of the board of directors of NIKE, Inc. since April 2005. Mr. Connors holds a B.A. in Accounting from the University of Montana.

Our board of directors believes that Mr. Connors possesses specific attributes that qualify him to serve as a director, including his substantial experience as an investment professional in the business software and services industry and his experience as an executive of another company in the software industry and as a member of the board of directors and audit and finance committee of a Fortune 500 company. Our board of directors also believes that Mr. Connors brings historical knowledge and continuity to the board of directors, as well as accounting experience and financial expertise.

David M. Hornik has served as a member of our board of directors since August 2004. Since June 2000, Mr. Hornik has been a partner at August Capital, a venture capital firm. Prior to joining August Capital, Mr. Hornik was an intellectual property and corporate attorney at the law firms of Venture Law Group.
and Perkins Coie LLP, and a litigator at the law firm of Cravath, Swaine & Moore LLP. Mr. Hornik holds A.B. degrees in Computer Music and Political Science from Stanford University, an M.Phil in Criminology from Cambridge University and a J.D. from Harvard Law School.

Our board of directors believes that Mr. Hornik possesses specific attributes that qualify him to serve as a director, including his substantial experience as an investment professional and as a director of private technology companies focusing on enterprise application and infrastructure software. Our board of directors also believes that Mr. Hornik brings historical knowledge and continuity to the board of directors.

**Thomas M. Neustaetter** has served as a member of our board of directors since October 2010. Since March 1999, Mr. Neustaetter has been a Managing Director at JK&B Capital, a venture capital firm. Prior to joining JK&B Capital, Mr. Neustaetter was a partner at The Chatterjee Group, an affiliate of Soros Fund Management, from January 1996 to February 1999. Mr. Neustaetter holds a B.A. in Philosophy from the University of California, Berkeley and an M.B.A. and M.S. in Information Science from the University of California, Los Angeles.

Our board of directors believes that Mr. Neustaetter possesses specific attributes that qualify him to serve as a director, including his substantial experience as an investment professional and as a director of private software companies.

**Graham V. Smith** has served as a member of our board of directors since October 2011. Since March 2008, Mr. Smith has served as Executive Vice President and Chief Financial Officer at salesforce.com, inc., a provider of enterprise cloud computing software. He also served as salesforce.com's Executive Vice President and Chief Financial Officer Designate from December 2007 to March 2008. Prior to joining salesforce.com, Mr. Smith served as Chief Financial Officer at Advent Software Inc., a software company, from January 2003 to December 2007. Mr. Smith holds a B.Sc. in Economics and Politics from Bristol University in England.

Our board of directors believes that Mr. Smith possesses specific attributes that qualify him to serve as a director, including his financial expertise and professional experience as an executive of other software companies.

**Nicholas G. Sturiale** has served as a member of our board of directors since August 2004. Since March 2009, Mr. Sturiale has served as a general partner at Jafco Ventures, a venture capital firm. Prior to joining Jafco Ventures, Mr. Sturiale served as a managing director at The Carlyle Group, a global alternative asset management firm, from January 2008 to December 2008. From June 2000 to January 2008, Mr. Sturiale served as a General Partner at Sevin Rosen Funds, a venture capital firm. Mr. Sturiale remains a Partner with Sevin Rosen Funds and an officer and director of Sevin Rosen Bayless Management Company, an affiliate of Sevin Rosen Funds. Mr. Sturiale holds a B.S. in Economics from California State University, Chico and an M.B.A. from the University of California, Berkeley.

Our board of directors believes that Mr. Sturiale possesses specific attributes that qualify him to serve as a director, including his substantial experience as an investment professional and as a director of private technology companies. Our board of directors also believes that Mr. Sturiale brings historical knowledge and continuity to the board of directors.

**Scott Thompson** has served as a member of our board of directors since October 2011. Since January 2012, Mr. Thompson has served as the Chief Executive Officer, President and a director of Yahoo! Inc., a digital media company. Prior to Yahoo!, Mr. Thompson served as President of PayPal, Inc., a subsidiary of eBay Inc., from January 2008 to January 2012. He also served as PayPal's Senior Vice President and Chief Technology Officer from February 2005 to January 2008. Prior to joining PayPal, Mr. Thompson served as Executive Vice President of Technology Solutions at Inovant, LLC, a U.S. credit company and subsidiary of Visa Inc., from September 2001 to February 2005. Mr. Thompson has served as a member of the board of directors of F5 Networks, Inc., a networking appliances company, since January 2008. Mr. Thompson holds a B.S. in Accounting from Stonehill College.
Our board of directors believes that Mr. Thompson possesses specific attributes that qualify him to serve as a director, including his professional experience as an executive and director of other technology companies.

Board Composition

Our business affairs are managed under the direction of our board of directors, which is currently composed of eight members. Six of our directors are independent within the meaning of the independent director guidelines of the . Immediately prior to this offering, our board of directors will be divided into three staggered classes of directors. At each annual meeting of stockholders, a class of directors will be elected for a three-year term to succeed the same class whose terms are then expiring. The terms of the directors will expire upon the election and qualification of successor directors at the annual meeting of stockholders to be held during the year 2013 for the Class I directors, 2014 for the Class II directors and 2015 for the Class III directors.

• Our Class I directors will be Messrs. Hornik and Neustaetter.
• Our Class II directors will be Messrs. Connors, Sturiale and Swan.
• Our Class III directors will be Messrs. Smith, Sullivan and Thompson.

Our amended and restated certificate of incorporation and bylaws will provide that the number of our directors, which is currently eight members, shall be fixed from time to time by a resolution of our board of directors. Each of our executive officers serves at the discretion of our board of directors and holds office until his or her successor is duly appointed and qualified or until his or her earlier resignation or removal. There are no family relationships among any of our directors or executive officers.

The division of our board of directors into three classes with staggered three-year terms may delay or prevent a change of our management or a change of control. See "Description of Capital Stock—Anti-Takeover Effects of Delaware Law and Our Certificate of Incorporation and Bylaws" for a discussion of other anti-takeover provisions found in our certificate of incorporation.

Director Independence

Upon the completion of this offering, our common stock will be listed on the . Under the rules of the , independent directors must comprise a majority of a listed company's board of directors within a specified period of the completion of an initial public offering. In addition, the rules of the require that, subject to specified exceptions, each member of a listed company's audit, compensation and nominating and corporate governance committees must be independent. Under the rules of , a director is independent only if our board of directors makes an affirmative determination that the director has no material relationship with us.

In December 2011, our board of directors undertook a review of its composition, the composition of its committees and the independence of each director. The determination of independence of members of our board of directors was based upon information requested from and provided by each director concerning his background, employment and affiliations, including family relationships. In making this determination, our board of directors considered the relationships that each non-employee director has with us and all other facts and circumstances our board of directors deemed relevant in determining their independence, including the beneficial ownership of our capital stock by each non-employee director. Our board of directors has determined that Messrs. Connors, Hornik, Neustaetter, Smith, Sturiale and Thompson, representing six of our eight directors, are "independent" as that term is defined under the rules of the for purposes of serving on our board of directors.

We have entered into commercial dealings with eBay, including its subsidiary PayPal, and salesforce.com that we consider arms-length. eBay and salesforce.com are both our customers, and we are
a customer of salesforce.com. We entered into these commercial dealings in the ordinary course of our business. In making the determinations as to which members of our board of directors are independent, our board of directors considered the fact that Mr. Thompson, one of our directors, was an executive officer of eBay and Mr. Smith, one of our directors, is an executive officer of salesforce.com. In reviewing these relationships, our board of directors determined that Messrs. Thompson and Smith do not and did not have a direct or indirect material interest in any such commercial dealings and that such relationships do not impede the ability of Messrs. Thompson and Smith to act independently on our behalf and on behalf of our stockholders.

Board Committees

Our board of directors has the authority to appoint committees to perform certain management and administrative functions. Our board of directors has an audit committee, a compensation committee and a nominating and corporate governance committee, each of which has the composition and the responsibilities described below.

Audit Committee

Our audit committee oversees our accounting and financial reporting process and the audit of our financial statements and assists our board of directors in monitoring our financial systems and our legal and regulatory compliance. Our audit committee is responsible for, among other things:

• appointing, compensating and overseeing the work of our independent auditors, including resolving disagreements between management and the independent registered public accounting firm regarding financial reporting;
• approving engagements of the independent registered public accounting firm to render any audit or permissible non-audit services;
• reviewing the qualifications and independence of the independent registered public accounting firm;
• reviewing our financial statements and related disclosures and reviewing our critical accounting policies and practices;
• reviewing the adequacy and effectiveness of our internal control over financial reporting;
• establishing procedures for the receipt, retention and treatment of accounting and auditing related complaints and concerns;
• preparing the audit committee report required by SEC rules to be included in our annual proxy statement;
• reviewing and discussing with management and the independent registered public accounting firm the results of our annual audit, our quarterly financial statements and our publicly filed reports; and
• reviewing and approving in advance any proposed related person transactions.

We believe that the functioning of our audit committee complies with the applicable requirements of the and SEC rules and regulations.

The members of our audit committee are Messrs. Connors, Hornik and Smith. Our board of directors has determined that both Messrs. Connors and Smith are financial experts as contemplated by the rules of the SEC implementing Section 407 of the Sarbanes Oxley Act of 2002. Mr. Connors has also been appointed to serve as our audit committee chairman.

Our board of directors has considered the independence and other characteristics of each member of our audit committee and has concluded that the composition of our audit committee meets the
requirements for independence under the current requirements of the and SEC rules and regulations. Audit committee members must satisfy additional independence criteria set forth under Rule 10A-3 of the Securities Exchange Act of 1934, as amended. In order to be considered independent for purposes of Rule 10A-3, an audit committee member may not, other than in his capacity as a member of the audit committee, accept consulting, advisory or other fees from us or be an affiliated person of us. Each of the members of our audit committee qualifies as an independent director pursuant to Rule 10A-3.

Compensation Committee

Our compensation committee oversees our compensation policies, plans and programs. The compensation committee is responsible for, among other things:

• reviewing and recommending policies, plans and programs relating to compensation and benefits of our directors, officers and employees;
• reviewing and recommending compensation and the corporate goals and objectives relevant to compensation of our Chief Executive Officer;
• reviewing and approving compensation and corporate goals and objectives relevant to compensation for executive officers other than our Chief Executive Officer;
• evaluating the performance of our Chief Executive Officer and other executive officers in light of established goals and objectives; and
• administering our equity compensations plans for our employees and directors.

The members of our compensation committee are Messrs. Neustaetter, Sturiale and Thompson. Mr. Sturiale is the chairman of our compensation committee. Our board of directors has determined that each member of our compensation committee is independent within the meaning of the independent director guidelines of the . We believe that the composition of our compensation committee meets the requirements for independence under, and the functioning of our compensation committee complies with, any applicable requirements of the and SEC rules and regulations, as well as Section 162(m) of the Code.

Nominating and Corporate Governance Committee

Our nominating and corporate governance committee oversees and assists our board of directors in reviewing and recommending corporate governance policies and nominees for election to our board of directors and its committees. The nominating and corporate governance committee is responsible for, among other things:

• evaluating and making recommendations regarding the organization and governance of our board of directors and its committees and changes to our certificate of incorporation and bylaws and stockholder communications;
• reviewing succession planning for our Chief Executive Officer and other executive officers and evaluating potential successors;
• assessing the performance of board members and making recommendations regarding committee and chair assignments and composition and the size of our board of directors and its committees;
• recommending desired qualifications for board and committee membership and conducting searches for potential members of our board of directors;
• evaluating and making recommendations regarding the creation of additional committees or the change in mandate or dissolution of committees;

89
• reviewing and making recommendations with regard to our corporate governance guidelines and compliance with laws and regulations; and

• reviewing and approving conflicts of interest of our directors and corporate officers, other than related person transactions reviewed by the audit committee.

The members of our nominating and corporate governance committee are Messrs. Connors and Sturiale. Mr. Connors is the chairman of our nominating and corporate governance committee. Our board of directors has determined that each member of our nominating and corporate governance committee is independent within the meaning of the independent director guidelines of the .

Our board of directors may from time to time establish other committees.

Code of Business Conduct and Ethics

We have adopted a code of business conduct and ethics that is applicable to all of our employees, officers and directors, including our chief executive and senior financial officers. The code of business conduct and ethics will be available on our website at www.splunk.com. We expect that any amendment to the code, or any waivers of its requirements, will be disclosed on our website. The inclusion of our website in this prospectus does not include or incorporate by reference the information on our website into this prospectus.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee is an officer or employee of our company. None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or compensation committee.

Non-Employee Director Compensation

We reimburse our non-employee directors for expenses incurred in connection with attending board and committee meetings. We intend to adopt a compensation program for non-employee directors that will be effective immediately upon the closing of this offering. Pursuant to this program, each member of our board of directors who is not our employee will receive the following cash compensation for board services, as applicable:

• $ per year for service as a board member;

• $ per year for service as chair of the audit committee or the compensation committee;

• $ per year for service as chair of the nominating and corporate governance committee; and

• $ for each committee meeting attended in person ($ for meetings attended by video or telephone conference).

In addition, after this offering, we will continue to reimburse our non-employee directors for expenses incurred in attending board and committee meetings. Members of our board of directors who are not our employees will receive non-statutory stock options under our 2012 Equity Incentive Plan, which will become effective upon the closing of this offering. Each non-employee director on our board of directors on the date that we enter into the underwriting agreement for this offering or upon initially joining our board of directors after the completion of this offering will be granted a non-statutory stock option to purchase shares of our common stock, with an exercise price equal to the then fair market value of our common stock. On the date of each annual meeting of our stockholders beginning in fiscal 2013, each non-employee director will be granted a non-statutory stock option to purchase shares of our common stock. Initial stock option grants will vest in a series of successive equal monthly installments.
measured from the date of grant. Annual stock option grants will vest in a series of successive equal monthly installments measured from the date of grant. All director stock options granted under our 2012 Equity Incentive Plan will have a term of ten years.

The following table shows, for fiscal 2011, certain information with respect to the compensation of all of our non-employee directors.

### Fiscal 2011 Director Compensation Table

<table>
<thead>
<tr>
<th>Name</th>
<th>Fees Earned or Paid in Cash ($)</th>
<th>Stock Awards ($)</th>
<th>Option Awards ($)[1]</th>
<th>Non-Equity Incentive Plan Compensation ($)</th>
<th>All Other Compensation ($)</th>
<th>Total ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>John G. Connors</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>David M. Hornik</td>
<td>—</td>
<td>—</td>
<td>—</td>
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<td>—</td>
</tr>
<tr>
<td>Thomas M. Neustaetter</td>
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</tr>
<tr>
<td>Graham V. Smith</td>
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<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Nicholas G. Sturiale</td>
<td>—</td>
<td>—</td>
<td>$36,887(2)</td>
<td>—</td>
<td>—</td>
<td>$36,887</td>
</tr>
<tr>
<td>Scott Thompson</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
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<td>—</td>
</tr>
</tbody>
</table>

(1) The amounts included in the "Options Awards" column represent the aggregate grant date fair value of the option awards calculated in accordance with authoritative accounting guidance on stock compensation. For a discussion of valuation assumptions, see the notes to our financial statements included elsewhere in this prospectus.

(2) Mr. Sturiale was granted a stock option pursuant to the 2003 Equity Incentive Plan to purchase 75,000 shares of common stock. This option vests in equal monthly installments over two years commencing on April 22, 2010. This stock option was granted to Mr. Sturiale in recognition of his service as a director of the company.
EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

Overview

The compensation provided to our "named executive officers" for fiscal 2011 is set forth in detail in the 2011 Summary Compensation Table and other tables and the accompanying footnotes and narrative that follow this section. This section provides an overview of our executive compensation philosophy, the overall objectives of our executive compensation program, and each component of compensation that we provide. In addition, we explain how and why our board of directors, the compensation committee of our board of directors, and/or our Chief Executive Officer arrived at the specific compensation policies and decisions involving our executive officers, including the named executive officers listed in the 2011 Summary Compensation Table set forth below, during fiscal 2011. Following completion of our fiscal 2012 on January 31, 2012, this section will be revised and updated to include a discussion of fiscal 2012 compensation, and how and why our board of directors, compensation committee, and/or CEO arrived at specific compensation policies and decisions involving our executive officers.

This section contains forward-looking statements that are based on our current plans, considerations, expectations, and determinations regarding future compensation plans and arrangements. The actual compensation plans and arrangements that we adopt may differ materially from currently anticipated plans and arrangements as summarized in this section.

Our named executive officers for fiscal 2011, which consist of those executive officers who appear in the 2011 Summary Compensation Table, were:

- Godfrey R. Sullivan, our President and Chief Executive Officer;
- Raman Kapur, our Vice President, Finance*;
- Erik M. Swan, our Chief Technology Officer; and
- Thomas E. Schodorf, our Senior Vice President, Field Operations.

General Compensation Practices

We operate in a highly competitive business environment, which is characterized by frequent technological advances, rapidly changing market requirements, and the emergence of new market entrants. To grow our business successfully in this dynamic environment, we must continually develop and enhance our products and services to stay ahead of customer needs and challenges. To achieve these objectives, we need a highly talented and seasoned team of technical, sales, marketing, operations, and other business professionals.

We compete with many other companies in seeking to attract and retain a skilled management team. To meet this challenge, we have implemented compensation practices that are designed to motivate them to pursue our corporate objectives while encouraging the creation of long-term value for our stockholders. We evaluate and reward our executive officers through compensation intended to motivate them to identify and capitalize on opportunities to grow our business. We strive to provide a compensation package to each executive that is competitive, rewards achievement of our business objectives, drives the development of a successful and profitable business, and aligns the interests of executives with our stockholders through equity ownership in the company.

* Mr. Kapur was appointed Treasurer in July 2010, and served as our principal financial officer until July 2011, when our current chief financial officer was hired. Mr. Kapur's present position is "Vice President, Finance."
We strive to ensure that the total compensation paid to our executive officers is fair, reasonable and competitive, and aligns with our general compensation practices. Our executive compensation program combines short- and long-term components, and cash and equity in amounts and proportions that we believe are most appropriate to incentivize and reward our executive officers for achieving our objectives.

**Compensation Decision Process**

Our historic executive compensation program reflects our operations as a private company, as we have relied upon our board of directors, our compensation committee, the experience of our executive management, and market data in determining the appropriate compensation levels with respect to our executives.

Historically, compensation decisions for our named executive officers have been determined by our board of directors, except for Mr. Kapur's compensation, which has been determined by our CEO. For all other named executive officers other than our CEO, our CEO has made recommendations and provided substantial input for setting compensation. Our CEO has recommended compensation adjustments for our executive officers following his evaluation of each named executive officer's performance (other than himself) relative to expectations and to the performance of our other employees. Prior to fiscal 2011, our CEO's compensation was set by the board of directors, in its discretion and based on the collective experience of our directors.

At the end of fiscal 2010, we established our compensation committee, which generally evaluated, reviewed, and made recommendations to our board of directors on compensation for our executive officers (including our CEO) for fiscal 2011, except with respect to Mr. Kapur's compensation. Our CEO continued to make recommendations and provide input on compensation for the other named executive officers, other than himself. Our compensation committee reviewed our CEO's compensation for fiscal 2011 and made recommendations to our board of directors. Compensation decisions for all of our named executive officers ultimately have been made by our board of directors, except for Mr. Kapur's compensation.

At the beginning of each fiscal year, our board of directors, after consulting with management and the compensation committee, has been responsible for establishing our corporate performance objectives, making decisions with respect to any base salary adjustment, and approving the target annual cash bonus opportunities for our named executive officers and the individual performance objectives for our CEO. Our CEO then used his individual performance objectives and the corporate performance objectives as guidelines for developing the individual performance objectives for the other members of the management team, including the named executive officers. Any recommendations for equity awards to our named executive officers have been submitted to our compensation committee for its evaluation, and the compensation committee then made recommendations to the board of directors for its consideration and ultimate approval.

For fiscal 2011, our board of directors considered compensation databases and standard industry surveys, including the Dow Jones CompPro and Radford High-Technology Executive Compensation Survey, as references for establishing cash and equity compensation levels for our named executive officers (other than Mr. Kapur) with an emphasis on technology companies with a similar size, stage of development, and growth potential. This data, along with the board's collective experience and the recommendations of our management and/or compensation committee, was considered in setting compensation for our named executive officers. The board of directors believed that this data served as a useful mechanism to stay competitive against industry norms and, at the same time, meet one of our principal compensation objectives of motivating our named executives to pursue our corporate objectives. The board of directors did not use the data to benchmark the compensation for our named executive officers.
Our board of directors has emphasized remaining competitive by differentiating total cash compensation levels through the use of annual cash bonus arrangements. Equity compensation generally has been delivered on a discretionary basis with the goal to retain top talent and align the interests of our executive officers with the long-term interests of our stockholders. In fiscal 2011, equity grants were made to certain of our named executive officers to align these officers' equity compensation levels with those of comparable executives at similarly situated companies.

Role of compensation committee. Following this offering, we anticipate our compensation committee, in consultation with management, will be primarily responsible for establishing, approving and adjusting compensation arrangements for our named executive officers, except for our CEO's compensation, which will continue to be determined without input from management.

Our compensation committee currently is comprised of Messrs. Neustaetter, Sturiale, and Thompson. Mr. Sturiale is the chairman of our compensation committee. Each member of our compensation committee qualifies as an "outside director" for purposes of Section 162(m) of the Code and a "non-employee director" for purposes of Rule 16b-3 under the Exchange Act as well as an "independent director" under the requirements of . Our compensation committee operates under a written charter that specifies its duties and responsibilities.

The fundamental responsibilities of our compensation committee are:

• to annually review and approve the corporate goals and objectives to be considered in determining the compensation of our CEO and other executive officers, and evaluate the performance of our CEO and other executive officers in light of these goals and objectives;

• to determine the salary, cash-based incentive compensation, equity-based compensation and other compensation for our CEO and other executive officers;

• to annually review and make recommendations to the board of directors with respect to the adoption and approval of, or amendments to, all cash-based and equity-based incentive compensation plans and arrangements, and the cash amounts and number of shares reserved for issuance thereunder; and

• to administer and interpret our cash-based and equity-based compensation plans and arrangements, and make equity grants to our employees and consultants and those of our subsidiaries.

The compensation committee has the authority to engage its own advisors to assist it in carrying out its responsibilities but did not do so during fiscal 2011. In making its recommendations for compensation for fiscal 2011, the compensation committee reviewed survey data and relied on its experience in reviewing the recommendations of the CEO and approving each compensation element. In late January 2011, the compensation committee engaged Radford, an independent executive compensation consulting firm, to assist in reviewing our executive compensation for fiscal 2012.

Role of management. In carrying out its responsibilities, our board of directors and the compensation committee work with members of our management, including our CEO and our human resources professionals. Typically, our management assists our board of directors and the compensation committee by providing information on corporate and individual performance, market data, and management's perspective and recommendations on compensation matters.

Historically, the initial compensation arrangements with our executive officers, including the named executive officers, have been determined in negotiations with each individual executive at the time that he or she joined the company. Except for his own compensation arrangement, our CEO has been responsible for negotiating these arrangements, with the oversight and final approval of our board of directors and/or the compensation committee. Our CEO's initial compensation arrangement was negotiated by our board of directors. In negotiating the initial compensation arrangements with our CEO and executive officers, our board of directors or CEO considered external market data, which supported the determination that
the initial compensation opportunities for our CEO and executive officers were comparable to the compensation opportunities of executives holding analogous positions at similarly situated companies.

Typically, our CEO will make recommendations to our board of directors and/or compensation committee regarding compensation matters, including the compensation of our named executive officers (except with respect to his own compensation and Mr. Kapur's compensation). In setting compensation levels for Mr. Kapur, our CEO relies on market data, his experience, and his assessment of compensation levels for comparable positions. Our CEO also attends our board meetings, except with respect to discussions involving his own compensation and meetings of our non-employee directors.

While our board of directors solicits and reviews our CEO's recommendations and proposals with respect to compensation-related matters, our board of directors only uses these recommendations and proposals as one factor in making compensation decisions, along with the market data and compensation committee recommendations.

Principal Elements of Executive Compensation

Components of Named Executive Officer Compensation

The compensation program for our named executive officers consists of:

- base salary;
- incentive compensation;
- stock options; and
- severance and change in control-related benefits.

These elements comprise our compensation program for our named executive officers because we believe they provide a compensation package that attracts and retains qualified individuals, links individual performance to company performance, focuses the efforts of our named executive officers on the achievement of both our short-term and long-term objectives, and aligns the interests of our named executive officers with those of our stockholders.

As our needs evolve, we intend to continue to evaluate our philosophy and compensation programs as circumstances require, and at a minimum, we will review executive compensation annually.

Weighting of Elements of Compensation Program

Currently, we do not have any pre-determined formula or target for allocating compensation between short-and long-term, fixed and variable, or cash and non-cash compensation. As a privately held company, executive compensation has been heavily weighted towards equity, which has been awarded in the form of stock options. Our board of directors determined that this form of compensation has encouraged our executives to achieve our strategic and financial goals, including revenue growth and continuous enhancement of our software. Our board of directors believes that making stock options a key component of executive compensation aligned the executive team with the long-term interests of our stockholders. To maintain a competitive compensation program, we have also offered cash compensation in the form of (i) base salaries to reward individual contributions and compensate our employees for their day-to-day responsibilities, and (ii) annual incentive compensation to drive excellence and leadership and incentivize achievement of our shorter-term objectives.

Base Salaries

We provide base salaries to our named executive officers and other employees to compensate them for services rendered on a day-to-day basis during the year. Base salaries typically will be used to recognize the experience, skills, knowledge and responsibilities required of each named executive officer, although
competitive market conditions also may play a role in setting the level of base salary. Historically, we have not applied specific formulas to determine changes in base salary. Rather, the base salaries of our named executive officers (other than the CEO and Mr. Kapur) were reviewed on an annual basis by the CEO and the board of directors and/or compensation committee based on their experience with respect to setting salary levels and supplemented by survey data and assessments of the performance of the named executive officers. The survey data historically has not driven compensation decisions but instead has been used as a reference for the CEO, the compensation committee, and board of directors to understand the market compensation paid to executives holding comparable positions at similarly situated companies. Base salary increases have been made to reflect these considerations as well as our business condition and future expected performance and what our named executive officers could be expected to receive if employed at companies similarly situated to ours.

While we historically have reviewed survey data when setting compensation levels for our executive officers, in fiscal 2012, as we began to consider transitioning from a private company to a public company, we engaged Radford to provide executive compensation data for comparable executives working for technology companies similarly situated to ours.

### Fiscal 2011 base salaries.

Fiscal 2011 base salaries were set by the board of directors based on the recommendations of the CEO and the compensation committee, their subjective assessment of compensation paid to executive officers at similar companies, and their review of market data, and were set to reflect our status as a private company. In fiscal 2010, we focused on reducing our overall expenses and increasing our revenues in order to become cash flow positive. Having become cash flow positive in the third quarter of fiscal 2010, the board of directors directed our CEO and management team to develop a business plan for fiscal 2011 that would continue to focus on aggressively increasing our revenues while staying approximately cash flow neutral. In furtherance of these goals, our CEO recommended, and our board of directors agreed, not to make any increases to the base salaries of our named executive officers at the beginning of fiscal 2011. Instead, our compensation plan for fiscal 2011 included cash incentive opportunities for our named executive officers that paid additional cash compensation in fiscal 2011 if our performance objectives were achieved. See "Incentive Compensation—Fiscal 2011 Incentive Compensation” section below for further discussion.

<table>
<thead>
<tr>
<th>Name and Principal Position</th>
<th>Fiscal 2011 Base Salary ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Godfrey R. Sullivan</td>
<td>$250,000</td>
</tr>
<tr>
<td>President and Chief Executive Officer</td>
<td></td>
</tr>
<tr>
<td>Raman Kapur</td>
<td>$165,000(1)</td>
</tr>
<tr>
<td>Vice President, Finance</td>
<td></td>
</tr>
<tr>
<td>Erik M. Swan</td>
<td>$225,000</td>
</tr>
<tr>
<td>Chief Technology Officer</td>
<td></td>
</tr>
<tr>
<td>Thomas E. Schodorf</td>
<td>$240,000</td>
</tr>
<tr>
<td>Senior Vice President, Field Operations</td>
<td></td>
</tr>
</tbody>
</table>

(1) Mr. Kapur's base salary was increased to $175,000 from $165,000, effective September 2010, in connection with his promotion to Treasurer.

### Incentive Compensation

One of our compensation objectives is to have a significant portion of each named executive officer's compensation tied to performance. To this end, we provide for performance-based cash incentive opportunities for certain employees, including our named executive officers. Performance-based cash incentives are paid to our named executive officers based on the achievement of corporate and individual performance objectives, which generally are determined by our CEO, except for the CEO's compensation,
which is determined by our compensation committee and approved by our board of directors. After we become a public company, these objectives will be established for the named executive officers by the compensation committee, in consultation with the CEO and management (except for the CEO's own incentive compensation opportunity), and performance against them will be determined or approved by the compensation committee. These objectives may change from year to year as the company and market conditions continue to evolve and different priorities are established.

Historically, cash incentive compensation generally is paid based on the sum of the percentage achievement against each of the corporate goals and the individual performance goals, if any, although we have the authority to deviate from this formula. We believe this approach to our incentive compensation allows us to create a strong link of pay for performance, remain competitive and drive performance toward our goals.

Fiscal 2011 incentive compensation. In January 2010, our named executive officers (other than Mr. Kapur) entered into written, individualized incentive compensation arrangements that provided for potential cash bonus payouts for the 2010 calendar year (which included most of fiscal 2011). These target cash bonus payouts were based on our actual achievement against pre-established corporate financial objectives, as well as achievement of each named executive officer's individual performance goals during the year. Prior to the 2010 calendar year, the board of directors set our financial objectives and the individual performance objectives for our CEO. At the time these objectives were established, our financial resources were limited and the economic environment in which our business operated remained extremely volatile. In the fall of the 2009, our board of directors directed our CEO and management team to develop a business plan that would continue to focus on aggressively increasing revenues while staying approximately cash flow neutral. To further these goals, our CEO recommended that the base salaries of our named executive officers remain unchanged for fiscal 2011, and instead, the board of directors adopt a cash incentive compensation program that would pay additional cash compensation to our named executive officers if the performance objectives were achieved. Accordingly, the board of directors, in an effort to motivate our CEO and management team to rapidly expand the growth and development of our business while staying approximately cash flow neutral, set objectives that it considered extremely aggressive and attainable only with outstanding performance and execution in a highly challenging economic environment. These corporate financial objectives were designed to drive increased revenues, which the board of directors and management felt would directly result in increased stockholder value creation.

The CEO used his individual performance objectives and overall corporate objectives as guidelines for developing the individual performance goals for each named executive officer. These individual performance goals were intended to incentivize and drive performance towards attaining our company objectives.

Mr. Kapur did not enter into a written, individualized compensation arrangement but was eligible to receive quarterly cash bonus payouts based on our actual achievement of pre-established corporate financial objectives and his achievement of pre-determined individual performance goals, as mutually determined by the CEO and Mr. Kapur.
Table of Contents

Target Incentive Compensation

As in prior years, the target annual cash incentive compensation opportunities for our named executive officers were expressed as a target cash amount, rather than as a percentage of base salary. The table below shows the target cash incentive compensation for each named executive officer:

<table>
<thead>
<tr>
<th>Name</th>
<th>Target Incentive Compensation ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Godfrey R. Sullivan</td>
<td>$250,000</td>
</tr>
<tr>
<td>President and Chief Executive Officer</td>
<td></td>
</tr>
<tr>
<td>Raman Kapur</td>
<td>$50,000</td>
</tr>
<tr>
<td>Vice President, Finance</td>
<td></td>
</tr>
<tr>
<td>Erik M. Swan</td>
<td>$75,000</td>
</tr>
<tr>
<td>Chief Technology Officer</td>
<td></td>
</tr>
<tr>
<td>Thomas E. Schodorf</td>
<td>$178,000</td>
</tr>
<tr>
<td>Senior Vice President, Field Operations</td>
<td></td>
</tr>
</tbody>
</table>

Our board of directors and CEO, exercising their judgment and discretion, based the target incentive cash opportunities for our named executive officers on several factors, including our overall financial and operational results for the prior fiscal year, the unstable economic environment, the performance of the individual named executive officer, his potential to contribute to our long-term strategic goals, his role and scope of responsibilities within the company, his individual experience and skills, competitive market practices for annual cash incentive compensation opportunities, survey data of comparable executives at similarly situated companies, and the recommendations of our management team.

**CEO.** Our CEO's target bonus was payable on an annual basis, and consisted of $250,000, which was payable on the achievement of our bookings target, the growth and expansion of our executive team, and the development of commercially available apps that leverage our software. Our CEO also was eligible to earn an additional $250,000, which was payable on the achievement of bookings of 125% of our bookings target, along with the development of software development kits, application programming interfaces, and a cloud-based service with beta or general availability customers. These goals were designed to drive performance, enhance our products and customer bases, and strengthen our internal operations. In light of the difficult economic environment at the beginning of calendar year 2010, the board of directors believed these goals were aggressive and achievable through only through extraordinary effort.

**Mr. Swan.** The target bonus opportunity for Mr. Swan was payable on a quarterly basis, and was based 50% on achievement of target bookings and 50% on achievement of individual performance goals. For the portion of the target bonus attributable to target bookings, Mr. Swan would be eligible to receive a bonus only to the extent, and in the amount, that we achieved 90% of our bookings target (with payment opportunities apportioned 85% to the first three quarters and 145% to the final quarter). For Mr. Swan to be eligible to receive bonus payouts at 100% of the target level, we would have to achieve our bookings target (with payment opportunities apportioned 85% to the first three quarters and 145% to the final quarter). In addition, to the extent that our bookings exceeded the target level for the year, Mr. Swan would be eligible to receive a bonus payout based on a multiple of the payout at target level, payable following the fourth quarter of the calendar year. The target level for the bookings performance measure was set to be extremely aggressive, yet achievable, with diligent effort during the year. As a result, the accelerator multiples set forth in the plans were significant and would yield large cash bonus payouts if bookings were in excess of the target.
Our CEO believed this arrangement was appropriate given the aggressive nature of the bookings target, and the extraordinary effort that would be required to exceed the target in light of our financial constraints and the volatile economic environment as of the beginning of the 2010 calendar year. The chart below illustrates the correlations between performance as compared to our bookings target and the impact of varying levels of performance on the percentage of bonus earned.

<table>
<thead>
<tr>
<th>Percentage Attainment of Bookings Target</th>
<th>Bonus Payment Multiple Relative to Target(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>133%</td>
<td>11.88x</td>
</tr>
<tr>
<td>125%</td>
<td>7.81x</td>
</tr>
<tr>
<td>117%</td>
<td>5.00x</td>
</tr>
<tr>
<td>113%</td>
<td>3.75x</td>
</tr>
<tr>
<td>110%</td>
<td>3.13x</td>
</tr>
<tr>
<td>108%</td>
<td>2.66x</td>
</tr>
<tr>
<td>107%</td>
<td>2.34x</td>
</tr>
<tr>
<td>103%</td>
<td>1.41x</td>
</tr>
<tr>
<td>100%</td>
<td>1.00x</td>
</tr>
<tr>
<td>90%</td>
<td>0.47x</td>
</tr>
</tbody>
</table>

(1) For the portion of the bonus opportunity applicable to corporate financial objectives, bonuses were calculated by first, assessing the level of attainment of the bookings target for a performance period (column 1); next, determining the corresponding payment multiple (column 2); and then multiplying each individual's target bonus opportunity by the payment multiple.

For the portion of the target bonus attributable to individual performance, Mr. Swan would be eligible to receive a bonus payout based on our CEO's evaluation of his performance against his performance goals following the fourth quarter of the 2010 calendar year. The percentage of the target bonus attributable to individual performance was adjustable based on the achievement of the corporate financial objectives. Thus, to the extent that our bookings exceeded the target level for the year, Mr. Swan would be eligible to receive an increased bonus payout for the portion of the target bonus applicable to individual performance using the same accelerator multiple used for calculating the portion of the target bonus applicable to bookings achievement up to a maximum of 110% of the portion of the target bonus opportunity for individual performance. Our CEO believed this arrangement was appropriate given the diligent and focused effort that would be required to achieve the bookings goals.

The individual performance goals were established at the beginning of the year by our CEO and were intended to drive achievement of our pre-established corporate objectives.

Mr. Swan's performance goals and the weighting assigned to each goal are set forth below:

- release Splunk 4.1 with real-time capabilities (40%)
- hire a vice president of client development (30%)
- develop plan for Splunk 4.2 before Splunk 4.1 is released (20%)
- cultivate and enhance customer relationships (10%)

**Mr. Schodorf.** As our Senior Vice President, Field Operations, Mr. Schodorf's target incentive compensation opportunity primarily was structured as a commission-based program, which provided for quarterly and annual cash payments based on the ability of our sales organization to achieve specified pre-established sales quota (based on bookings) throughout the year. Mr. Schodorf would be eligible to receive quarterly commission payments only to the extent, and in the amount, that we achieved at least 70% of our bookings quota (with payment opportunities apportioned 85% to the first three quarters and 145% to the final quarter). For Mr. Schodorf to be eligible to receive commission payouts at 100% of the target level, we would have to achieve our bookings quota (with payment opportunities apportioned 85%
to the first three quarters and 145% to the final quarter). In addition, to the extent that we exceeded our bookings quota for the year, Mr. Schodorf would be eligible to receive additional commission payments based on a multiple of the payout at target level, payable following the fourth quarter. The target level for the bookings performance measure was set to be extremely aggressive, yet achievable, with diligent effort during the year. As a result, the accelerator multiples set forth in Mr. Schodorf's plan were significant and would yield large commission payments if bookings were in excess of the quota. As our senior sales executive, Mr. Schodorf's target commission opportunity was higher than the target incentive compensation opportunity of our named executive officers (other than our CEO's) due to the strong link between his job responsibilities and our bookings achievement. Therefore, the accelerator multiples used for calculating commissions based on bookings achievement above target were lower than the multiples for the other named executive officers.

Our CEO believed this arrangement was appropriate given the aggressive nature of the bookings quota, and the extraordinary effort that would be required to exceed the target in light of the volatile economic environment as of the beginning of calendar year 2010. The chart below illustrates the correlations between performance as compared to our bookings quota and the impact of varying levels of performance on the percentage of commissions earned.

<table>
<thead>
<tr>
<th>Percentage Attainment of Bookings Target</th>
<th>Commission Payment Multiple Relative to Target(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>133%</td>
<td>5.63x</td>
</tr>
<tr>
<td>125%</td>
<td>4.38x</td>
</tr>
<tr>
<td>117%</td>
<td>3.13x</td>
</tr>
<tr>
<td>113%</td>
<td>2.50x</td>
</tr>
<tr>
<td>110%</td>
<td>2.00x</td>
</tr>
<tr>
<td>107%</td>
<td>1.56x</td>
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<tr>
<td>103%</td>
<td>1.25x</td>
</tr>
<tr>
<td>100%</td>
<td>1.00x</td>
</tr>
<tr>
<td>90%</td>
<td>0.50x</td>
</tr>
<tr>
<td>80%</td>
<td>0.25x</td>
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</table>

(1) Commission payments are calculated by first, assessing the level of attainment of the bookings quota for a performance period (column 1); next, determining the corresponding payment multiple (column 2); and then multiplying Mr. Schodorf's target commission opportunity by the payment multiple.

Under his incentive plan, Mr. Schodorf also was eligible to receive quarterly bonuses of $2,000 per quarter for securing new customers, and an annual bonus of $10,000 for large reference customers. Our CEO believed these extra incentives were valuable tools to incentivize Mr. Schodorf to grow and develop our business. If Mr. Schodorf's performance was extraordinary, he would be eligible to receive additional bonus payments.

Mr. Kapur. The target bonus opportunity for Mr. Kapur was payable on a quarterly basis and was based (1) 50% on achievement of corporate objectives and (2) 50% on achievement of individual performance objectives. Our CEO, in consultation with Mr. Kapur, determined these performance goals in advance of the performance period. Our CEO believed these goals would drive performance towards achievement of our business objectives. Mr. Kapur's performance goals and the weighting assigned to each goal are set forth below:

- implement internal systems for tracking stock options and accounts payable (10%)
- develop long term tax planning for the company (10%)
- ensure we maintain a high customer renewal rate for support and maintenance services (20%)


Fiscal 2011 Bonus Decisions

CEO. After the conclusion of the 2010 calendar year, our compensation committee and our board of directors evaluated our performance and our CEO's performance against the performance goals set forth in the CEO's individual compensation arrangement. In making this determination, the board of directors concluded that the company had achieved outstanding results including revenue growth of 89%. Our bookings for the bonus period equaled approximately 129% of our target bookings for the calendar year, which exceeded the target levels of both of our CEO's target bonus opportunity and of our CEO's additional bonus opportunity. Our compensation committee and our board of directors determined that our CEO satisfied all of the performance goals for his target bonus opportunity, surpassed the bookings goal for his additional bonus opportunity, and made significant progress towards substantially achieving the remaining performance goals for his additional bonus opportunity, including laying the groundwork for development of software development kits, and substantial progress towards releasing Splunk Storm, our cloud-based service in beta form. Our compensation committee recommended and our board of directors decided to pay our CEO a bonus equal to 100% of his target bonus amount plus 100% of the additional bonus amount, or a total of $500,000, in recognition of his extraordinary leadership in guiding us to rapidly expand our business and to substantially exceed our financial performance goals amidst an extremely difficult economic environment. Our board of directors believed that payment of the full additional bonus opportunity was appropriate to reward our CEO for the company's overachievement of its financial goals and the strides made towards full achievement of his performance goals during the performance period.

Mr. Swan. Our CEO, in consultation with our management team, determined the extent to which our bookings target and Mr. Swan's individual performance goals were achieved for the first three quarters of the performance period, and approved the payment of quarterly bonuses to Mr. Swan at or near Mr. Swan's target quarterly bonus amount for each of the first three quarters. Following the end of the performance period, our board of directors, in consultation with our compensation committee and CEO, reviewed the financial data and annual bookings achievement, and determined that we achieved 129% of our annual bookings target. In accordance with the payment accelerators set forth in his incentive compensation arrangements, Mr. Swan received cash bonus payouts following the end of the period equal to 7.81x the portion of his target annual bonus applicable to the corporate bookings achievement, plus the full prorated portion applicable to the fourth quarter.

In addition, our CEO, in consultation with our management team, reviewed Mr. Swan's performance against his performance goals and determined that Mr. Swan achieved the substantial majority of his performance goals (noting that he exerted significant efforts towards the achievement of the full 100% of his performance goals). Our compensation committee evaluated and approved our CEO's recommendations, and our board of directors considered these recommendations and approved the bonus payments. In consideration of our achievement of 129% of our bookings target and the payment accelerators set forth in his incentive compensation arrangements, Mr. Swan received cash bonus payouts following the end of the period equal to 7.81x the portion of his target annual bonus applicable to the individual performance achievement, plus the full prorated portion applicable to the fourth quarter.

In setting target bonus opportunities for Mr. Swan for fiscal 2012, our CEO reviewed the cash bonuses paid to executives at similarly situated companies included in the survey data and the Radford analysis. Our CEO recommended, and our compensation committee approved, a maximum threshold for the fiscal 2012 bonus opportunity of 3x Mr. Swan's target amount, which was consistent with the market practices reflected in the survey data and Radford analysis in light of the company's goals for fiscal 2012. In addition, the revenue target for 100% achievement of Mr. Swan's target amount was aggressive and achievable through focused efforts. The chart below illustrates the percentages under the fiscal 2012 plans for

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101
calculating bonuses based on our revenue achievements. Our CEO and compensation committee believed that these goals and payment multiples provide appropriate motivation towards exceeding our targets.

| Percentage Attainment of Revenue Target | Bonus Payment Multiple Relative to Target(
<table>
<thead>
<tr>
<th></th>
<th></th>
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<tbody>
<tr>
<td>130%</td>
<td>3.00x</td>
</tr>
<tr>
<td>125%</td>
<td>2.50x</td>
</tr>
<tr>
<td>120%</td>
<td>2.00x</td>
</tr>
<tr>
<td>115%</td>
<td>1.75x</td>
</tr>
<tr>
<td>110%</td>
<td>1.50x</td>
</tr>
<tr>
<td>105%</td>
<td>1.25x</td>
</tr>
<tr>
<td>100%</td>
<td>1.00x</td>
</tr>
<tr>
<td>95%</td>
<td>0.75x</td>
</tr>
<tr>
<td>90%</td>
<td>0.50x</td>
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</table>

(1) Bonuses are calculated by first, assessing the level of attainment of the revenue target for a performance period (column 1); next, determining the corresponding payment multiple (column 2); and then multiplying each individual’s target bonus opportunity by the payment multiple.

**Mr. Schodorf.** Our CEO, in consultation with our management team, determined the extent to which our bookings target was achieved for each of the first three quarters during the performance period and approved payments of quarterly commissions to Mr. Schodorf at or near his target quarterly bonus amount for the first three quarters of the 2010 calendar year. Following the end of the performance period, our board of directors, in consultation with our compensation committee and CEO, reviewed the financial data and annual bookings achievement, and determined that we achieved 129% of our annual bookings target. Mr. Schodorf received an additional commission payment equal to slightly more than 4.38x his target annual commission, which commission amount was determined based on the accelerator multiples set forth in his commission plan. Mr. Schodorf also received the portion of his commission applicable to the fourth quarter of the 2010 calendar year.

Mr. Schodorf also received bonus amounts equal to $7,500 per quarter in recognition of his extraordinary efforts in securing new customers. Our CEO believed that paying him quarterly target bonuses in excess of his target bonus amount was important to reward Mr. Schodorf for the new customers, and to continue to drive his performance throughout the year to expand our business. Following the end of the fourth quarter of the 2010 calendar year, Mr. Schodorf received an additional $10,000 per the terms of his incentive compensation arrangement after our board of directors, in consultation with our CEO and compensation committee, determined he achieved his goal of securing large reference customers.

**Mr. Kapur.** Our CEO determined the extent to which our pre-established corporate goals and Mr. Kapur’s individualized performance goals were achieved during each quarter. Our compensation committee evaluated and approved our CEO’s recommendations, and our board of directors approved the payment of cash bonuses to Mr. Kapur at or near his target quarterly bonus amount for the first three quarters of the performance period. Following the end of the performance period, our CEO reviewed Mr. Kapur’s performance and his contribution to our achievement, particularly in light of his promotion to Treasurer during the year, and determined to pay him an additional amount to reward him for his performance. Mr. Kapur also received a $10,000 discretionary bonus in connection with his promotion to Treasurer in July 2010.

For fiscal 2012, our board of directors, in consultation with our CEO and management, approved incentive compensation cash opportunities for our named executive officers that were measured on a fiscal year basis (February 1, 2011 through January 31, 2012), unlike in prior years when cash incentive compensation opportunities were measured on a calendar year basis. As a result, no incentive compensation arrangements for our named executive officers were in place for the month of January 2011.
To account for the changes to the administration of our cash incentive compensation arrangements, and in recognition of our continued strong performance in January 2011 and our named executive officers’ contributions in driving this performance, our board of directors approved discretionary bonuses for our named executive officers (other than our CEO) as set forth in the chart below.

The chart below summarizes the total amount of incentive compensation payable to our named executive officers for fiscal 2011:

<table>
<thead>
<tr>
<th>Name</th>
<th>Target Incentive Compensation ($)(1)</th>
<th>Actual Incentive Compensation Paid Relative to Target ($)(2)</th>
<th>Discretionary Bonus Paid ($)(3)</th>
<th>Total Incentive Compensation Paid($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Godfrey R. Sullivan, President and Chief Executive Officer</td>
<td>$250,000</td>
<td>$500,000</td>
<td>—</td>
<td>$500,000</td>
</tr>
<tr>
<td>Raman Kapur, Vice President, Finance</td>
<td>$50,000</td>
<td>$99,264</td>
<td>$14,167</td>
<td>$113,431</td>
</tr>
<tr>
<td>Erik M. Swan, Chief Technology Officer</td>
<td>$75,000</td>
<td>$533,345</td>
<td>$6,250</td>
<td>$539,595</td>
</tr>
<tr>
<td>Thomas E. Schodorf, Senior Vice President, Field Operations</td>
<td>$178,000(4)</td>
<td>$740,000(5)</td>
<td>$13,333</td>
<td>$753,333(6)</td>
</tr>
</tbody>
</table>

(1) This represents the target incentive compensation opportunities for the performance period of January 1, 2010 through December 31, 2010.

(2) This represents the cash amounts paid to named executive officer based on performance against the target corporate and individual performance goals for the performance period of January 1, 2010 through December 31, 2010.

(3) This represents the bonus amounts paid to each named executive officer (other than our CEO) in recognition of his efforts for the month of January 2011. This also includes the $10,000 discretionary bonus paid to Mr. Kapur in July 2010.

(4) This represents the sum of $160,000 of target cash commissions and $18,000 of target cash bonus payments that Mr. Schodorf was eligible to earn for the performance period under his incentive compensation arrangement.

(5) This represents the sum of $721,000 of total cash commissions and $19,000 of total cash bonus payments that were paid to Mr. Schodorf for the performance period under his incentive compensation arrangement.

(6) This represents the total cash commissions and bonuses paid to Mr. Schodorf under his incentive compensation arrangement, plus the discretionary bonus for his services performed in January 2011.

**Long-Term Equity-Based Incentive Compensation**

We believe that strong, long-term corporate performance is achieved with a corporate culture that encourages a long-term focus by our named executive officers through the use of stock-based awards, the value of which depends on our stock performance. Our equity-based incentives historically have been granted in the form of stock options. We grant stock options to provide our named executive officers with incentives to help align their interests with the interests of our stockholders and to enable them to participate in the long-term appreciation of our stockholder value. Additionally, stock options provide an important retention tool for us to retain our named executive officers, as they are subject to vesting over an extended period of time subject to continued service with us. Going forward, we may introduce other forms of stock-based compensation awards as we deem appropriate into our executive compensation program to offer executive officers additional types of long-term equity incentives that further this objective.
Historically, the size and material terms of the initial stock option grants made to our executive officers, including our named executive officers, were determined after consideration of external market data and our assessment of initial equity grants made to comparable executives at similarly situated companies. Following the initial stock option grants, we have not followed an established set of criteria for granting equity awards. Instead, our board of directors has exercised its judgment and discretion, in consultation with our CEO and compensation committee, and considered, among other things, the role and responsibility of the named executive officer, competitive factors, external market data, the amount of stock-based equity compensation already held by the named executive officer, and the cash-based compensation received by the named executive officer, to determine its recommendations for stock options. We do not have any program, plan or practice to time stock option grants in coordination with releasing material non-public information.

Stock ownership guidelines. At this time, the board of directors has not adopted stock ownership guidelines with respect to the named executive officers or otherwise, although it may consider doing so in the future. In connection with the offering, we have established an insider trading policy that prohibits, among other things, short sales, hedging of stock ownership positions, and transactions involving derivative securities relating to our common stock.

Fiscal 2011 equity grants. In fiscal 2011, we did not make any equity grants to our CEO. The board of directors determined that given his then-current equity holdings, our CEO was, at that time, sufficiently incentivized and had a stake in the success of the company that appropriately aligned his interests with those of our stockholders. Our compensation committee and board of directors review our CEO's compensation, including the retention and incentive value of his awards, in order to determine whether and when additional equity compensation is appropriate.

In addition, Mr. Schodorf received an option grant immediately prior to the beginning of fiscal 2011 in connection with his hiring. Our board of directors believed he was sufficiently incentivized to perform, and therefore did not make any additional option grants to him in fiscal 2011.

In April 2010, our board of directors approved the grant of a “refresh” option to Mr. Swan to purchase up to 100,000 shares of common stock. When approving the refresh option, the board of directors recognized that Mr. Swan held options that were substantially vested and referenced the market data for assessing how Mr. Swan's equity holdings compared with executives of similarly situated companies. The board of directors, exercising its discretion, believed the size of this option grant was appropriate to continue to drive performance.

In December 2010, our board of directors approved the grant of a stock option to purchase 37,500 shares of common stock to Mr. Kapur. This stock option grant was made in recognition of his promotion to Treasurer in July 2010, and in order to continue to drive his performance to enhance our value and better align his interests with the interests of our stockholders. In determining the number of shares subject to the stock option, the board of directors considered his current equity holdings, as well as what they believed Mr. Kapur could obtain from other companies if he were to leave for new employment.

Perquisites

Our named executive officers are eligible to participate in the same group insurance and employee benefit plans generally available to our other salaried employees in the United States. We provide employee benefits to all eligible employees in the United States, including our named executive officers, which the compensation committee believes are reasonable and consistent with its overall compensation objective to better enable us to attract and retain employees. These benefits include medical, dental, vision, and disability benefits and other plans and programs made available to eligible employees. In fiscal 2011, we did not provide special plans or programs for our named executive officers. Accordingly, employee benefits and perquisites are reviewed from time to time only to ensure that benefit levels remain competitive for the company as a whole, but are not included in the compensation committee's annual determination of a named executive officer's compensation package.
Post-Employment Compensation

The offer letters entered into with our named executive officers provide certain protections in the event of their termination of employment under specified circumstances, including following a change in control of our company. Mr. Swan did not previously have a written employment arrangement and his letter states the current terms of his employment. We believe that these protections serve our executive retention objectives by helping our named executive officers maintain continued focus and dedication to their responsibilities to maximize stockholder value, including in the event of a transaction that could result in a change in control of our company. The terms of these letters were determined after review by the compensation committee of our retention goals for each executive and thereafter considered and approved by our board of directors. For a summary of the material terms and conditions of these severance and change in control arrangements, see “—Potential Payments Upon Termination and Upon Termination Following Change in Control.”

Tax and Accounting Treatment of Compensation

Deductibility of Executive Compensation

Generally, Section 162(m) of the Code disallows a tax deduction to any publicly-held corporation for any remuneration in excess of $1 million paid in any taxable year to its chief executive officer and to certain other highly compensated officers. Remuneration in excess of $1 million may be deducted if, among other things, it qualifies as "performance-based compensation" within the meaning of the Code.

As a privately-held corporation, we have not previously taken the deductibility limit imposed by Section 162(m) into consideration in setting compensation for our executive officers. Further, under a certain Section 162(m) exception, certain compensation paid pursuant to a compensation plan in existence before the effective date of this public offering will not be subject to the $1 million limitation until the earliest of: (i) the expiration of the compensation plan, (ii) a material modification of the compensation plan (as determined under Section 162(m)), (iii) the issuance of all the employer stock and other compensation allocated under the compensation plan, or (iv) the first meeting of stockholders at which directors are elected after the close of the third calendar year following the year in which the offering occurs. We expect that, where reasonably practicable, we will seek to qualify the variable compensation paid to our executive officers for the "performance-based compensation" exemption from the deductibility limit. As such, in approving the amount and form of compensation for our executive officers in the future, we will consider all elements of the cost to us of providing such compensation, including the potential impact of Section 162(m). Our compensation committee may, in its judgment, authorize compensation payments that do not comply with an exemption from the deductibility limit when it believes that such payments are appropriate to attract and retain executive talent.

Taxation of "Parachute" Payments and Deferred Compensation

We did not provide any executive officer, including any named executive officer, with a "gross-up" or other reimbursement payment for any tax liability that he or she might owe as a result of the application of Sections 280G, 4999, or 409A of the Code during fiscal 2011, and we have not agreed and are not otherwise obligated to provide any named executive officer with such a "gross-up" or other reimbursement. Sections 280G and 4999 of the Code provide that executive officers and directors who hold significant equity interests and certain other service providers may be subject to an excise tax if they receive payments or benefits in connection with a change in control that exceeds certain prescribed limits, and that the company, or a successor, may forfeit a deduction on the amounts subject to this additional tax. Section 409A also imposes additional significant taxes on the individual in the event that an executive officer, director or other service provider receives "deferred compensation" that does not meet the requirements of Section 409A of the Code.
Accounting for Stock-Based Compensation

We follow Financial Accounting Standards Board Accounting Standards Codification Topic 718 ("ASC Topic 718"), formerly known as SFAS 123(R), for our stock-based awards. ASC Topic 718 requires companies to measure the compensation expense for all share-based payment awards made to employees and directors, including stock options and restricted stock awards, based on the grant date "fair value" of these awards. This calculation is performed for accounting purposes and reported in the compensation tables below, even though our executive officers may never realize any value from their awards. ASC Topic 718 also requires companies to recognize the compensation cost of their stock-based compensation awards in their income statements over the period that an executive officer is required to render service in exchange for the option or other award.

We account for equity compensation paid to our employees under the rules of ASC Topic 718, which requires us to estimate and record an expense for each award of equity compensation over the service period of the award. Accounting rules also require us to record cash compensation as an expense at the time the obligation is incurred.

Risk Assessment and Compensation Practices

Our management assesses and discusses with our compensation committee our compensation policies and practices for our employees as they relate to our risk management, and based upon this assessment, we believe that any risks arising from such policies and practices are not reasonably likely to have a material adverse effect on us in the future.

2011 Summary Compensation Table

The following table provides information regarding the compensation of our named executive officers during fiscal 2011.

<table>
<thead>
<tr>
<th>Name and Principal Position</th>
<th>Year</th>
<th>Salary ($)</th>
<th>Option Awards ($)</th>
<th>Non-Equity Incentive Plan Compensation ($)</th>
<th>All Other Compensation ($)</th>
<th>Total ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Godfrey R. Sullivan</td>
<td>2011</td>
<td>250,000</td>
<td>—</td>
<td>500,000</td>
<td>—</td>
<td>750,000</td>
</tr>
<tr>
<td>President and Chief Executive Officer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Principal Financial Officer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Erik M. Swan</td>
<td>2011</td>
<td>225,000</td>
<td>52,884</td>
<td>533,345</td>
<td>6,250</td>
<td>817,479</td>
</tr>
<tr>
<td>Chief Technology Officer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thomas E. Schodorf</td>
<td>2011</td>
<td>240,000</td>
<td>—</td>
<td>740,000</td>
<td>13,333</td>
<td>993,333</td>
</tr>
<tr>
<td>Senior Vice President, Field Operations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) The dollar amounts in this column represent the aggregate grant date fair value of stock option awards granted in fiscal 2011. These amounts have been calculated in accordance with ASC Topic 718 using the Black-Scholes option-pricing model. Pursuant to SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions. For a discussion of valuation assumptions, see the notes to our financial statements included elsewhere in this prospectus.

(2) Unless otherwise noted in the footnotes, these options vest over four years as follows: 25% of the shares vest one year following the vesting commencement date, with the remaining 75% vesting in equal monthly installments over the next three years.
Grants of Plan-Based Awards For Fiscal 2011

The following table presents information concerning grants of plan-based awards to each of our named executive officers during fiscal 2011.

<table>
<thead>
<tr>
<th>Name</th>
<th>Grant Date</th>
<th>Threshold ($)</th>
<th>Target ($)</th>
<th>Maximum ($)</th>
<th>Exercise or Base Price of Option Awards ($)</th>
<th>Grant Date Fair Value of Option Awards ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Godfrey R. Sullivan</td>
<td>—</td>
<td>—</td>
<td>250,000</td>
<td>500,000</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Raman Kapur</td>
<td>12/22/2010</td>
<td>—</td>
<td>50,000</td>
<td>—</td>
<td>37,500</td>
<td>1.10</td>
</tr>
<tr>
<td>Erik M. Swan</td>
<td>4/22/2010</td>
<td>—</td>
<td>75,000</td>
<td>—</td>
<td>100,000</td>
<td>0.99</td>
</tr>
<tr>
<td>Thomas E. Schodorf</td>
<td>—</td>
<td>—</td>
<td>178,000</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

(1) Amounts in the "Estimated Future Payouts Under Non-Equity Incentive Plan Awards" column relate to target incentive compensation opportunities under each named executive officer’s individual compensation arrangement and assumes the achievement at target level for both the corporate achievement and individual achievement components. Payments under these plans are not subject to a minimum or maximum payment limitation, except for our CEO's opportunity. The actual amounts paid to our named executive officers are set forth in the "2011 Summary Compensation Table" above and the calculation of the actual amounts paid is discussed more fully in "Executive Compensation—Compensation Discussion and Analysis—Non-Equity Incentive Plan Compensation" above.

(2) Unless otherwise noted in the footnotes, these options vest over four years as follows: 25% of the shares vest one year following the vesting commencement date, with the remaining 75% vesting in equal monthly installments over the next three years.
Outstanding Equity Awards at Fiscal Year-End

The following table presents information concerning equity awards held by our named executive officers at the end of fiscal 2011.

<table>
<thead>
<tr>
<th>Name</th>
<th>Vesting Commencement Date</th>
<th>Number of Securities Underlying Unexercised Options (#)</th>
<th>Option Exercise Price ($)</th>
<th>Option Expiration Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Godfrey R. Sullivan</td>
<td>9/1/2008</td>
<td>3,985,332(1) 176,991(1)(2)</td>
<td>0.565</td>
<td>9/16/2018</td>
</tr>
<tr>
<td>Raman Kapur</td>
<td>8/31/2009</td>
<td>26,562(1) 48,438</td>
<td>0.62</td>
<td>10/21/2019</td>
</tr>
<tr>
<td></td>
<td>9/1/2010</td>
<td>—(3) 37,500</td>
<td>1.10</td>
<td>12/21/2020</td>
</tr>
<tr>
<td>Erik M. Swan</td>
<td>5/18/2006</td>
<td>4,000(3)</td>
<td>0.065</td>
<td>5/7/2016</td>
</tr>
<tr>
<td></td>
<td>1/1/2008</td>
<td>963,750(4) 321,250</td>
<td>0.565</td>
<td>4/9/2018</td>
</tr>
<tr>
<td></td>
<td>4/23/2009</td>
<td>43,750(1) 56,250</td>
<td>0.62</td>
<td>7/22/2019</td>
</tr>
<tr>
<td></td>
<td>1/21/2010</td>
<td>25,000(1) 75,000</td>
<td>0.99</td>
<td>4/21/2021</td>
</tr>
<tr>
<td>Thomas E. Schodorf</td>
<td>10/5/2009</td>
<td>—(1) 642,245</td>
<td>0.62</td>
<td>10/21/2019</td>
</tr>
</tbody>
</table>

(1) These options vest over four years as follows: 25% of the shares vest one year following the vesting commencement date, with the remaining 75% vesting in equal monthly installments over the next three years.

(2) The stock option is subject to an early exercise provision pursuant to which the remaining 176,991 shares become exercisable on January 1, 2012.

(3) The stock option is fully vested and immediately exercisable.

(4) The stock option vests in equal monthly installments over four years.

Option Exercises and Stock Vested at Fiscal Year-End

The following table presents information concerning the exercise of options by our named executive officers during fiscal 2011. None of our named executive officers held any restricted stock or other stock awards during fiscal 2011.

<table>
<thead>
<tr>
<th>Name of Executive Officer</th>
<th>Number of Shares Acquired on Exercise (#)</th>
<th>Value Realized on Exercise ($)(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Godfrey R. Sullivan</td>
<td>853,982</td>
<td>401,880</td>
</tr>
<tr>
<td>Raman Kapur</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Erik M. Swan</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Thomas E. Schodorf</td>
<td>291,928</td>
<td>114,436</td>
</tr>
</tbody>
</table>

(1) Represents the value of our common stock on the date of exercise, as determined by our board of directors, less the option exercise price multiplied by the number of shares for which the option was exercised.

Pension Benefits and Nonqualified Deferred Compensation

We do not provide a pension plan for our employees and none of our named executive officers participated in a nonqualified deferred compensation plan during fiscal 2011.
Executive Employment Arrangements

The initial terms and conditions of employment for each of our named executive officers are set forth in written executive employment offer letters. With the exception of his offer letter, each of these letters was negotiated on our behalf by our CEO, with the oversight and approval of our board of directors. In January 2012, we entered into employment offer letters with Messrs. Sullivan, Swan and Schodorf setting forth the terms and conditions of such executive's employment with us. Each of these employment offer letters also provides for severance and change in control benefits, as described below under the "Executive Compensation—Potential Payments Upon Termination or Upon Termination Following a Change in Control" section.

Godfrey R. Sullivan

We entered into an employment offer letter, dated August 19, 2008, with Godfrey R. Sullivan, our Chief Executive Officer and President, which set forth the initial terms and conditions of his employment with us. These terms and conditions were negotiated between Mr. Sullivan and our board of directors. We subsequently entered into a revised employment offer letter, dated January 11, 2012, with Mr. Sullivan. This letter supersedes the terms of his original employment offer letter and sets forth Mr. Sullivan's current annual base salary of $350,000 and his current annual target cash bonus of 90% of his base salary.

Raman Kapur

We entered into an employment offer letter, dated August 28, 2009, with Raman Kapur, our Vice President, Finance. This letter sets forth Mr. Kapur's initial annual base salary of $165,000 and eligibility for first year variable compensation of $16,500 based on achievement of individual goals and a company sales bookiings goal. In connection with his appointment, Mr. Kapur was granted an option to purchase 75,000 shares of common stock at $0.62, which vests over four years.

Erik M. Swan

We entered into an employment offer letter, dated January 11, 2012, with Erik M. Swan, our Chief Technology Officer. This agreement sets forth Mr. Swan's current annual base salary of $250,000 and his current annual target cash bonus of 40% of his base salary. Prior to January 2012, the terms of Mr. Swan's employment were not memorialized in any written employment offer letter or agreement.

Thomas E. Schodorf

We entered into an employment offer letter, dated September 21, 2009, with Thomas E. Schodorf, our Senior Vice President, Field Operations, which sets forth the initial terms and conditions of his employment with us. We subsequently entered into an a revised employment offer letter, dated January 9, 2012, with Mr. Schodorf. This letter supersedes the terms of his original employment offer letter and sets forth Mr. Schodorf's current annual base salary of $240,000 and his current annual target incentive compensation of 101% of his base salary.

Potential Payments Upon Termination or Upon Termination Following a Change in Control

We have entered into agreements with Messrs. Sullivan, Swan and Schodorf that may provide for benefits under the circumstances described below if the named executive officer's employment is terminated under certain conditions and enhanced benefits if the termination occurs in connection with a change in control. The material terms of these benefits are set forth below.
If, prior to the three-month period before a change in control or following the 12-month period after a change in control, a named executive officer's employment is terminated without cause, he will be eligible to receive the following benefits if he timely signs a release of claims:

- lump sum payment equal to six months of his then-current base salary (12 months, in the case of our CEO), plus a pro-rated portion of his annual target bonus for the year of termination;

- payment by us for up to six months of COBRA premiums to continue health insurance coverage for him and his eligible dependents (12 months, in the case of our CEO), or a lump sum payment of $12,000 if paying for COBRA premiums would result in an excise tax to us;

- six months accelerated vesting of his outstanding equity awards (12 months, in the case of our CEO); and

- six-month extension of the post-termination exercise period for his outstanding options.

If, within the period commencing three months before a change in control and ending 12 months after a change in control, his employment is terminated without cause or he resigns for good reason, he will be entitled to the following benefits if he timely signs a release of claims:

- lump sum payment equal to 12 months of his then-current base salary (18 months, in the case of our CEO), plus a pro-rated portion of his annual target bonus for the year of termination (18 months of annual target bonus for the year of termination, in the case of our CEO);

- payment by us for up to 12 months of COBRA premiums to continue health insurance coverage for him and his eligible dependents (18 months, in the case of our CEO), or a lump sum payment of $24,000 if paying for COBRA premiums would result in an excise tax to us;

- 100% accelerated vesting of his outstanding equity awards; and

- six-month extension of the post-termination exercise period for his outstanding options.

The following table provides information concerning the estimated payments and benefits that would be provided in the circumstances described above for each of the named executive officers. For purposes of this table, a qualifying termination of employment is considered "in connection with a change in control" if such termination occurs within the period commencing three months before and ending 12 months after a "change in control." Payments and benefits are estimated assuming that the triggering event took place on January 31, 2011, but using the terms of severance that were in place as of January 11, 2012. For purposes of valuing accelerated vesting, the values indicated in the table are calculated as the aggregate difference between the fair market value of a share of our common stock underlying the option on January 31, 2011 and the exercise price of the applicable option, multiplied by the number of unvested shares accelerated. There can be no assurance that a triggering event would produce the same or similar results as those estimated below if such event occurs on any other date or at any other price, or if any other assumption used to estimate potential payments and benefits is not correct. Due to the number of factors that affect
the nature and amount of any potential payments or benefits, any actual payments and benefits may be different.

<table>
<thead>
<tr>
<th>Named Executive Officer</th>
<th>Termination Without Cause</th>
<th>Termination Without Cause or Resignation for Good Reason in Connection with a Change in Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Godfrey R. Sullivan</td>
<td>$ 665,000</td>
<td>$ 997,500</td>
</tr>
<tr>
<td></td>
<td>$ 21,222</td>
<td>$ 31,683</td>
</tr>
<tr>
<td></td>
<td>$ 990,747</td>
<td>$ 1,651,246</td>
</tr>
<tr>
<td></td>
<td>$ 1,676,969</td>
<td>$ 2,680,429</td>
</tr>
<tr>
<td>Total:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Erik M. Swan

<table>
<thead>
<tr>
<th></th>
<th>Termination Without Cause</th>
<th>Termination Without Cause or Resignation for Good Reason in Connection with a Change in Control</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ 150,000</td>
<td>$ 300,000</td>
</tr>
<tr>
<td></td>
<td>$ 10,561</td>
<td>$ 21,122</td>
</tr>
<tr>
<td></td>
<td>$ 93,309</td>
<td>$ 207,119</td>
</tr>
<tr>
<td>Total:</td>
<td>$ 253,870</td>
<td>$ 528,241</td>
</tr>
</tbody>
</table>

Thomas E. Schodorf

<table>
<thead>
<tr>
<th></th>
<th>Termination Without Cause</th>
<th>Termination Without Cause or Resignation for Good Reason in Connection with a Change in Control</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ 209,000</td>
<td>$ 418,000</td>
</tr>
<tr>
<td></td>
<td>$ 11,842</td>
<td>$ 23,684</td>
</tr>
<tr>
<td></td>
<td>$ 56,051</td>
<td>$ 308,278</td>
</tr>
<tr>
<td>Total:</td>
<td>$ 276,893</td>
<td>$ 749,962</td>
</tr>
</tbody>
</table>

(1) This represents the sum of each named executive officer's base salary plus pro-rated target bonus amount, in each case, as were in effect as of January 31, 2011.

**Employee Benefit and Stock Plans**

**2012 Equity Incentive Plan**

Our board approved a form of 2012 Equity Incentive Plan, or the 2012 Plan, in January 2012. We expect our board will adopt and our stockholders will approve the 2012 Plan in its final form prior to the completion of this offering. Subject to stockholder approval, the 2012 Plan is effective upon the later to occur of its adoption by our board or immediately prior to the effective date of the registration statement that registers our shares of common stock pursuant to the Securities Exchange Act of 1934, but is not expected to be utilized until after the completion of this offering. Our 2012 Plan provides for the grant of incentive stock options, within the meaning of Section 422 of the Code, to our employees and any parent and subsidiary corporations’ employees, and for the grant of nonstatutory stock options, restricted stock, restricted stock units, stock appreciation rights, performance units and performance shares to our employees, directors and consultants and our parent and subsidiary corporations’ employees and consultants.

**Authorized shares.** A total of shares of our common stock are reserved for issuance pursuant to the 2012 Plan, of which no awards are issued and outstanding. In addition, the shares reserved for issuance under our 2012 Plan will also include (a) those shares reserved but unissued under the 2003 Equity Incentive Plan, or the 2003 Plan, as of the effective date described above and (b) shares returned to the 2003 Plan as the result of expiration or termination of awards (provided that the maximum number of shares that may be added to the 2012 Plan pursuant to (a) and (b) is shares). The number of shares available for issuance under the 2012 Plan will also include an annual increase on the first day of each fiscal year beginning in 2013, equal to the least of:

* shares;
Plan administration. Our board or a committee appointed by our board has the authority to administer our 2012 Plan. Our compensation committee will administer our 2012 Plan. In the case of awards intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, the compensation committee will consist of two or more "outside directors" within the meaning of Section 162(m). Subject to the provisions of our 2012 Plan, the administrator has the power to determine the terms of the awards, including the exercise price, the number of shares subject to each such award, the exercisability of the awards and the form of consideration, if any, payable upon exercise. The administrator also has the authority to amend existing awards to reduce their exercise price, to allow participants the opportunity to transfer outstanding awards to a financial institution or other person or entity selected by the administrator and to institute an exchange program by which outstanding awards may be surrendered in exchange for awards with a higher or lower exercise price.

Stock options. The exercise price of options granted under our 2012 Plan must at least be equal to the fair market value of our common stock on the date of grant. The term of an incentive stock option may not exceed 10 years, except that with respect to any participant who owns more than 10% of the voting power of all classes of our outstanding stock, the term must not exceed five years and the exercise price must equal at least 110% of the fair market value on the grant date. Subject to the provisions of our 2012 Plan, the administrator determines the term of all other options. After the termination of service of an employee, director or consultant, he or she may exercise his or her option for the period of time stated in his or her option agreement. Generally, if termination is due to death or disability, the option will remain exercisable for 12 months. In all other cases, the option will generally remain exercisable for three months following the termination of service. However, in no event may an option be exercised later than the expiration of its term.

Stock appreciation rights. Stock appreciation rights may be granted under our 2012 Plan. Stock appreciation rights allow the recipient to receive the appreciation in the fair market value of our common stock between the exercise date and the date of grant. Subject to the provisions of our 2012 Plan, the administrator determines the terms of stock appreciation rights, including when such rights become exercisable and whether to pay any increased appreciation in cash or with shares of our common stock, or a combination thereof, except that the per share exercise price for the shares to be issued pursuant to the exercise of a stock appreciation right will be no less than 100% of the fair market value per share on the date of grant.

Restricted stock. Restricted stock may be granted under our 2012 Plan. Restricted stock awards are grants of shares of our common stock that vest in accordance with terms and conditions established by the administrator. The administrator will determine the number of shares of restricted stock granted to any employee, director or consultant. The administrator may impose whatever conditions to vesting it determines to be appropriate (for example, the administrator may set restrictions based on the achievement of specific performance goals or continued service to us); provided, however, that the administrator, in its sole discretion, may accelerate the time at which any restrictions will lapse or be removed. Shares of restricted stock that do not vest are subject to our right of repurchase or forfeiture.

Restricted stock units. Restricted stock units may be granted under our 2012 Plan. Restricted stock units are bookkeeping entries representing an amount equal to the fair market value of one share of our common stock. The administrator determines the terms and conditions of restricted stock units including the vesting criteria (which may include accomplishing specified performance criteria or continued service to us) and the form and timing of payment. Notwithstanding the foregoing, the administrator, in its sole discretion may accelerate the time at which any restrictions will lapse or be removed.
Performance units and performance shares. Performance units and performance shares may be granted under our 2012 Plan. Performance units and performance shares are awards that will result in a payment to a participant only if performance goals established by the administrator are achieved or the awards otherwise vest. The administrator will establish organizational or individual performance goals in its discretion, which, depending on the extent to which they are met, will determine the number and/or the value of performance units and performance shares to be paid out to participants. After the grant of a performance unit or performance share, the administrator, in its sole discretion, may reduce or waive any performance objectives or other vesting provisions for such performance units or performance shares. Performance units shall have an initial dollar value established by the administrator prior to the grant date. Performance shares shall have an initial value equal to the fair market value of our common stock on the grant date. The administrator, in its sole discretion, may pay earned performance units or performance shares in the form of cash, in shares or in some combination thereof.

Outside directors. Our 2012 Plan provides that all non-employee directors will be eligible to receive all types of awards (except for incentive stock options) under the 2012 Plan. Please see the description of our Outside Director Equity Compensation Policy above under "Management—Non-Employee Director Compensation."

Non-transferability of awards. Unless the administrator provides otherwise, our 2012 Plan generally does not allow for the transfer of awards and only the recipient of an award may exercise an award during his or her lifetime.

Certain adjustments. In the event of certain changes in our capitalization, to prevent diminution or enlargement of the benefits or potential benefits available under the 2012 Plan, the administrator will adjust the number and class of shares that may be delivered under the plan and/or the number, class, and price of shares covered by each outstanding award, and the numerical share limits set forth in the 2012 Plan. In the event of our proposed liquidation or dissolution, the administrator will notify participants as soon as practicable and all awards will terminate immediately prior to the consummation of such proposed transaction.

Merger or change in control. Our 2012 Plan provides that in the event of a merger or change in control, as defined under the 2012 Plan, each outstanding award will be treated as the administrator determines, except that if a successor corporation or its parent or subsidiary does not assume or substitute an equivalent award for any outstanding award, then such award will fully vest, all restrictions on such award will lapse, all performance goals or other vesting criteria applicable to such award will be deemed achieved at 100% of target levels and such award will become fully exercisable, if applicable, for a specified period prior to the transaction. The award will then terminate upon the expiration of the specified period of time. If the service of an outside director is terminated on or following a change in control, other than pursuant to a voluntary resignation, his or her options, restricted stock units and stock appreciation rights, if any, will vest fully and become immediately exercisable, all restrictions on his or her restricted stock will lapse, and all performance goals or other vesting requirements for his or her performance shares and units will be deemed achieved at 100% of target levels, and all other terms and conditions met.

Amendment, termination. Our board has the authority to amend, suspend or terminate the 2012 Plan provided such action does not impair the existing rights of any participant. Our 2012 Plan will automatically terminate in 2022, unless we terminate it sooner.

2012 Employee Stock Purchase Plan

Our board approved a form of 2012 Employee Stock Purchase Plan (the "ESPP") in January 2012. We expect our board will adopt and our stockholders will approve the ESPP in its final form prior to the completion of this offering. Subject to its adoption by our board and approval by our stockholders, the ESPP will become effective soon after the completion of this offering.

113
Authorized shares. A total of shares of our common stock will be made available for sale. In addition, our ESPP provides for annual increases in the number of shares available for issuance under the ESPP on the first day of each fiscal year beginning in fiscal 2014, equal to the lesser of:

- % of the outstanding shares of our common stock on the first day of such fiscal year;
- shares; or
- such other amount as may be determined by our board of directors.

Plan administration. Our compensation committee will administer the ESPP. Our compensation committee has full and exclusive authority to interpret the terms of the ESPP and determine eligibility to participate subject to the conditions of our ESPP as described below.

Eligibility. Generally, all of our employees are eligible to participate if they are employed by us, or any participating subsidiary, for at least 20 hours per week and more than five months in any calendar year. However, an employee may not be granted rights to purchase stock under the ESPP if such employee:

- immediately after the grant would own stock possessing 5% or more of the total combined voting power or value of all classes of our capital stock; or
- hold rights to purchase stock under all of our employee stock purchase plans that accrue at a rate that exceeds $25,000 worth of stock for each calendar year.

Offering periods. Our ESPP is intended to qualify under Section 423 of the Code, and provides for consecutive-month offering periods. The offering periods generally start on the first trading day on or after and of each year. The administrator may, in its discretion, modify the terms of future offering periods.

Payroll deductions. Our ESPP permits participants to purchase common stock through payroll deductions of up to % of their eligible compensation, which includes a participant's base straight time gross earnings, commissions, overtime and shift premium, but exclusive of payments for incentive compensation, bonuses and other compensation. A participant may purchase a maximum of shares during a purchase period.

Exercise of purchase right. Amounts deducted and accumulated by the participant are used to purchase shares of our common stock at the end of each-month purchase period. The purchase price of the shares will be 85% of the lower of the fair market value of our common stock on the first trading day of each offering period or on the exercise date. If the fair market value of our common stock on the exercise date is less than the fair market value on the first trading day of the offering period, participants will be withdrawn from the current offering period following their purchase of shares on the purchase date and will be automatically re-enrolled in a new offering period. Participants may end their participation at any time during an offering period, and will be paid their accrued payroll deductions that have not yet been used to purchase shares of common stock. Participation ends automatically upon termination of employment with us.

Non-transferability. A participant may not transfer rights granted under the ESPP other than by will, the laws of descent and distribution, or as otherwise provided under the ESPP.

Merger or change in control. In the event of our merger or change in control, as defined under the ESPP, a successor corporation may assume or substitute each outstanding purchase right. If the successor corporation refuses to assume or substitute for the outstanding purchase right, the offering period then in progress will be shortened, and a new exercise date will be set. The administrator will notify each participant that the exercise date has been changed and that the participant's option will be exercised automatically on the new exercise date unless prior to such date the participant has withdrawn from the offering period.
Amendment, termination. Our ESPP will automatically terminate in 2022, unless we terminate it sooner. Our board of directors has the authority to amend, suspend or terminate our ESPP, except that, subject to certain exceptions described in the ESPP, no such action may adversely affect any outstanding rights to purchase stock under our ESPP.

2003 Equity Incentive Plan, as amended

Our board adopted and our stockholders approved the 2003 Plan in November 2003. The 2003 Plan was most recently amended by our board of directors in December 2011.

Authorized shares. Our 2003 Plan will be terminated in connection with this offering, and accordingly, no shares will be available for issuance under this plan. The 2003 Plan will continue to govern outstanding awards granted thereunder. The 2003 Plan provided for the grant of incentive stock options, nonstatutory stock options and restricted stock. As of January 31, 2012, options to purchase shares of our common stock remained outstanding under the 2003 Plan.

Plan administration. Our board or a committee thereof appointed by our board has the authority to administer the 2003 Plan. Currently, the compensation committee administers the 2003 Plan. Subject to the provisions of our 2003 Plan, the administrator has the power to determine the terms of awards, including the recipients, the number of shares subject to each award, the exercise price (if any), the fair market value of a share of our common stock, the vesting schedule applicable to the awards, together with any vesting acceleration, and the terms of the award agreement for use under the 2003 Plan. The administrator also has the authority, subject to the terms of the 2003 Plan, to institute an exchange program under which (i) outstanding options may be surrendered in exchange for options of the same type (which may have lower or higher exercise prices and different terms), options of a different type and/or cash and/or (ii) the exercise price of an outstanding option is reduced, to prescribe rules and regulations pertaining to the 2003 Plan, including the establishment of sub-plans for the purposes of satisfying applicable foreign laws, and to construe and interpret the 2003 Plan and awards granted thereunder.

Options. The administrator may grant options. The exercise price per share of all options must equal at least 100% of the fair market value per share of our common stock on the date of grant. The term of an option may not exceed 10 years. An incentive stock option held by a participant who owns more than 10% of the total combined voting power of all classes of our stock, or any parent or subsidiary corporations, may not have a term in excess of five years and must have an exercise price of at least 110% of the fair market value per share of our common stock on the date of grant. The administrator will determine the methods of payment of the exercise price of an option, which may include cash, shares or certain other property or other consideration acceptable to the administrator. After the termination of service of an employee, director or consultant, the participant may exercise his or her option, to the extent vested as of such date of termination, within three months of termination or such shorter or longer period of time as stated in his or her option agreement, no less than 30 days or to exceed five years. If termination is due to death or disability, the option will remain exercisable, to the extent vested as of such date of termination, for six months or such longer period of time as stated in his or her option agreement not exceeding five years. However, in no event may an option be exercised later than the expiration of its term.

Transferability of awards. Unless the administrator provides otherwise, our 2003 Plan generally does not allow for the transfer of awards, and only the recipient of an option may exercise such an award during his or her lifetime.

Certain adjustments. In the event of certain changes in our capitalization, to prevent diminution or enlargement of the benefits or potential benefits available under the 2003 Plan, the administrator will adjust the number and class of shares that may be delivered under the 2003 Plan and/or the number, class and price of shares covered by each outstanding award. In the event of our proposed liquidation or
dissolution, the administrator will notify participants as soon as practicable, and all awards will terminate immediately prior to the consummation of such proposed transaction.

**Merger or change in control.** Our 2003 Plan provides that in the event of a merger or change in control, as defined under the 2003 Plan, each outstanding award will be assumed or substituted for an equivalent award. In the event that awards are not assumed or substituted for, then the awards will expire on such transaction at such time and on such conditions as the board will determine.

**Amendment, termination.** Our board may amend the 2003 Plan at any time. As noted above, in connection with this offering, the 2003 Plan will be terminated and no further awards will be granted thereunder. All outstanding awards will continue to be governed by their existing terms.

### 401(k) Plan

We maintain a tax-qualified retirement plan that provides eligible employees with an opportunity to save for retirement on a tax advantaged basis. Eligible employees are able to participate in the 401(k) plan as of the first day of the month following the date they meet the plan's eligibility requirements, and participants are able to defer up to 90% of their eligible compensation subject to applicable annual Code limits. All participants' interests in their deferrals are 100% vested when contributed. The 401(k) plan permits us to make matching contributions and profit sharing contributions to eligible participants, although we have not made any such contributions to date. Pre-tax contributions are allocated to each participant's individual account and are then invested in selected investment alternatives according to the participants' directions. The 401(k) plan is intended to qualify under Sections 401(a) and 501(a) of the Code. As a tax-qualified retirement plan, contributions to the 401(k) plan and earnings on those contributions are not taxable to the employees until distributed from the 401(k) plan and all contributions are deductible by us when made.

### Limitation on Liability and Indemnification Matters

Our amended and restated certificate of incorporation and bylaws that will become effective upon the completion of this offering contain provisions that limit the personal liability of our directors for monetary damages to the fullest extent permitted by Delaware law. Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for:

- any breach of the director's duty of loyalty to us or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- any transaction from which the director derived an improper personal benefit.

Our amended and restated certificate of incorporation that will become effective upon the completion of this offering provides that we indemnify our directors to the fullest extent permitted by Delaware law. In addition, our amended and restated bylaws that will become effective upon the completion of this offering provide that we indemnify our directors and officers to the fullest extent permitted by Delaware law. Our amended and restated bylaws that will become effective upon the completion of this offering also provide that we shall advance expenses incurred by a director or officer in advance of the final disposition of any action or proceeding, and permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity, regardless of whether we would otherwise be permitted to indemnify him or her under the provisions of Delaware law. We have entered and expect to continue to enter into agreements to indemnify our directors, executive officers and
other employees as determined by our board of directors. With certain exceptions, these agreements provide for indemnification for related expenses including, among others, attorneys' fees, judgments, fines and settlement amounts incurred by any of these individuals in any action or proceeding. We believe that these bylaw provisions and indemnification agreements are necessary to attract and retain qualified persons as directors and officers. We also maintain directors' and officers' liability insurance.

The limitation of liability and indemnification provisions in our amended and restated certificate of incorporation and bylaws that will become effective upon the completion of this offering may discourage stockholders from bringing a lawsuit against our directors for breach of their fiduciary duty of care. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and our stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers. At present, there is no pending litigation or proceeding involving any of our directors, officers or employees for which indemnification is sought, and we are not aware of any threatened litigation that may result in claims for indemnification.
CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Below we describe transactions and series of similar transactions, during our last three fiscal years, to which we were a party or will be a party, in which:

• the amounts involved exceeded or will exceed $120,000; and

• any of our directors, executive officers or beneficial holders of more than 5% of any class of our capital stock, or any immediate family member of such related person, had or will have a direct or indirect material interest.

Other than as described below, there has not been, nor is there any currently proposed transactions or series of similar transactions to which we have been or will be a party other than compensation arrangements, which are described where required under "Executive Compensation."

Investors’ Rights Agreement

We are party to an investors' rights agreement which provides, among other things, that holders of our preferred stock, including stockholders affiliated with some of our directors, have the right to demand that we file a registration statement or request that their shares be covered by a registration statement that we are otherwise filing. For a more detailed description of these registration rights, see "Description of Capital Stock—Registration Rights."

Employment Arrangements and Indemnification Agreements

We have entered into employment and consulting arrangements with certain of our current and former executive officers. See "Executive Compensation—Executive Employment Arrangements."

We have also entered into indemnification agreements with each of our directors and officers. The indemnification agreements and our certificate of incorporation and bylaws in effect upon the completion of this offering require us to indemnify our directors and officers to the fullest extent permitted by Delaware law. See "Executive Compensation—Limitation on Liability and Indemnification Matters."

Severance and Separation Agreements

Many of our executive officers are entitled to certain severance benefits. See "Executive Compensation—Potential Payments Upon Termination or Upon Termination Following a Change in Control."

Stock Option Grants to Executive Officers and Directors

We have granted stock options to our executive officers and one of our non-employee directors. See "Executive Compensation" and "Management—Non-Employee Director Compensation."

Policies and Procedures for Related Party Transactions

Prior to this offering, we historically did not enter into transactions with related parties, including those described above unless a majority of the non-interested directors approved the transaction. In determining whether to approve a related party transaction, the board of directors would consider the material facts as to the related party's relationship or interest in the transaction.

We intend to adopt a formal written policy that will be effective upon the closing of this offering providing that our executive officers, directors, nominees for election as directors, beneficial owners of more than 5% of any class of our common stock, any member of the immediate family of any of the foregoing persons, and any firm, corporation or other entity in which any of the foregoing persons is employed or is a general partner or principal or in a similar position or in which such person has a 5% or
greater beneficial ownership interest, are not permitted to enter into a related party transaction with us without the prior consent of our audit committee, subject to the exceptions described below. In approving or rejecting any such proposal, our audit committee will consider the relevant facts and circumstances available and deemed relevant to our audit committee, including, but not limited to, whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances and the extent of the related party's interest in the transaction. Our audit committee has determined that certain transactions will not require audit committee approval, including certain employment arrangements of executive officers, director compensation, transactions with another company at which a related party's only relationship is as an employee or beneficial owner of less than 5% of that company's shares, transactions where a related party's interest arises solely from the ownership of our common stock and all holders of our common stock received the same benefit on a pro rata basis, and transactions available to all employees generally.
PRINCIPAL AND SELLING STOCKHOLDERS

The following table sets forth information regarding beneficial ownership of our common stock as of October 31, 2011 and as adjusted to reflect the shares of common stock to be issued and sold in the offering assuming no exercise of the underwriters' over-allotment option, by:

- each person or group of affiliated persons known by us to be the beneficial owner of more than 5% of our common stock;
- each of our named executive officers;
- each of our directors;
- all executive officers and directors as a group; and
- all selling stockholders, which consist of the entities and individuals shown as having shares listed in the column "Shares Being Offered."

We have determined beneficial ownership in accordance with SEC rules. The information does not necessarily indicate beneficial ownership for any other purpose. Under these rules, the number of shares of common stock deemed outstanding includes shares issuable upon exercise of options and warrants held by the respective person or group that may be exercised or converted within 60 days after October 31, 2011. For purposes of calculating each person's or group's percentage ownership, stock options and warrants exercisable within 60 days after October 31, 2011 are included for that person or group but not the stock options or warrants of any other person or group.

Applicable percentage ownership is based on 79,350,595 shares of common stock outstanding at October 31, 2011, which includes 200,000 shares of common stock that we issued upon the exercise of certain outstanding warrants, and assumes the automatic conversion of all outstanding shares of our preferred stock on a one-for-one basis into 56,930,194 shares of common stock. For purposes of the table below, we have assumed that shares of common stock will be outstanding upon completion of this offering, based upon an assumed initial public offering price of $ per share.

Unless otherwise indicated and subject to applicable community property laws, to our knowledge, each stockholder named in the following table possesses sole voting and investment power over the shares.
listed. Unless otherwise noted below, the address of each person listed on the table is c/o Splunk Inc., 250 Brannan Street, San Francisco, California 94107.

<table>
<thead>
<tr>
<th>Name of Beneficial Owner</th>
<th>Shares Beneficially Owned Prior to the Offering</th>
<th>Shares Being Offered</th>
<th>Shares Beneficially Owned After the Offering</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Shares</td>
<td>Percentage</td>
<td>Shares</td>
</tr>
<tr>
<td><strong>5% Stockholders:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entities affiliated with August Capital(1)</td>
<td>16,428,500</td>
<td>20.7</td>
<td>16,428,500</td>
</tr>
<tr>
<td>Entities affiliated with Sevin Rosen(2)</td>
<td>16,428,496</td>
<td>20.7</td>
<td>16,428,496</td>
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<tr>
<td>Entities affiliated with JK&amp;B Capital(3)</td>
<td>14,128,032</td>
<td>17.8</td>
<td>14,128,032</td>
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<tr>
<td>Entities affiliated with Ignition Partners(4)</td>
<td>9,742,730</td>
<td>12.3</td>
<td>9,742,730</td>
</tr>
<tr>
<td>Godfrey R. Sullivan(5)</td>
<td>6,781,525</td>
<td>8.1</td>
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</tr>
<tr>
<td>Erik M. Swan(6)</td>
<td>4,876,811</td>
<td>6.0</td>
<td>4,876,811</td>
</tr>
<tr>
<td>Michael J. Baum(7)</td>
<td>4,517,899</td>
<td>5.7</td>
<td>4,517,899</td>
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<tr>
<td><strong>Named Executive Officers and Directors:</strong></td>
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<td></td>
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<tr>
<td>Godfrey R. Sullivan(5)</td>
<td>6,781,525</td>
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<tr>
<td>Raman Kapur(8)</td>
<td>53,905</td>
<td>*</td>
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<td>Erik M. Swan(6)</td>
<td>4,876,811</td>
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<tr>
<td>Thomas E. Schodorf(9)</td>
<td>506,009</td>
<td>*</td>
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</tr>
<tr>
<td>John G. Connors(10)</td>
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<td>David M. Hornik(11)</td>
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<tr>
<td>Thomas M. Neustetter</td>
<td>—</td>
<td>*</td>
<td>—</td>
</tr>
<tr>
<td>Graham V. Smith(12)</td>
<td>150,000</td>
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</tr>
<tr>
<td>Nicholas G. Sturiale(13)</td>
<td>96,074</td>
<td>*</td>
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</tr>
<tr>
<td>Scott Thompson(14)</td>
<td>150,000</td>
<td>*</td>
<td>150,000</td>
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<tr>
<td>All executive officers and directors as a group (11 persons)(15)</td>
<td>23,552,095</td>
<td>27.4</td>
<td>23,552,095</td>
</tr>
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</table>

(*) Represents beneficial ownership of less than 1%.

(1) Consists of (i) 16,406,590 shares held of record by August Capital III, L.P., as nominee for August Capital III, L.P., August Capital Strategic Partners III, L.P., August Capital III Founders Fund, L.P. and related individuals (collectively, the "August Capital III Funds"); and (ii) 21,910 shares held of record by August Capital V, L.P., as nominee for August Capital V, L.P. and related individuals (collectively, the "August Capital V Funds"). John R. Johnston, David F. Marquardt and Andrew S. Rappaport, as members of August Capital Management III, L.L.C., the general partner of the August Capital III Funds, share voting and investment power with respect to the shares held by the August Capital III Funds. Howard Hartenbaum, David M. Hornik, John R. Johnston, David E. Marquardt, Vivek Mehra and Andrew S. Rappaport, as members of August Capital Management V, L.L.C., the general partner of the August Capital V Funds, share voting and investment power with respect to the shares held by the August Capital V Funds. The address for each of these entities is c/o August Capital Management, L.L.C., 2480 Sand Hill Road, Suite 101, Menlo Park, California 94025.

(2) Consists of (i) 16,067,024 shares held of record by Sevin Rosen Fund VIII L.P.; (ii) 327,898 shares held of record by Sevin Rosen VIII Affiliates Fund L.P.; and (iii) 33,574 shares held of record by Sevin Rosen Bayless Management Company. Jon W. Bayless, Stephen L. Domenik, Stephen M. Dow, John V. Jaggers, Jackie R. Kimzey, Charles H. Phipps and Alan R. Schuele, as general partners of SRB Associates VIII L.P., the general partner of Sevin Rosen Fund VIII L.P. and Sevin Rosen VIII Affiliates Fund L.P., share voting and investment power with respect to shares held by Sevin Rosen Fund VIII L.P. and Sevin Rosen VIII Affiliates Fund L.P. Nicholas G. Sturiale is a limited partner of

(3) Consists of (i) 12,997,790 shares held of record by JK&B Capital IV, L.P. ("JK&B"); and (ii) 1,130,242 shares held of record by JK&B Capital IV QIP, L.P. ("JK&B QIP"). JK&B Management IV, L.P., ("JK&B Management"), the general partner of JK&B and JK&B QIP, may be deemed to have sole voting and dispositive power with respect to the shares held of record by JK&B and JK&B Management. JK&B Capital IV, L.L.C. ("JK&B Capital") is the general partner of JK&B Management. David Kronfeld, as the managing member of JK&B Capital, may be deemed to have sole voting and dispositive power with respect to the shares held by these entities. Thomas M. Neustaetter, one of our directors, is a managing director of JK&B Capital, L.L.C. and has no voting or dispositive power over the shares held by these entities. The address for these entities is c/o JK&B Capital, Two Prudential Plaza, 180 N. Stetson Avenue, Suite 4500, Chicago, Illinois 60601.

(4) Consists of 9,466,037 shares held of record by Ignition Venture Partners III, L.P.; and 276,693 shares held of record by Ignition Managing Directors Fund III, L.L.C. (collectively "Ignition Partners"). Ignition GP III, LLC possesses all voting and dispositive power with respect to shares held by Ignition Venture Partners III, L.P. A board of seven managing directors controls all voting and dispositive power with respect to Ignition Ventures Partners III, L.P. and Ignition Managing Directors Fund III, LLC, including with respect to shares held by Ignition Venture Partners III, L.P. and Ignition Managing Directors Fund III, LLC. The board is comprised of John Connors, Robert Headley, Steve Hooper, John Ludwig, Cameron Myhrvold, Jonathan Roberts and Brad Silverberg. The business address for Ignition Venture Partners III, L.P., Ignition Managing Directors Fund, III, LLC and Ignition GP III, LLC is 11400 SE 6th Street, Suite 100, Bellevue, Washington 98004.

(5) Consists of (i) 353,982 shares held of record by Mr. Sullivan; (ii) 2,391,150 shares held of record by the Godfrey and Suzanne Sullivan Revocable Trust dated December 5, 2000 for which Mr. Sullivan serves as a trustee; (iii) 20,000 shares held of record by Mr. Sullivan as custodian for his elder daughter; (iv) 20,000 shares held of record by Mr. Sullivan as custodian for his younger daughter; and (v) 3,996,393 shares exercisable within 60 days of October 31, 2011, of which 2,773,424 shares are fully vested.

(6) Consists of (i) 3,500,000 shares held of record by Mr. Swan; and (ii) 1,376,811 shares exercisable within 60 days of October 31, 2011, all of which are fully vested.

(7) Consists of (i) 4,113,248 shares held of record by Mr. Baum; and (ii) 404,651 shares issuable upon the exercise of outstanding warrants. Mr. Baum's address is 2440 Sand Hill Road, Suite 100, Menlo Park, California 94025.

(8) Consists of (i) 34,375 shares held of record by Mr. Kapur; and (ii) 19,530 shares exercisable within 60 days of October 31, 2011, all of which are fully vested.

(9) Consists of (i) 467,086 shares held of record by Mr. Schodorf; and (ii) 38,923 shares exercisable within 60 days of October 31, 2011, all of which are fully vested.

(10) Consists of the shares listed in footnote (4) above which are held by entities affiliated with Ignition Partners. Mr. Connors is a member of a board that controls all voting and dispositive power with respect to Ignition GP III, LLC and Ignition Managing Directors Fund III, LLC, including with respect to the shares held by the Ignition Partners. Mr. Connors may be deemed to have shared voting and dispositive power over the shares held by Ignition Partners.
(11) Consists of the shares held by the August Capital V Funds as disclosed in footnote (1) above. Mr. Hornik is a member of August Capital Management V, L.L.C. and has shared voting and investment power over the shares held by the August Capital V Funds as disclosed in footnote (1) above.

(12) Consists of 150,000 shares subject to options exercisable within 60 days of October 31, 2011, of which 15,625 shares are fully vested.

(13) Consists of (i) 33,574 shares held of record by Sevin Rosen Bayless Management Company listed in footnote (2) above; and (ii) 62,500 shares subject to options exercisable within 60 days of October 31, 2011, all of which are fully vested.

(14) Consists of 150,000 shares subject to options exercisable within 60 days of October 31, 2011, of which 6,250 shares are fully vested.

(15) Consists of (i) 16,830,500 shares beneficially owned by our current directors and officers, of which 280,068 may be repurchased by us at the original exercise price within 60 days of October 31, 2011; and (ii) 6,721,575 shares subject to options exercisable within 60 days of October 31, 2011, of which 4,273,533 shares are fully vested.
DESCRIPTION OF CAPITAL STOCK

General

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

Immediately following the completion of this offering, our authorized capital stock will consist of 1,020,000,000 shares, with a par value of $0.001 per share, of which:

- 1,000,000,000 shares are designated as common stock; and
- 20,000,000 shares are designated as preferred stock.

As of October 31, 2011, we had outstanding 79,350,595 shares of common stock, held by approximately 157 stockholders of record, assuming the automatic conversion of all outstanding shares of our preferred stock as of October 31, 2011 into 56,930,194 shares of common stock which includes the exercise of a warrant to purchase 200,000 shares of our Series A preferred stock which occurred subsequent to October 31, 2011. Pursuant to the terms of our certificate of incorporation, our preferred stock will automatically convert into common stock effective upon the closing of this offering. In addition, as of October 31, 2011, we had outstanding options to acquire 19,430,429 shares of our common stock and outstanding warrants that will become exercisable into 469,557 shares of common stock.

Common Stock

The holders of common stock are entitled to one vote per share on all matters submitted to a vote of our stockholders and do not have cumulative voting rights. Accordingly, holders of a majority of the shares of common stock entitled to vote in any election of directors may elect all of the directors standing for election. Subject to preferences that may be applicable to any preferred stock outstanding at the time, the holders of outstanding shares of common stock are entitled to receive ratably any dividends declared by our board of directors out of assets legally available. See the section entitled "Dividend Policy." Upon our voluntary or involuntary liquidation, dissolution or winding up, holders of our common stock are entitled to share ratably in all assets remaining after payment of liabilities and the liquidation preference of any then outstanding shares of preferred stock. Holders of common stock have no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the common stock.

Preferred Stock

After the completion of this offering, no shares of preferred stock will be outstanding. Pursuant to our certificate of incorporation, our board of directors will have the authority, without further action by the stockholders, to issue from time to time up to 20,000,000 shares of preferred stock in one or more series. Our board of directors may designate the rights, preferences, privileges and restrictions of the preferred stock, including dividend rights, conversion rights, voting rights, redemption rights, liquidation preference, sinking fund terms and the number of shares constituting any series or the designation of any series. The issuance of preferred stock could have the effect of restricting dividends on the common stock, diluting the voting power of the common stock, impairing the liquidation rights of the common stock or delaying, deterring or preventing a change in control. Such issuance could have the effect of decreasing the market price of the common stock. The issuance of preferred stock or even the ability to issue preferred stock could also have the effect of delaying, deterring or preventing a change in control. We currently have no plans to issue any shares of preferred stock.
Warrants

As of October 31, 2011, a warrant to purchase 200,000 shares of our Series A preferred stock at an exercise price of $0.25 per share was outstanding, which was subsequently exercised.

As of October 31, 2011, a warrant to purchase 404,651 shares of our Series C preferred stock at an exercise price of $1.56 per share was outstanding. Upon the closing of this offering, this warrant will become exercisable for the same number of shares of common stock.

As of October 31, 2011, a warrant to purchase 26,444 shares of our Series C preferred stock and up to an additional 44,069 shares of our Series C preferred stock, based upon the amount advanced under the terms of our hardware facility and software facility lease with TriplePoint Capital LLC, and a warrant to purchase 38,462 shares of our Series C preferred stock and up to an additional 115,385 shares of our Series C preferred stock, based upon the amount advanced under the terms of our growth capital loan with TriplePoint Capital LLC, were outstanding at an exercise price of $1.56 per share. Upon the closing of this offering, these warrants will become exercisable for the same number of shares of common stock.

All of these warrants have a net exercise provision under which its holder may, in lieu of payment of the exercise price in cash, surrender the warrant and receive a net amount of shares based on the fair market value of our preferred stock at the time of exercise of the warrant after deduction of the aggregate exercise price. Each warrant contains provisions for the adjustment of the exercise price and the number of shares issuable upon the exercise of the warrant in the event of certain stock dividends, stock splits, reorganizations, reclassifications and consolidations. Certain of the holders of the shares issuable upon exercise of our warrants are entitled to registration rights with respect to such shares as described in greater detail under the heading "Registration Rights."

Registration Rights

Following this offering's completion, the holders of an aggregate of 66,986,549 shares of our common stock, or their permitted transferees, are entitled to rights with respect to the registration of these shares under the Securities Act. These rights are provided under the terms of an investors' rights agreement between us and the holders of these shares, which was entered into in connection with our preferred stock financings, and include demand registration rights, short-form registration rights and piggyback registration rights. These registration rights are assignable, subject to certain conditions, including that the assignee be bound by the terms and conditions of the investors' rights agreement.

Demand Registration Rights

The holders of an aggregate of 66,986,549 shares of our common stock, or their permitted transferees, are entitled to demand registration rights. Under the terms of the investors' rights agreement, at any time after the earlier of (i) one hundred eighty (180) days after the effective date of this offering and (ii) August 31, 2010, we will be required, upon the written request by the holders of at least thirty percent (30%) of the shares that are entitled to rights under the investors' rights agreement, to use our best efforts to register all or a portion of these shares for public resale. We are not required to effect a registration pursuant to this provision of the investors' rights agreement if (i) the shares requested to be registered do not represent twenty percent (20%) or more of the total number of registrable securities then outstanding and the aggregate public offering price would be less than $5.0 million or (ii) during any ninety (90) days prior to our good faith estimate of the date of filing of, and ending on a date one hundred eighty (180) days following the effective date of, any company-initiated registration under the Securities Act (other than a registration relating solely to any employee benefit plan or a corporate reorganization). If such a registration is to be an underwritten offering, then the holders' registration rights are conditioned on such holders' participation in such underwriting. We may defer the filing of a registration statement once during any twelve (12) month period for a period of not more than ninety (90) days, if we provide a certificate
Form S-3 Registration Rights

The holders of an aggregate of 66,986,549 shares of our common stock, or their permitted transferees, are also entitled to S-3 registration rights. If we are eligible to file a registration statement on Form S-3 and have not done so within the preceding 12 month period, these holders have the right, upon written request to us, to have such shares registered by us if the proposed aggregate offering price of the shares to be registered by the holders requesting registration is at least $1.0 million, subject to certain exceptions. However, we may defer the filing of the Form S-3 registration statement once during any 12 month period for a period of not more than 90 days, if we provide a certificate stating that in good faith our board of directors believes it would be seriously detrimental to us and our stockholders for the Form S-3 registration statement to be effected at that time.

Piggyback Registration Rights

The holders of an aggregate of 66,986,549 shares of our common stock, or their permitted transferees, are entitled to piggyback registration rights. If we register any of our securities for our own account (other than to any employee benefit plan or a corporate reorganization), the holders of these shares are entitled to include their shares in the registration. If such a registration is to be an underwritten offering, then the holders' registration rights are conditioned on such holders' participation in such underwriting.

Other Obligations

The registration rights are subject to certain conditions and limitations, including the right of the underwriters of an offering to limit the number of shares of common stock to be included in the registration. We are generally required to bear the expenses of all registrations, except underwriting discounts and commissions. The investors' rights agreement also contains the mutual commitment of us and the holders to indemnify each other for losses attributable to untrue statements or omission of a material fact or violations of the Securities Act or state securities laws incurred by us with registrations under the agreement. The investors' rights agreement also contains an agreement by the holders not to sell or otherwise transfer or dispose of securities for a period of up to 180 days (or such other period as may be requested by the company or the underwriters) following the completion of this offering.

Termination

With respect to all holders of registrable securities who hold less than two percent of our outstanding capital stock immediately following the closing of this offering, the registration rights and our obligations terminate five years after the closing of this offering. With respect to all holders of registrable securities who hold equal to or greater than two percent of our outstanding capital stock immediately following the closing of this offering and at all times thereafter hold a number of registrable securities equal to or greater than one percent of our outstanding capital stock, the registration rights and our obligations terminate seven years after the closing of this offering. The registration rights and our obligations terminate with respect to all registrable securities that may be sold pursuant to Rule 144 promulgated under the Securities Act, unless the holder of such securities holds a number of registrable securities equal to more than one percent of our outstanding capital stock.

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

Our certificate of incorporation and bylaws contain certain provisions that could have the effect of delaying, deferring or discouraging another party from acquiring control of us. These provisions and certain provisions of Delaware law, which are summarized below, could discourage takeovers, coercive or
otherwise. These provisions are also designed, in part, to encourage persons seeking to acquire control of us to negotiate first with our board of directors. We believe that the benefits of increased protection of our potential ability to negotiate with an unfriendly or unsolicited acquirer outweigh the disadvantages of discouraging a proposal to acquire us.

**Undesignated Preferred Stock**

As discussed above, our board of directors has the ability to designate and issue preferred stock with voting or other rights or preferences that could deter hostile takeovers or delay changes in our control or management.

**Limits on Ability of Stockholders to Act by Written Consent or Call a Special Meeting**

Our certificate of incorporation provides that our stockholders may not act by written consent. This limit on the ability of stockholders to act by written consent may lengthen the amount of time required to take stockholder actions. As a result, the holders of a majority of our capital stock would not be able to amend bylaws or remove directors without holding a meeting of stockholders called in accordance with the bylaws.

In addition, our bylaws provide that special meetings of the stockholders may be called only by the chairperson of the board, the chief executive officer, the president (in the absence of a chief executive officer) or our board of directors. A stockholder may not call a special meeting, which may delay the ability of our stockholders to force consideration of a proposal or for holders controlling a majority of our capital stock to take any action, including the removal of directors.

**Requirements for Advance Notification of Stockholder Nominations and Proposals**

Our 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 our board of directors or a committee of the board of directors. These may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed, and may also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect its own slate of directors or otherwise attempt to obtain control of our company.

**Board Classification**

Our board of directors is divided into three classes. The directors in each class will serve for a three-year term, one class being elected each year by our stockholders. In addition, directors may only be removed for cause. This system of electing and removing directors may tend to discourage a third party from making a tender offer or otherwise attempting to obtain control of us because it generally makes it more difficult and takes more time for stockholders to replace a majority of the directors.

**Delaware Anti-Takeover Statute**

We are subject to the provisions of Section 203 of the Delaware General Corporation Law regulating corporate takeovers. In general, Section 203 prohibits a publicly held Delaware corporation from engaging, under certain circumstances, in a business combination with an interested stockholder for a period of three years following the date the person became an interested stockholder unless:

- prior to the date of the transaction, our board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;

- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the
voting stock outstanding, but not the outstanding voting stock owned by the interested stockholder, (1) shares owned by persons who are directors and also officers and (2) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

• at or subsequent to the date of the transaction, the business combination is approved by our board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66\(\frac{2}{3}\)% of the outstanding voting stock that is not owned by the interested stockholder.

Generally, a business combination includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. An interested stockholder is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own 15% or more of a corporation's outstanding voting stock. We expect the existence of this provision to have an anti-takeover effect with respect to transactions our board of directors does not approve in advance. We also anticipate that Section 203 may discourage attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

The provisions of Delaware law and the provisions of our certificate of incorporation and bylaws could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they might also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions might also have the effect of preventing changes in our management. It is also possible that these provisions could make it more difficult to accomplish transactions that stockholders might otherwise deem to be in their best interests.

Transfer Agent and Registrar

Upon the completion of this offering, the transfer agent and registrar for our common stock will be . The transfer agent's address is 

Market Listing

We intend to apply to list our common stock on the under the symbol "SPLK."
SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for shares of our common stock. Future sales of substantial amounts of shares of common stock, including shares issued upon the exercise of outstanding options, in the public market after this offering, or the possibility of these sales occurring, could adversely affect the prevailing market price for our common stock or impair our ability to raise equity capital.

Upon the completion of this offering based on shares outstanding as of October 31, 2011, a total of shares of common stock will be outstanding, assuming the automatic conversion of all outstanding shares of preferred stock as of October 31, 2011 into shares of common stock upon the completion of this offering and the exercise of a warrant to purchase Series A preferred stock. Of these shares, all shares of common stock sold in this offering by us or the selling stockholders, plus any shares sold upon exercise of the underwriters' over-allotment option, will be freely tradable in the public market without restriction or further registration under the Securities Act, unless these shares are held by "affiliates," as that term is defined in Rule 144 under the Securities Act. The remaining shares of common stock will be "restricted securities," as that term is defined in Rule 144 under the Securities Act. These restricted securities are eligible for public sale only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rules 144 or 701 under the Securities Act. As a result of the lock-up agreements described below and the provisions of Rules 144 and 701 under the Securities Act, the restricted securities will be available for sale in the public market as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Number of Shares Eligible for Sale / Percent of Outstanding Stock</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>At the date of this prospectus</td>
<td>Shares sold in this offering or eligible for sale under Rule 144</td>
<td></td>
</tr>
<tr>
<td>Between 90 and 180 days (subject to extension) after the date of this prospectus</td>
<td>Shares eligible for sale under Rule 144 or Rule 701</td>
<td></td>
</tr>
<tr>
<td>After 180 days (subject to extension) after the date of this prospectus and various times thereafter</td>
<td>Shares eligible for sale under Rule 144 or Rule 701 upon expiration of lock-up agreements</td>
<td></td>
</tr>
</tbody>
</table>

In addition, of the 19,430,429 shares of our common stock that were subject to stock options outstanding as of October 31, 2011, options to purchase 7,095,813 shares of common stock were vested and will be eligible for sale 180 days following the effective date of this offering, subject to extension as described in the section entitled "Underwriters."

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 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 such 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 such person is entitled to sell such shares without complying with any of the requirements of Rule 144.

129
In general, under Rule 144, as currently in effect, our affiliates or persons selling shares on behalf of our affiliates are entitled to sell upon expiration of the lock-up agreements described above, within any three-month period beginning 90 days after the date of this prospectus, 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 130 shares immediately after this offering; or
- the average weekly trading volume of the common stock during the four calendar weeks preceding the filing of a notice on 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 generally allows a stockholder who purchased shares of our common stock pursuant to a written compensatory plan or contract and who is not deemed to have been an affiliate of our company during the immediately preceding 90 days to sell these shares in reliance upon Rule 144, but without being required to comply with the public information, holding period, volume limitation, or notice provisions of Rule 144. Rule 701 also permits affiliates of our company to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares, however, are required to wait until 90 days after the date of this prospectus before selling such shares pursuant to Rule 701.

**Lock-Up Agreements**

We, the selling stockholders, all of our directors and officers and the holders of substantially all of our stock and other equity securities outstanding immediately prior to this offering have agreed that, without the prior written consent of Morgan Stanley & Co. LLC on behalf of the underwriters, we and they will not, during the period ending 180 days after the date of this prospectus:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock or any securities convertible into or exercisable or exchangeable for shares of our common stock; or
- enter into any hedge or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of our common stock;

whether any transaction described above is to be settled by delivery of shares of our common stock or such other securities, in cash or otherwise. These agreements are subject to certain exceptions. For example, certain of our officers may exercise options to purchase shares of common stock during the restricted period described above; no sales of the shares received upon exercise may occur until after the expiration of the applicable lock-up agreements entered into by such officer in connection with this offering. These agreements are also subject to extension for up to an additional 34 days, as set forth in the section entitled "Underwriters."

**Rule 10b5-1 Trading Plans**

Following the closing of this offering, certain of our officers and directors may adopt written plans, known as Rule 10b5-1 trading plans, in which they will contract with a broker to buy or sell shares of our common stock on a periodic basis to diversify their assets and investments. Under these 10b5-1 trading plans, a broker may execute trades pursuant to parameters established by the officer or director when
entering into the plan, without further direction from such officer or director. Such sales would not commence until the expiration of the applicable lock-up agreements entered into by such officer or director in connection with this offering.

Registration Rights

Upon completion of this offering, the holders of 66,986,549 shares of common stock or their transferees will be entitled to various rights with respect to the registration of these shares under the Securities Act. Registration of these shares under the Securities Act would result in these shares becoming fully tradable without restriction under the Securities Act immediately upon the effectiveness of the registration, except for shares purchased by affiliates. See "Description of Capital Stock —Registration Rights" for additional information.

Registration Statements on Form S-8

We intend to file a registration statement on Form S-8 under the Securities Act to register the shares of common stock issued or reserved for issuance under our stock option plans. We expect to file this registration statement after this offering. Shares covered by this registration statement will be eligible for sale in the public market upon the expiration or release from the terms of the lock-up agreements and subject to vesting of such shares.
MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following discussion is a summary of the material U.S. federal income tax consequences applicable to non-U.S. holders (as defined below) of the acquisition, ownership and disposition of our common stock sold pursuant to this offering. This discussion is not a complete analysis of all the potential U.S. federal income tax consequences relating thereto, nor does it address any tax consequences arising under any state, local or non-U.S. tax laws, the U.S. federal estate tax or gift tax rules or any other U.S. federal tax laws. This discussion is based on the Code, Treasury Regulations promulgated thereunder, judicial decisions and published rulings and administrative pronouncements of the Internal Revenue Service, or IRS, all as in effect as of the date of this prospectus. These authorities may change, possibly retroactively, resulting in U.S. federal income tax consequences different from those discussed below.

This discussion is limited to non-U.S. holders who purchase our common stock pursuant to this offering and who hold our common stock as a capital asset within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax considerations that may be relevant to a particular holder in light of that holder’s particular circumstances. This discussion also does not consider any specific facts or circumstances that may be relevant to holders subject to special rules under the U.S. federal income tax laws, including, without limitation, persons that own, or are deemed to own, more than 5% of our capital stock (except to the extent specifically set forth below), certain former citizens or long-term residents of the United States, an integral part or controlled entity of a foreign sovereign, partnerships and other pass-through entities, real estate investment trusts, regulated investment companies, “controlled foreign corporations,” “passive foreign investment companies,” corporations that accumulate earnings to avoid U.S. federal income tax, banks, financial institutions, insurance companies, brokers, dealers or traders in securities, commodities or currencies, tax-exempt organizations, tax-qualified retirement plans, persons subject to the alternative minimum tax, persons holding our common stock as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment or persons deemed to sell our common stock under the constructive sale provisions of the Code.

If a partnership (or other entity taxed as a partnership for U.S. federal income tax purposes) holds our common stock, the U.S. federal income tax treatment of a partner in the partnership generally will depend on the status of the partner and upon the activities of the partnership. Accordingly, partnerships that hold our common stock and partners in such partnerships are urged to consult their tax advisors regarding the specific U.S. federal income tax consequences to them of acquiring, owning or disposing of our common stock.

PROSPECTIVE INVESTORS ARE URGED TO CONSULT THEIR TAX ADVISORS REGARDING THE PARTICULAR U.S. FEDERAL INCOME TAX CONSEQUENCES TO THEM OF ACQUIRING, OWNING AND DISPOSING OF OUR COMMON STOCK WITH RESPECT TO THEIR PARTICULAR SITUATIONS, AS WELL AS ANY TAX CONSEQUENCES ARISING UNDER ANY STATE, LOCAL OR NON-U.S. TAX LAWS, THE U.S. FEDERAL ESTATE OR GIFT TAX RULES, ANY OTHER U.S. FEDERAL TAX LAWS AND ANY APPLICABLE TAX TREATY.

Definition of Non-U.S. Holder

For purposes of this discussion, a non-U.S. holder is any beneficial owner of our common stock that is not a "U.S. person" or a partnership for U.S. federal income tax purposes. A U.S. person is any of the following:

• an individual citizen or resident of the United States;

• a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
Distributions on Our Common Stock

As described in the section titled “Dividend Policy,” we do not anticipate paying cash dividends on our common stock. If, however, we make distributions of cash or property on our common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute a return of capital and will first be applied against and reduce a non-U.S. holder's adjusted tax basis in its common stock, but not below zero. Any excess will be treated as gain from the sale of stock and will be treated as described under the section titled “Gain on Sale or Disposition of Our Common Stock” below.

Dividends paid to a non-U.S. holder of our common stock that are not effectively connected with a U.S. trade or business conducted by such holder generally will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends, or such lower rate specified by an applicable tax treaty. To receive the benefit of a reduced treaty rate, a non-U.S. holder must timely furnish to us or our paying agent a valid IRS Form W-8BEN (or applicable successor form) certifying such holder's qualification for the reduced rate. This certification must be provided to us or our paying agent prior to the payment of dividends and must be updated periodically. If the non-U.S. holder holds the stock through a financial institution or other agent acting on the non-U.S. holder's behalf, the non-U.S. holder will be required to provide appropriate documentation to the agent, who then will be required to provide certification to us or our paying agent, either directly or through other intermediaries. Non-U.S. holders that do not timely provide us or our paying agent with the required certification, but that qualify for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. holders should consult their tax advisors regarding possible entitlement to benefits under a tax treaty.

If a non-U.S. holder holds our common stock in connection with the conduct of a trade or business in the United States, and dividends paid on the common stock are effectively connected with such holder's U.S. trade or business (and, if required by an applicable tax treaty, attributable to a permanent establishment maintained by the non-U.S. holder in the United States), dividends paid to the non-U.S. holder will be exempt from the U.S. federal withholding tax described above. To claim the exemption, the non-U.S. holder must furnish to us or our paying agent a valid IRS Form W-8ECI (or applicable successor form), certifying that the dividends are effectively connected with the non-U.S. holder's conduct of a trade or business within the United States.

Any dividends paid on our common stock that are effectively connected with a non-U.S. holder's U.S. trade or business (and, if required by an applicable tax treaty, attributable to a permanent establishment maintained by the non-U.S. holder in the United States) generally will be subject to graduated U.S. federal income tax rates, net of deductions and credits, in the same manner as if such holder were a U.S. person. Dividends that are effectively connected with the conduct of a U.S. trade or business and paid to a non-U.S. holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable tax treaty). Non-U.S. holders should consult their tax advisors regarding any applicable tax treaties that may provide for different rules.
Gain on Sale or Disposition of Our Common Stock

Subject to the discussions below regarding backup withholding and legislation relating to foreign accounts, a non-U.S. holder generally will not be subject to U.S. federal income tax on any gain realized upon the sale or disposition of our common stock unless:

- the gain is effectively connected with the non-U.S. holder's conduct of a trade or business in the United States and, if required by an applicable tax treaty, attributable to a permanent establishment maintained by the non-U.S. holder in the United States;
- the non-U.S. holder is a nonresident alien individual present in the United States for a period or periods of 183 days or more in the aggregate during the taxable year of the sale or disposition and certain other requirements are met; or
- our common stock constitutes a U.S. real property interest by reason of our status as a U.S. real property holding corporation, or USRPHC, for U.S. federal income tax purposes during the relevant statutory period.

The gain described in the first bullet point above generally will be subject to U.S. federal income tax at graduated tax rates on a net income basis in the same manner as if such holder were a U.S. person. A non-U.S. holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable tax treaty). Non-U.S. holders should consult their tax advisors regarding any applicable tax treaties that may provide for different rules.

Gain described in the second bullet point above generally will be subject to U.S. federal income tax at a flat 30% rate (or such a lower rate specified by an applicable income tax treaty), but may be offset by U.S. source capital losses of the non-U.S. holder (even though the individual is not considered a resident of the United States), provided that the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe that we currently are not, and we do not anticipate becoming, a USRPHC for U.S. federal income tax purposes. Because the determination of whether we are a USRPHC depends on the fair market value of our U.S. real property interests relative to the fair market value of our non-U.S. real property interests and other trade or business assets, however, there can be no assurance that we will not become a USRPHC in the future. In the event we do become a USRPHC, as long as our common stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market, our common stock will be treated as a U.S. real property interest only with respect to a non-U.S. holder that actually or constructively holds more than 5% of our common stock at any time during the shorter of the five-year period preceding the date of disposition or the holder's holding period. We expect our common stock to be "regularly traded" on an established securities market, although we cannot guarantee that it will be so traded. If gain on the sale or other taxable disposition of our stock were subject to taxation under the third bullet point above, the non-U.S. holder would be subject to regular U.S. federal income tax with respect to such gain in generally the same manner as a U.S. person.

Information Reporting and Backup Withholding

Generally, we must report annually to the IRS and to each non-U.S. holder the amount of dividends paid to such holder, the name and address of the non-U.S. holder, and the amount of any tax withheld with respect to those dividends. This information also may be made available under a specific treaty or agreement with the tax authorities of the country in which the non-U.S. holder resides or is established. Under certain circumstances, the Code imposes an information reporting and a backup withholding obligation (currently at a rate of 28% but scheduled to increase to 31% for payments made after December 31, 2012) on certain reportable payments such as dividends paid on or the gross proceeds from disposition of our common stock. Backup withholding generally will not, however, apply to payments of
dividends to a non-U.S. holder of our common stock provided the non-U.S. holder furnishes to us or our paying agent the required certification as to its non-U.S. status, such as by providing a valid IRS Form W-8BEN or W-8ECI, or otherwise establishes an exemption. Notwithstanding the foregoing, backup withholding may apply if either we or our paying agent has actual knowledge, or reason to know, that the holder is a U.S. person that is not an exempt recipient.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

Legislation Relating to Foreign Accounts

Legislation enacted in 2010 may impose withholding taxes on certain types of payments made to “foreign financial institutions“ (as specially defined under these rules) and certain other non-U.S. entities. Under this legislation, the failure to comply with additional certification, information reporting and other specified requirements could result in withholding tax being imposed on payments of dividends and sales proceeds to foreign intermediaries and certain non-U.S. holders. The legislation imposes a 30% withholding tax on dividends on, or gross proceeds from the sale or other disposition of, our common stock paid to a foreign financial institution or to a foreign non-financial entity, unless (i) the foreign financial institution undertakes certain diligence and reporting obligations or (ii) the foreign non-financial entity either certifies it does not have any substantial U.S. owners or furnishes identifying information regarding each substantial U.S. owner. If the payee is a foreign financial institution, it must enter into an agreement with the U.S. Treasury requiring, among other things, that it undertake to identify accounts held by certain U.S. persons or U.S.-owned foreign entities, annually report certain information about such accounts, and withhold 30% on payments to account holders whose actions prevent it from complying with these reporting and other requirements. Under certain transition rules, any obligation to withhold under the legislation with respect to dividends on our common stock will not begin until January 1, 2014 and with respect to the gross proceeds of a sale or other disposition of our common stock will not begin until January 1, 2015. Under certain circumstances, a non-U.S. holder might be eligible for refunds or credits of such taxes. Prospective investors should consult their tax advisors regarding the possible implications of this legislation on their investment in our common stock.
Under the terms and subject to the conditions contained in an underwriting agreement dated the date of this prospectus, the underwriters named below, for whom Morgan Stanley & Co. LLC, Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated are acting as representatives, have severally agreed to purchase, and we and the selling stockholders have agreed to sell to them, severally, the number of shares indicated below:

<table>
<thead>
<tr>
<th>Name</th>
<th>Number of Shares</th>
</tr>
</thead>
<tbody>
<tr>
<td>Morgan Stanley &amp; Co. LLC</td>
<td></td>
</tr>
<tr>
<td>Credit Suisse Securities (USA) LLC</td>
<td></td>
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<tr>
<td>J.P. Morgan Securities LLC</td>
<td></td>
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<tr>
<td>Merrill Lynch, Pierce, Fenner &amp; Smith</td>
<td></td>
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<tr>
<td>Incorporating</td>
<td></td>
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<tr>
<td>UBS Securities LLC</td>
<td></td>
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<tr>
<td>Pacific Crest Securities LLC</td>
<td></td>
</tr>
<tr>
<td>Cowen and Company, LLC</td>
<td></td>
</tr>
<tr>
<td>Total:</td>
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</tbody>
</table>

The underwriters and the representatives are collectively referred to as the "underwriters" and the "representatives," respectively. The underwriters are offering the shares of common stock subject to their acceptance of the shares from us and the selling stockholders and subject to prior sale. The underwriting agreement provides that the obligations of the several underwriters to pay for and accept delivery of the shares of common stock offered by this prospectus are subject to the approval of certain legal matters by their counsel and to certain other conditions. The underwriters are obligated to take and pay for all of the shares of common stock offered by this prospectus if any such shares are taken. However, the underwriters are not required to take or pay for the shares covered by the underwriters' over-allotment option described below.

The underwriters initially propose to offer part of the shares of common stock directly to the public at the initial public offering price listed on the cover page of this prospectus and part to certain dealers at a price that represents a concession not in excess of $            a share under the public offering price. After the initial offering of the shares of common stock, the offering price and other selling terms may from time to time be varied by the representatives.

We and the selling stockholders have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to an aggregate of additional shares of common stock (which includes shares offered by the selling stockholders and shares offered by us) at the public offering price listed on the cover page of this prospectus, less underwriting discounts and commissions. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with the offering of the shares of common stock offered by this prospectus. To the extent the option is exercised, each underwriter will become obligated, subject to certain conditions, to purchase about the same percentage of the additional shares of common stock as the number listed next to the underwriter's name in the preceding table bears to the total number of shares of common stock listed next to the names of all underwriters in the preceding table.

The following table shows the per share and total public offering price, underwriting discounts and commissions, and proceeds before expenses to us and the selling stockholders. These amounts are shown
assuming both no exercise and full exercise of the underwriters’ option to purchase up to an additional shares of common stock from us and the selling stockholders.

<table>
<thead>
<tr>
<th>Public offering price</th>
<th>Total Per Share</th>
<th>No Exercise</th>
<th>Full Exercise</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Underwriting discounts and commissions to be paid by:</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Us</td>
<td>$</td>
<td>$</td>
<td>$</td>
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<tr>
<td>Selling stockholders</td>
<td>$</td>
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<td>$</td>
</tr>
<tr>
<td>Proceeds, before expenses, to us</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Proceeds, before expenses, to selling stockholders</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

The estimated offering expenses payable by us, exclusive of the underwriting discounts and commissions, are approximately $ , which includes legal, accounting and printing costs and various other fees associated with the registration and listing of our common stock.

The underwriters have informed us that they do not intend sales to discretionary accounts to exceed five percent of the total number of shares of common stock offered by them.

Application has been made to have our common stock approved for listing on the under the trading symbol "SPLK."

We, the selling stockholders, all of our directors and officers and the holders of substantially all of our outstanding stock and other equity securities outstanding immediately prior to this offering have agreed that, without the prior written consent of Morgan Stanley & Co. LLC on behalf of the underwriters, we and they will not, during the period ending 180 days after the date of this prospectus (the "restricted period”):

• offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for shares of common stock;

• 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; or

• file any registration statement with the Securities and Exchange Commission relating to the offering of any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock;

whether any such transaction described in the first two bullet points above is to be settled by delivery of common stock or such other securities, in cash or otherwise. In addition, we and each such person agree that, without the prior written consent of Morgan Stanley & Co. LLC on behalf of the underwriters, we or such other person will not, during the restricted period, make any demand for, or exercise any right with respect to, the registration of any shares of common stock or any security convertible into or exercisable or exchangeable for common stock.

The restrictions described in the immediately preceding paragraph do not apply to:

• the sale of shares to the underwriters; or

• transactions by a security holder relating to shares of common stock or other securities acquired in open market transactions after completion of this offering; provided that no filing under Section 16(a) of the Exchange Act is required or voluntarily made in connection with subsequent sales of common stock or other securities acquired in such open market transactions; or

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137
• the transfer by a security holder of shares of common stock or any securities convertible into or exercisable or exchangeable for common stock (i) to an immediate family member of a security holder or to a trust formed for the benefit of such an immediate family member, (ii) by bona fide gift, will or intestacy, (iii) if the security holder is a corporation, partnership or other business entity (A) to another corporation, partnership or other business entity that is an affiliate of such security holder or (B) as part of a distribution to an equity holder of such stockholder or to the estate of any such equity holder or (iv) if the security holder is a trust, transfers of shares of common stock or any securities convertible into or exercisable or exchangeable for common stock to a trustor or beneficiary of the trust or to the estate of such beneficiary, provided that in each case, the transferee, donee or distributee signs and delivers a lock-up agreement prior to or upon such transfer and no filing under Section 16(a) of the Exchange Act reporting a reduction in beneficial ownership of shares of common stock is required or voluntarily made during the restricted period; or

• the receipt of shares of common stock from the company upon the exercise of options or the transfer of shares of common stock or any securities convertible into common stock to the company upon a vesting event or upon the exercise of options to purchase shares of common stock on a “cashless” or “net exercise” basis or to cover tax withholding obligations in connection with such vesting or exercise; provided that no filing under Section 16(a) of the Exchange Act is required or voluntarily made during the restricted period; or

• the receipt by certain of our officers of up to an aggregate of 833,359 shares of common stock upon the exercise of options for cash; provided that no public reports including but not limited to filings under Section 16 of the Exchange Act are required or voluntarily made within 90 days after the date of this prospectus and such shares of common stock will remain subject to the lock-up restrictions described above; or

• pursuant to agreements under which we have the option to repurchase such shares or a right of first refusal with respect to transfers of such shares, provided that no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership of shares of common stock, is required or voluntarily made during the restricted period; or

• the conversion of outstanding preferred stock into shares of common stock, provided that such shares of common stock remain subject to the lock-up restrictions described above; or

• the transfer of shares of common stock or any security convertible into or exercisable or exchangeable for common stock that occurs by operation of law or by order of a court of competent jurisdiction, provided that the transferee signs and delivers a lock-up agreement; or

• our sale or issuance of shares of common stock or other securities convertible into or exercisable for shares of common stock in connection with mergers, acquisitions, joint ventures, strategic alliances, equipment leasing arrangements or debt financings, in an aggregate number of shares not to exceed 5% of the total number of shares of common stock outstanding immediately following the completion of this offering, provided that each recipient of these shares of common stock or other securities shall be subject to the lock-up restrictions described above; or

• the establishment by a security holder of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of common stock, provided that such plan does not provide for the transfer of common stock during the restricted period and no public announcement or filing under the Exchange Act regarding the establishment of such plan shall be required or shall be voluntarily made.
The restricted period will be extended if:

- during the last 17 days of the restricted period we issue an earnings release or material news or a material event relating to our company occurs, or
- prior to the expiration of the restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the restricted period or we provide notification to Morgan Stanley & Co. LLC of any earnings release or material news or material event that may give rise to an extension of the initial restricted period,

in which case the restrictions described in the preceding paragraphs 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.

Morgan Stanley & Co. LLC, in its sole discretion, may release the common stock and other securities subject to the lock-up agreements described above in whole or in part at any time. When determining whether or not to release common stock and other securities from lock up agreements, Morgan Stanley & Co. LLC will consider, among other factors, the holder's reasons for requesting the release, the number of shares of common stock and other securities for which the release is being requested and market conditions at the time.

In order to facilitate this offering of common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock. Specifically, the underwriters may sell more shares than they are obligated to purchase under the underwriting agreement, creating a short position. A short sale is covered if the short position is no greater than the number of shares available for purchase by the underwriters under the over-allotment option. The underwriters can close out a covered short sale by exercising the over-allotment option or purchasing shares in the open market. In determining the source of shares to close out a covered short sale, the underwriters will consider, among other things, the open market price of shares compared to the price available under the over-allotment option. The underwriters may also sell shares in excess of the over-allotment option, creating a naked short position. 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 the common stock in the open market after pricing that could adversely affect investors who purchase in this offering. As an additional means of facilitating this offering, the underwriters may bid for, and purchase, shares of common stock in the open market to stabilize the price of the common stock. These activities may raise or maintain the market price of the common stock above independent market levels or prevent or retard a decline in the market price of the common stock. The underwriters are not required to engage in these activities and may end any of these activities at any time.

We, the selling stockholders and the underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

A prospectus in electronic format may be made available on websites maintained by one or more underwriters, or selling group members, if any, participating in this offering. Morgan Stanley & Co. LLC may agree to allocate a number of shares of common stock to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by Morgan Stanley & Co. LLC to underwriters that may make internet distributions on the same basis as other allocations.

**Pricing of the Offering**

Prior to this offering, there has been no public market for our common stock. The initial public offering price was determined by negotiations between us and the representatives. Among the factors considered in determining the initial public offering price were our future prospects and those of our industry in general, our sales, earnings and certain other financial and operating information in recent
periods, and the price earnings ratios, price sales ratios, market prices of securities, and certain financial and operating information of companies engaged in activities similar to ours.

Other Relationships

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. Certain of the underwriters and their respective affiliates may in the future perform various financial advisory and investment banking services for us, for which they will receive customary fees and expenses. In the ordinary course of their various business activities, the underwriters and their respective 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 and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve our securities and instruments.

Selling Restrictions

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"), an offer to the public of any shares of our common stock may not be made in that Relevant Member State, except that an offer to the public in that Relevant Member State of any shares of our common stock may be made at any time under the following exemptions under the Prospectus Directive, if they have been implemented in that Relevant Member State:

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 for any such offer; or

c) in any other circumstances falling within Article 3(2) of the Prospectus Directive, provided that no such offer of shares of our common stock shall result in a requirement for the publication by us or any underwriter of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an "offer to the public" in relation to any shares of our common stock 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 any shares of our common stock to be offered so as to enable an investor to decide to purchase any shares of our common stock, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State, the expression "Prospectus Directive" means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State, and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

United Kingdom

Each underwriter has represented and agreed that:

a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000, as amended (the
b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the shares of our common stock in, from or otherwise involving the United Kingdom.

**Notice to Prospective Investors in Switzerland**

The shares may not be and will not be publicly offered, sold or advertised, directly or indirectly in or from 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 prospectus and any other offering or marketing material relating to the shares or the offering 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 prospectus 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 prospectus nor any other offering or marketing material relating to the offering, the Company or the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this prospectus 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 shares of common stock offered hereby will be passed upon for us by Wilson Sonsini Goodrich & Rosati, Professional Corporation, Palo Alto, California. The underwriters are being represented by Davis Polk & Wardwell LLP, Menlo Park, California, in connection with this offering.

EXPERTS

The consolidated financial statements as of January 31, 2011 and 2010 and for each of the three years in the period ended January 31, 2011 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

CHANGE IN INDEPENDENT PUBLIC ACCOUNTING FIRM

Armanino McKenna LLP audited our financial statements for the year ended December 31, 2005 through the year ended December 31, 2009. Armanino McKenna's reports for each of these periods did not contain an adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principles.

In July 2010, our audit committee determined not to renew Armanino McKenna's engagement as our independent accountant. In July 2010, our board of directors approved the appointment of PricewaterhouseCoopers LLP as our independent accountant commencing with work to be performed in relation to our audit for fiscal 2011. In addition, our audit committee engaged PricewaterhouseCoopers to audit our fiscal 2009 and fiscal 2010 financial statements.

During the period in which Armanino McKenna served as our independent accountant, there were no disagreements between Armanino McKenna and us on any matter of accounting principles or practices, financial statements disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of Armanino McKenna, would have caused Armanino McKenna to make reference to such disagreements in the firm's reports on our financial statements for such periods. In addition, no reportable events, as defined in Item 304 (a)(1)(vi) of Regulation S-K, occurred during our two most recent fiscal years.

We have provided Armanino McKenna with a copy of the foregoing disclosure and have requested that Armanino McKenna furnish us with a letter addressed to the SEC stating whether or not Armanino McKenna agrees with the above statements and, if not, stating the respects in which it does not agree. A copy of the letter from Armanino McKenna, in which Armanino McKenna agrees with the above statements, is filed as an exhibit to the registration statement of which this prospectus is a part.
WHERE YOU CAN FIND MORE 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 offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement, some of which is contained in exhibits to the registration statement as permitted by the rules and regulations of the SEC. For further information with respect to us and our common stock, we refer you to the registration statement, including the exhibits filed as a part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other document is not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, please see 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. You may obtain copies of this information at the Public Reference Room of the SEC, 100 F Street, N.E., Room 1580, Washington, D.C. 20549, at prescribed rates. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains a website that contains reports, proxy statements and other information about issuers, like us, that file electronically with the SEC. The address of that website is www.sec.gov.

As a result of this offering, we will become subject to the information and reporting requirements of the Securities Exchange Act of 1934 and, in accordance with this law, will file periodic reports, proxy statements and other information with the SEC. These periodic reports, proxy statements and other information will be available for inspection and copying at the SEC's Public Reference Room and the website of the SEC referred to above. We also maintain a website at www.splunk.com. Upon completion of this offering, you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. Information contained on our website is not a part of this prospectus.
# SPLUNK INC.

## INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

**Report of Independent Registered Public Accounting Firm**  
Page(s): F-2

**Consolidated Financial Statements**

- Consolidated Balance Sheets  
  Page(s): F-3
- Consolidated Statements of Operations  
  Page(s): F-4
- Consolidated Statements of Convertible Preferred Stock, Stockholders' Deficit and Comprehensive Loss  
  Page(s): F-5
- Consolidated Statements of Cash Flows  
  Page(s): F-6
- Notes to Consolidated Financial Statements  
  Page(s): F-7

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F-1
REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Splunk Inc.:

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, convertible preferred stock, stockholders' deficit and comprehensive loss and cash flows present fairly, in all material respects, the financial position of Splunk Inc. and its subsidiaries at January 31, 2010 and 2011, and the results of their operations and their cash flows for each of the three years in the period ended January 31, 2011 in conformity with accounting principles generally accepted in the United States of America. 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 of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

San Jose, California
January 12, 2012

F-2
Splunk Inc.

CONSOLIDATED BALANCE SHEETS

(In thousands, except share and per share amounts)

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

<table>
<thead>
<tr>
<th></th>
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<th></th>
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<td>Current assets</td>
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<td>Property and equipment, net</td>
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<td>Total assets</td>
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<td>$38,791</td>
<td>$56,451</td>
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<td>Current liabilities</td>
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<td>Accounts payable</td>
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<td>$1,174</td>
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<td>Accrued payroll and compensation</td>
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<td>Accrued expenses and other liabilities</td>
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<td>Capital lease obligation, current portion</td>
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<td>31</td>
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<td>Deferred revenue, current portion</td>
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<td>Total current liabilities</td>
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<td>Non-current liabilities</td>
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<td>9,990</td>
<td>7,462</td>
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<td>Deferred revenue, non-current</td>
<td>677</td>
<td>2,807</td>
<td>5,366</td>
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<td>Capital lease obligation, non-current</td>
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<td>Preferred stock warrant liability</td>
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<td>Other liabilities, non-current</td>
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<td>402</td>
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<td>Term debt, non-current</td>
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<td>Total non-current liabilities</td>
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<td>7,462</td>
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<td>Total liabilities</td>
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<td>Commitments and contingencies (Note 9)</td>
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<td>Convertible preferred stock</td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Convertible preferred stock, $0.001 par value; 57,904,560 shares authorized; 56,730,194 issued and outstanding at January 31, 2010 and 2011 and October 31, 2011 (unaudited); (liquidation preference: $40,099,985) pro forma: zero shares issued and outstanding at October 31, 2011 (unaudited)</td>
<td>39,949</td>
<td>39,949</td>
<td>39,949</td>
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<td>Stockholders’ equity (deficit)</td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Common stock, $0.001 par value; 106,511,960 shares authorized; 16,846,526, 19,079,759 and 22,420,401 shares issued and outstanding at January 31, 2010 and 2011 and October 31, 2011 (unaudited); pro forma: 79,350,595 issued and outstanding at October 31, 2011 (unaudited)</td>
<td>17</td>
<td>19</td>
<td>22</td>
<td>79</td>
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<td>Accumulated other comprehensive income (loss)</td>
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<td>2</td>
<td>(24)</td>
<td>(24)</td>
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<td>Additional paid-in capital</td>
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<td>6,502</td>
<td>10,484</td>
<td>52,338</td>
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<td>Accumulated deficit</td>
<td>(39,220)</td>
<td>(43,026)</td>
<td>(52,742)</td>
<td>(52,126)</td>
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<tr>
<td>Total stockholders’ equity (deficit)</td>
<td>(35,266)</td>
<td>(36,503)</td>
<td>(42,200)</td>
<td>267</td>
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<tr>
<td>Total liabilities, convertible preferred stock and stockholders’ equity (deficit)</td>
<td>$21,915</td>
<td>$38,791</td>
<td>$56,451</td>
<td>$56,501</td>
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The accompanying notes are an integral part of these consolidated financial statements.
<table>
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<td><strong>License</strong></td>
<td>$14,948</td>
<td>$27,183</td>
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<td><strong>Maintenance and services</strong></td>
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<td>16,319</td>
<td>11,209</td>
<td>22,267</td>
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<td><strong>Total revenues</strong></td>
<td>$18,156</td>
<td>$35,000</td>
<td>$66,245</td>
<td>$43,464</td>
<td>$77,761</td>
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<td><strong>Cost of revenues</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>License</strong></td>
<td>86</td>
<td>102</td>
<td>228</td>
<td>123</td>
<td>712</td>
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<tr>
<td><strong>Maintenance and services</strong></td>
<td>2,711</td>
<td>3,188</td>
<td>6,428</td>
<td>4,214</td>
<td>7,458</td>
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<tr>
<td><strong>Total cost of revenues</strong></td>
<td>2,797</td>
<td>3,290</td>
<td>6,656</td>
<td>4,337</td>
<td>8,170</td>
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<td><strong>Gross profit</strong></td>
<td>$15,359</td>
<td>$31,710</td>
<td>$59,589</td>
<td>$39,127</td>
<td>$69,591</td>
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<td><strong>Operating expenses</strong></td>
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<td><strong>Research and development</strong></td>
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<td>8,479</td>
<td>14,025</td>
<td>9,181</td>
<td>16,227</td>
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<tr>
<td><strong>Sales and marketing</strong></td>
<td>17,281</td>
<td>24,072</td>
<td>39,909</td>
<td>25,663</td>
<td>48,337</td>
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<tr>
<td><strong>General and administrative</strong></td>
<td>4,462</td>
<td>6,462</td>
<td>8,949</td>
<td>6,261</td>
<td>13,108</td>
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<tr>
<td><strong>Total operating expenses</strong></td>
<td>30,427</td>
<td>39,013</td>
<td>62,883</td>
<td>41,105</td>
<td>77,672</td>
<td></td>
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<tr>
<td><strong>Operating loss</strong></td>
<td>(15,068)</td>
<td>(7,303)</td>
<td>(3,294)</td>
<td>(1,978)</td>
<td>(8,081)</td>
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<tr>
<td><strong>Other income (expense), net</strong></td>
<td>332</td>
<td>(69)</td>
<td>(387)</td>
<td>32</td>
<td>(1,585)</td>
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<tr>
<td><strong>Loss before income taxes</strong></td>
<td>(14,736)</td>
<td>(7,372)</td>
<td>(3,681)</td>
<td>(1,946)</td>
<td>(9,666)</td>
<td></td>
</tr>
<tr>
<td><strong>Provision for income taxes</strong></td>
<td>36</td>
<td>79</td>
<td>125</td>
<td>80</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td>$ (14,772)</td>
<td>$ (7,451)</td>
<td>$ (3,806)</td>
<td>$ (2,026)</td>
<td>$ (9,716)</td>
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<tr>
<td><strong>Net loss per share:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Basic and diluted</strong></td>
<td>$ (1.14)</td>
<td>$ (0.52)</td>
<td>$ (0.21)</td>
<td>$ (0.12)</td>
<td>$ (0.48)</td>
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<tr>
<td><strong>Weighted-average shares outstanding:</strong></td>
<td></td>
<td></td>
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<tr>
<td><strong>Basic and diluted</strong></td>
<td>12,911</td>
<td>14,392</td>
<td>17,738</td>
<td>17,492</td>
<td>20,069</td>
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<td><strong>Pro forma net loss per share (unaudited):</strong></td>
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<td></td>
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<td></td>
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<tr>
<td><strong>Basic and diluted</strong></td>
<td>$ (0.05)</td>
<td></td>
<td></td>
<td></td>
<td>$ (0.12)</td>
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<td><strong>Pro forma weighted-average shares outstanding used in calculating net loss per share (unaudited):</strong></td>
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<tr>
<td><strong>Basic and diluted</strong></td>
<td>74,668</td>
<td>76,999</td>
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The accompanying notes are an integral part of these consolidated financial statements.

F-4
## CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK, STOCKHOLDERS’ DEFICIT AND COMPREHENSIVE LOSS


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

---

### Table of Contents

---

### CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK, STOCKHOLDERS’ DEFICIT AND COMPREHENSIVE LOSS

<table>
<thead>
<tr>
<th>Convertible Preferred Stock</th>
<th>Common Stock</th>
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<tr>
<td>(in thousands, except share amounts)</td>
<td>Shares</td>
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<tr>
<td>Shares</td>
<td>Shares</td>
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<tr>
<td>Balances at January 31, 2008</td>
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</tr>
<tr>
<td>Stock-based compensation</td>
<td>—</td>
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<tr>
<td>Issuance of common stock upon exercise of options</td>
<td>—</td>
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<tr>
<td>Issuance of common stock upon early exercise of options</td>
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<tr>
<td>Net unrealized loss on investments</td>
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<tr>
<td>Net loss</td>
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<tr>
<td>Stock-based compensation</td>
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<tr>
<td>Issuance of common stock upon exercise of options</td>
<td>—</td>
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<td>Issuance of common stock upon early exercise of options</td>
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<tr>
<td>Vesting of early exercised options</td>
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<td>Net unrealized loss on investments</td>
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<td>Stock-based compensation</td>
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<tr>
<td>Issuance of common stock upon exercise of options</td>
<td>—</td>
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<tr>
<td>Issuance of common stock upon early exercise of options</td>
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<tr>
<td>Vesting of early exercised options</td>
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<tr>
<td>Net unrealized gain on investments</td>
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<tr>
<td>Net loss</td>
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<td>Stock-based compensation (unaudited)</td>
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<td>Issuance of common stock upon exercise of options (unaudited)</td>
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<td>Issuance of common stock upon early exercise of options (unaudited)</td>
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<tr>
<td>Vesting of early exercised options (unaudited)</td>
<td>—</td>
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<tr>
<td>Net unrealized loss on investments (unaudited)</td>
<td>—</td>
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<tr>
<td>Net loss (unaudited)</td>
<td>—</td>
</tr>
<tr>
<td>Balances at October 31, 2011 (unaudited)</td>
<td>56,730,194</td>
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F-5
Consolidated Statements of Cash Flows

(In thousands)

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<th>Year Ended January 31</th>
<th>Nine Months Ended October 31</th>
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<td>2009</td>
<td>2010</td>
<td>2011</td>
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<td>Net loss</td>
<td>$(14,772)</td>
<td>$(7,451)</td>
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<td>Adjustments to reconcile net loss to net cash (used in) provided by operating activities</td>
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<td>Depreciation and amortization</td>
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<td>Provision for doubtful accounts</td>
<td>179</td>
<td>379</td>
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<tr>
<td>Change in fair value of preferred stock warrants</td>
<td>21</td>
<td>22</td>
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<tr>
<td>Issuance of preferred stock warrants</td>
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<tr>
<td>Stock-based compensation expense</td>
<td>767</td>
<td>1,300</td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>(2,941)</td>
<td>(2,160)</td>
</tr>
<tr>
<td>Prepaid expenses, other current and non-current assets</td>
<td>(532)</td>
<td>(201)</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>(48)</td>
<td>462</td>
</tr>
<tr>
<td>Accrued compensation</td>
<td>761</td>
<td>527</td>
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<td>Accrued expenses and other liabilities</td>
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<td>1,032</td>
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<td>Deferred revenue</td>
<td>3,419</td>
<td>6,049</td>
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<tr>
<td>Net cash (used in) provided by operating activities</td>
<td>(11,230)</td>
<td>897</td>
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<tr>
<td>Change in restricted cash</td>
<td>(1,004)</td>
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<td>Proceeds from the sale and maturity of marketable securities</td>
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<td>4,877</td>
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<td>Net cash (used in) provided by investing activities</td>
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<td>4,719</td>
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<tr>
<td>Payments of financing obligation</td>
<td>(10)</td>
<td>(143)</td>
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<tr>
<td>Proceeds from financing obligation under sale leaseback</td>
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<tr>
<td>Proceeds from early exercise of employee stock options</td>
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<td>104</td>
</tr>
<tr>
<td>Proceeds from issuance of common stock</td>
<td>8</td>
<td>1,492</td>
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<tr>
<td>Proceeds from term debt</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Repayments of term debt</td>
<td>—</td>
<td>—</td>
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<tr>
<td>Net cash provided by financing activities</td>
<td>599</td>
<td>1,453</td>
</tr>
<tr>
<td>Net increase (decrease) in cash and cash equivalents</td>
<td>(8,354)</td>
<td>7,069</td>
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</table>

Cash and cash equivalents

| Beginning of period | 13,090 | 4,736 | 11,805 | 11,805 | 19,737 |
| End of period      | $4,736 | $11,805 | $19,737 | $13,462 | $22,997 |

Supplemental disclosures

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<th>Supplemental disclosures</th>
<th>Cash paid for interest</th>
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Non-cash investing and financing activities

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<th>Non-cash investing and financing activities</th>
<th>Accrued purchases of property and equipment</th>
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<td>Accrued purchases of property and equipment</td>
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The accompanying notes are an integral part of these consolidated financial statements.

F-6
SPLUNK INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED JANUARY 31, 2009, 2010 AND 2011 AND
NINE MONTHS ENDED OCTOBER 31, 2010 AND 2011 (UNAUDITED)

(1) Description of the Business

Splunk Inc. ("Splunk" or the "Company") provides an innovative software platform that enables organizations to gain real-time operational intelligence by harnessing the value of their data. The Company's software collects and indexes data regardless of format or source, and enables users to search, correlate, analyze, monitor and report on this data. Splunk's software addresses large and diverse data sets, commonly referred to as big data, and is specifically tailored for machine-generated data. Machine data is produced by nearly every software application and electronic device in an organization and contains a definitive, time-stamped record of various activities, such as transactions, customer and user activities, and security threats. The Company's software is designed to help users in various roles, including IT and business professionals, analyze machine data and realize real-time visibility into and intelligence about their organization's operations. This operational intelligence enables organizations to improve service levels, reduce costs, mitigate security risks, demonstrate and maintain compliance and gain new insights that enable them to drive better business decisions.

(2) Principles of Consolidation

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

(3) Summary of Significant Accounting Policies

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting periods covered by the financial statements and accompanying notes. In particular, we make estimates with respect to the fair value of multiple elements in revenue recognition, uncollectible accounts receivable, stock-based compensation, income taxes and contingencies. Actual results could differ from those estimates.

Unaudited Interim Financial Information

The accompanying Consolidated Balance Sheet at October 31, 2010 and 2011, the Consolidated Statements of Operations and the Consolidated Statement of Cash Flows for the nine months ended October 31, 2010 and 2011 and the Consolidated Statements of Convertible Preferred Stock, Stockholders' Deficit and Comprehensive Loss for the nine months ended October 31, 2011 are unaudited. The unaudited interim consolidated financial statements have been prepared on the same basis as the annual consolidated financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly our financial position and results of operations and cash flows for the nine months ended October 31, 2010 and 2011. The consolidated financial data and the other information disclosed in these notes to the consolidated financial statements related to these nine-month periods are unaudited. The results of the nine months ended October 31, 2011 are not necessarily indicative of the results to be expected for fiscal 2012 or for any other interim period or other future year.

F-7
(3) Summary of Significant Accounting Policies (Continued)

Unaudited Pro Forma Balance Sheet

Immediately prior to the closing of a qualifying public offering (“IPO”), all of the outstanding shares of convertible preferred stock will automatically convert into shares of common stock. In addition, the outstanding preferred stock warrants will either automatically be converted into warrants to purchase common stock upon effectiveness of an IPO or will expire if unexercised prior to the completion of an IPO. The October 31, 2011 unaudited pro forma balance sheet has been prepared assuming the automatic conversion of all outstanding shares of our preferred stock into 56,730,194 shares of our common stock, the automatic conversion of the outstanding Series C preferred stock warrants into common stock warrants and the exercise and conversion of the Series A preferred stock warrant to common stock. The exercise of the Series A preferred stock warrant occurred on December 24, 2011.

Foreign Currency Transactions

For the three years ended January 31, 2011, international sales were primarily sourced in their respective countries and were denominated in U.S. dollars. We determined that for transactions during this period, the functional currency was the U.S. dollar. Accordingly, monetary balance sheet accounts were remeasured using the current exchange rate in effect at the balance sheet date and non-monetary items were remeasured at the historical exchange rate. Expenses were remeasured at the average exchange rates for the period. Foreign currency remeasurement and transaction gains and losses are included in Other Income (Expense), Net and were not material for the three years ended January 31, 2011. During the nine months ended October 31, 2011, in connection with the creation of foreign subsidiaries in Germany, Singapore, the United Kingdom and Hong Kong, we determined the functional currency of each of these foreign subsidiaries is the respective local currency. Assets and liabilities of these subsidiaries are translated at the exchange rate in effect at each period-end. Income statement amounts are translated at the average rate of exchange prevailing during the period. Translation adjustments arising from the use of differing exchange rates from period to period are included in Accumulated Other Comprehensive Loss within Stockholders' Equity (Deficit).

Revenue Recognition

We generate revenues primarily in the form of software license fees and related maintenance and services fees. License fees include perpetual license fees, term license fees and royalties. Maintenance and services primarily consist of fees for maintenance services (including support and unspecified upgrades and enhancements when and if they are available), training and professional services that are not essential to functionality.

We recognize revenues when all of the following conditions are met:

• there is persuasive evidence of an arrangement;
• the software or services have been delivered to the customer;
• the amount of fees to be paid by the customer is fixed or determinable; and
• the collection of the related fees is probable.
Signed agreements, are used as evidence of an arrangement. If a contract signed by the customer does not exist, we have used a purchase order as evidence of an arrangement. In cases where both a signed contract and a purchase order exist, we consider the signed contract to be the final persuasive evidence of an arrangement. Electronic delivery occurs when we provide the customer with access to the software via a license key. We assess whether a fee is fixed or determinable at the outset of the arrangement, primarily based on the payment terms associated with the transaction. We do not generally offer extended payment terms with typical terms of payment due between 30 and 60 days from delivery of software. We assess collectibility of the fee based on a number of factors such as collection history and creditworthiness of the customer. If we determine that collectibility is not probable, revenue is deferred until collectibility becomes probable, generally upon receipt of cash.

When contracts contain multiple elements wherein vendor specific objective evidence ("VSOE") exists for all undelivered elements and the services, if any, are not essential to the functionality of the delivered elements, we account for the delivered elements in accordance with the "Residual Method."

Perpetual license arrangements are typically accompanied by maintenance agreements. Maintenance revenues consist of fees for providing software updates on a when and if available basis and technical support for software products ("post-contract support" or "PCS") for an initial term. Maintenance revenues are recognized ratably over the term of the agreement. We have established fair value for maintenance on perpetual licenses due to consistently priced standalone sales of maintenance.

Revenues related to term license fees are recognized ratably over the contract term beginning on the date the customer has access to the software license key and continuing through the end of the contract term. In these cases we do not have VSOE of fair value for maintenance as fees for support and maintenance are bundled with the license over the entire term of the contract.

License arrangements may also include professional services and training services, which are typically delivered early in the contract term. In determining whether professional services revenues should be accounted for separately from license revenues, we evaluate whether the professional services are considered essential to the functionality of the software using factors such as the nature of our software products; whether they are ready for use by the customer upon receipt; the nature of our implementation services, which typically do not involve significant customization to or development of the underlying software code; the availability of services from other vendors; whether the timing of payments for license revenues is coincident with performance of services; and whether milestones or acceptance criteria exist that affect the realizability of the software license fee. Substantially all of our professional services arrangements are billed on a time and materials basis and, accordingly, are recognized as the services are performed. Training revenues are recognized as training services are delivered. VSOE of fair value of professional and training services is based upon stand-alone sales of those services. Payments received in advance of services performed are deferred and recognized when the related services are performed.

We do not offer credits or refunds and therefore have not recorded any sales return allowance for any of the periods presented. Upon a periodic review of outstanding accounts receivable, amounts that are deemed to be uncollectible are written off against the allowance for doubtful accounts. Our policy is to record revenues net of any applicable sales, use or excise taxes.
Cash and Cash Equivalents and Restricted Cash

We consider all highly liquid instruments with original or remaining maturities of 90 days or less at the date of purchase to be cash equivalents. Cash and cash equivalents are recorded at cost, which approximates fair value. We do not hold or issue financial instruments for trading purposes. As of January 31, 2010 and 2011 and October 31, 2010, $9.6 million, $13.1 million and $16.1 million, respectively, of cash and cash equivalents were invested in money market funds.

Pursuant to the office lease agreement entered into in March 2008, we were originally required to maintain a minimum of $1.3 million in a letter of credit to the landlord for the security of the lease agreement. This amount is scheduled to be reduced over the term of the lease in accordance with the terms of the office lease agreement. At January 31, 2010 and 2011, we had $1.0 million and $0.8 million, respectively, and at October 31, 2011 we had $0.6 million of restricted cash satisfying the required amounts, which is held in a money market account. At January 31, 2010 and 2011, the current portion was $0.2 million and $0.2 million and the noncurrent portion was $0.8 million and $0.6 million, which amounts were included on the balance sheet in prepaid expenses and other current assets and other assets, respectively. At October 31, 2011, the non-current portion was $0.6 million.

Concentration of Risk

Financial instruments that potentially subject us to significant concentrations of credit risk consist principally of cash and cash equivalents and accounts receivable. We maintain the majority of our cash balance at one financial institution that management believes is a high-credit, quality financial institution and invest our cash equivalents in highly rated money market funds.

At January 31, 2010, there were no customers that individually represented greater than 10% of total accounts receivable. At January 31, 2011, there was one customer that represented approximately 11% of total accounts receivable. At October 31, 2011, there were no customers that represented more than 10% of total accounts receivable.

Our accounts receivable is subject to collection risks. Our gross accounts receivable is reduced for this risk by an allowance for doubtful accounts. This allowance is for estimated losses resulting from the inability of our customers to make required payments. It is an estimate and is regularly evaluated for adequacy by taking into consideration a combination of factors. We look at factors such as past collection experience, credit quality of the customer, age of the receivable balance, and current economic conditions. These factors are reviewed to determine whether an allowance for bad debts should be recorded to reduce the receivable balance to the amount believed to be collectible.

Fair Value of Financial Instruments

The carrying amounts of certain of our financial instruments including cash equivalents, accounts receivable, accounts payable and accrued liabilities approximate fair value due to their short-term maturities. We maintain a financing obligation in relation to a sales leaseback transaction. Based on borrowing rates currently available to us for financing obligations with similar terms and considering our credit risks, the carrying value of the financing obligation approximates fair value.
(3) Summary of Significant Accounting Policies (Continued)

Assets and liabilities recorded at fair value in the financial statements are categorized based upon the level of judgment associated with the inputs used to measure their fair value. Hierarchical levels which are directly related to the amount of subjectivity associated with the inputs to the valuation of these assets or liabilities are as follows:

Level 1—Observable inputs, such as quoted prices in active markets for identical assets or liabilities.

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

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

Assets and liabilities measured at fair value are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. Our assessment of the significance of a particular input to the fair value measurement in its entirety requires management to make judgments and considers factors specific to the asset or liability. Our convertible preferred stock warrant liability is classified within Level 3 of the fair value hierarchy.

Impairment of Long-Lived Assets

We evaluate the recoverability of our long-lived assets including amortizable intangible and tangible assets in accordance with authoritative guidance on accounting for the impairment or disposal of long-lived assets. Acquired intangible assets are amortized over their useful lives. We evaluate long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable. We recognize such impairment in the event the net book value of such assets exceeds their fair value. If the fair value of the long-lived assets exceeds the carrying value of the net assets assigned, then the assets are not impaired and no further testing is performed. If the carrying value of the net assets assigned exceeds the fair value of the assets, then we must perform the second step of the impairment test in order to determine the implied fair value. No impairment of long-lived assets has occurred in the fiscal and interim periods presented.

Property and Equipment

Property and equipment are stated at cost net of accumulated depreciation. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets ranging from generally three to five years. Leasehold improvements are amortized over the shorter of the estimated useful life or the remaining lease term. When assets are retired or disposed of, the cost and accumulated depreciation are removed from the accounts, and any resulting gains or losses are included in the Consolidated Statements of Operations. Maintenance and repairs that do not improve or extend the lives of the respective assets are charged to expense in the period incurred.
(3) Summary of Significant Accounting Policies (Continued)

The following table presents the estimated useful lives of our property and equipment:

<table>
<thead>
<tr>
<th>Property and Equipment</th>
<th>Useful Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computer equipment and software</td>
<td>3 years</td>
</tr>
<tr>
<td>Furniture and fixtures</td>
<td>5 years</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>Shorter of the useful life of the asset or the lease term</td>
</tr>
</tbody>
</table>

Capitalized Software Development Costs

Capitalization of software development costs for software to be sold, leased, or otherwise marketed begins upon the establishment of technological feasibility, which is generally the completion of a working prototype that has been certified as having no critical bugs and is a release candidate. Amortization begins once the software is ready for its intended use, generally based on the pattern in which the economic benefits will be consumed. At January 31, 2009, all previously capitalized costs were fully amortized. We did not capitalize any internal software development costs for fiscal 2010 and 2011 and for the nine months ended October 31, 2011 because the cost incurred and the time between technological feasibility and product release was insignificant. We capitalized purchased technology of $0.5 million in December 2010, which is included in Other Assets on the Consolidated Balance Sheets and is being amortized to Cost of License Revenue in the Consolidated Statements of Operations over an 18 month period. For fiscal 2011 and the nine months ended October 31, 2011, total amortization expense was $48,000 and $250,000, respectively.

Costs related to software acquired, developed or modified solely to meet our internal requirements, with no substantive plans to market such software at the time of development, are capitalized. Costs incurred during the preliminary planning and evaluation stage of the project and during post implementation operational stage are expensed as incurred. Costs incurred during the application development stage of the project are capitalized. We define the design, configuration, and coding process as the application development stage. For the nine months ended October 31, 2011, we capitalized $1.0 million of costs related to computer software developed for internal use, which is included in Property and Equipment on the Consolidated Balance Sheets. At January 31, 2011 and October 31, 2011, depreciation of the capitalized software has not commenced as it has not been made available for its intended use.

Commissions

Commissions are recorded as a component of sales and marketing expenses and consist of the variable compensation paid to our sales force. Sales commissions are earned and recorded at the time that a customer has entered into a binding purchase agreement. Commissions paid to sales personnel are recoverable only in the case that we cannot collect the invoiced amounts associated with a sales order. Commission expense was $2.4 million, $5.5 million and $9.9 million for fiscal 2009, 2010 and 2011, respectively, and $6.2 million and $11.5 million for the nine months ended October 31, 2010 and 2011, respectively.
Leases

We lease our facilities under operating leases. For leases that contain rent escalation or rent concession provisions, we record the total rent expense during the lease term on a straight-line basis over the term of the lease. We record the difference between the rent paid and the straight-line rent expense as a deferred rent liability in Other Liabilities, Non-Current in the accompanying Consolidated Balance Sheets. Rent expense was $0.8 million, $1.6 million and $1.6 million during fiscal 2009, 2010 and 2011, respectively, and $1.2 million and $1.8 million for the nine months ended October 31, 2010 and 2011, respectively.

Advertising Expense

We expense advertising costs as incurred. We incurred $1.0 million, $1.3 million and $2.0 million in advertising expenses for fiscal 2009, 2010 and 2011, respectively, and $1.5 million and $2.5 million in advertising expenses in the nine months ended October 31, 2010 and 2011, respectively. Advertising costs are recorded in Sales and Marketing Expenses within the accompanying Consolidated Statements of Operations.

Stock-Based Compensation

The fair value of stock options granted is recognized as compensation expense in the Consolidated Statements of Operations over the related vesting periods. The expense recorded is based on awards ultimately expected to vest and therefore is reduced by estimated forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. We calculate the fair value of options using the Black-Scholes method and expense using the straight-line attribution approach.

We account for equity awards issued to non-employees, such as consultants, in accordance with the guidance relating to equity instruments that are issued to other than employees for acquiring, or in conjunction with selling, goods or services, using the Black-Scholes method to determine the fair value of such instruments. Awards granted to non-employees are remeasured over the vesting period, and the resulting value is recorded as an expense over the period the services are received.

Segments

We operate our business as one operating segment: the development and marketing of a software platform that enables our customers to gain real-time operational intelligence by harnessing the value of their data. Our chief operating decision maker is our Chief Executive Officer, who reviews financial information presented on a consolidated basis for purposes of making operating decisions, assessing financial performance and allocating resources. Substantially all of our long-lived assets are located in the United States.

Income Taxes

Income taxes are accounted for under the asset and liability method in accordance with authoritative guidance for income taxes. Deferred tax assets and liabilities are recognized for the future tax

F-13
(3) Summary of Significant Accounting Policies (Continued)

consequences attributable to differences between the financial statement carrying accounts of existing assets and liabilities and their respective tax basis and operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

We adopted the provisions of ASC 740-10, Accounting for Uncertainty in Income Taxes, on February 1, 2009. There was no impact upon adoption of ASC 740-10 as our liability recognized under previous accounting guidance was consistent with that required under the new guidance. We have adopted the accounting policy that interest expense and penalties relating to income tax position are classified within the provision for income taxes.

Recent Accounting Pronouncements

In May 2011, the FASB amended its guidance related to fair value measurements in order to achieve common fair value measurements between U.S. GAAP and International Financial Reporting Standards. The amendments in the updated guidance explain how to measure fair value. They do not require additional fair value measurements and are not intended to establish valuation standards or affect valuation practices outside of financial reporting. The amendments change the wording used to describe many of the requirements in U.S. GAAP for measuring fair value and for disclosing information about fair value measurements. For many of the requirements, the updated guidance should not result in a change in the application of previous fair value measurement guidance. The updated guidance is effective during interim and annual periods beginning after December 15, 2011. We do not expect the adoption of this guidance on February 1, 2012 to have a significant impact on our consolidated financial statements.

In June 2011, the FASB updated its guidance related to the presentation of comprehensive income. Under the updated guidance, an entity has the option to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In both choices, an entity is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income, and a total amount for comprehensive income. The updated guidance eliminates the option to present the components of other comprehensive income as part of the statement of changes in stockholders’ equity. The updated guidance does not change the items that must be reported in other comprehensive income or when an item of other comprehensive income must be reclassified to net income. The updated guidance will be effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2011, with early adoption permitted. The updated guidance must be applied retrospectively. We do not expect the adoption of this guidance on February 1, 2012 to have a significant impact on our consolidated financial statements.
SPLUNK INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)


(4) Allowance for Doubtful Accounts

Allowance for doubtful accounts activity and balances are presented below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Year Ended January 31</th>
<th>Nine Months Ended October 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009</td>
<td>2010</td>
</tr>
<tr>
<td>Balance at beginning of period</td>
<td>$36</td>
<td>$120</td>
</tr>
<tr>
<td>Add: bad debt expense</td>
<td>179</td>
<td>379</td>
</tr>
<tr>
<td>Less: write-offs, net of recoveries</td>
<td>(95)</td>
<td>(178)</td>
</tr>
<tr>
<td>Balance at end of period</td>
<td>$120</td>
<td>$321</td>
</tr>
</tbody>
</table>

(5) Property and Equipment

Property and equipment are stated at cost, net of accumulated depreciation and amortization. These assets are depreciated and amortized using the straight line method over their estimated useful lives. Property and equipment consisted of the following:

<table>
<thead>
<tr>
<th>Description</th>
<th>January 31</th>
<th>October 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2010</td>
<td>2011</td>
</tr>
<tr>
<td>Computer equipment and software</td>
<td>$2,719</td>
<td>$4,144</td>
</tr>
<tr>
<td>Furniture and fixtures</td>
<td>976</td>
<td>1,102</td>
</tr>
<tr>
<td>Leasehold improvements</td>
<td>670</td>
<td>731</td>
</tr>
<tr>
<td>Total property and equipment</td>
<td>4,365</td>
<td>5,977</td>
</tr>
<tr>
<td>Less: accumulated depreciation and amortization</td>
<td>(2,603)</td>
<td>(3,559)</td>
</tr>
<tr>
<td>Total property and equipment</td>
<td>$1,762</td>
<td>$2,418</td>
</tr>
</tbody>
</table>

Depreciation and amortization expense was $0.8 million, $0.9 million and $1.0 million for fiscal 2009, 2010 and 2011, respectively. For the nine months ended October 31, 2010 and 2011, depreciation and amortization expense was $0.7 million and $1.4 million, respectively.

(6) Common Stock

Our certificate of incorporation, as amended and restated, authorizes us to issue 106,511,960 shares of $0.001 par value common stock. At January 31, 2011 and October 31, 2011, 19,079,759 and 22,420,401
(6) Common Stock (Continued)

shares of common stock were issued and outstanding. Common stock reserved for future issuance was as follows:

<table>
<thead>
<tr>
<th></th>
<th>January 31, 2011</th>
<th>October 31, 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Series A, B and C convertible preferred stock</td>
<td>56,730,194</td>
<td>56,730,194</td>
</tr>
<tr>
<td>Options to purchase common stock</td>
<td>16,771,360</td>
<td>19,430,429</td>
</tr>
<tr>
<td>Options available for future issuance</td>
<td>3,962,567</td>
<td>2,462,856</td>
</tr>
<tr>
<td>Warrants to purchase preferred stock</td>
<td>669,557</td>
<td>669,557</td>
</tr>
<tr>
<td><strong>Total common stock reserved for future issuance</strong></td>
<td><strong>78,133,678</strong></td>
<td><strong>79,293,036</strong></td>
</tr>
</tbody>
</table>

*Early Exercise of Employee Options*

Stock options granted under our stock option plan provide certain employee option holders the right to exercise unvested options in exchange for shares of restricted common stock. Unvested shares, in the amounts of 176,991, 58,997, 191,741, and 305,880 at January 31, 2009, 2010 and 2011 and October 31, 2011, respectively, were subject to a repurchase right held by us at the original issuance price in the event the optionees' employment is terminated either voluntarily or involuntarily. For exercises of employee options, this repurchase right generally lapses as to 1/4th of the shares subject to the option on the first anniversary of the vesting start date and as to 1/48th of the shares monthly thereafter.

These repurchase terms are considered to be a forfeiture provision and do not result in variable accounting. The restricted shares issued upon early exercise of stock options are legally issued and outstanding. However, these restricted shares are only deemed outstanding for basic earnings per share computation purposes upon the respective repurchase rights lasing. We treat cash received from employees for the exercise of unvested options as a refundable deposit shown as a liability in our consolidated balance sheets. At January 31, 2009, 2010 and 2011 and October 31, 2011, we included cash received for early exercise of options of $100,000, $104,000, $108,000 and $735,000, respectively, in Accrued Expenses and Other Liabilities. Amounts from accrued expenses and other liabilities are transferred into Common Stock and Additional Paid-in Capital as the shares vest.
(7) Convertible Preferred Stock

We are authorized to issue 57,904,560 shares of convertible preferred stock. Shares issued and outstanding were as follows:

<table>
<thead>
<tr>
<th>Series</th>
<th>Shares Authorized</th>
<th>Shares Issued and Outstanding</th>
<th>Carrying Amount</th>
<th>Aggregate Liquidation Preference</th>
<th>Issuance Price per Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Series A</td>
<td>20,600,000</td>
<td>20,400,000</td>
<td>$5,063</td>
<td>$5,100</td>
<td>$0.2500</td>
</tr>
<tr>
<td>Series B</td>
<td>20,304,560</td>
<td>20,304,560</td>
<td>9,948</td>
<td>10,000</td>
<td>0.4925</td>
</tr>
<tr>
<td>Series C</td>
<td>17,000,000</td>
<td>16,025,634</td>
<td>24,938</td>
<td>25,000</td>
<td>1.5600</td>
</tr>
</tbody>
</table>

The rights, preferences and privileges of the Series A, Series B and Series C are as follows:

**Liquidation**

In the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the holders of the preferred stock then outstanding shall be entitled to be paid, prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any available funds and assets on any share of common stock, $0.25, $0.4925 and $1.56 per share plus all declared and unpaid dividends thereon for Series A, Series B and Series C, respectively. If, upon the occurrence of such event, the available funds and assets to be distributed to the holders of the preferred stock shall be insufficient to permit the payment in full, then all of the available funds and assets shall be distributed among the holders of then outstanding preferred stock pro rata on an equal priority, pari passu basis, according to their respective liquidation preferences as set forth therein. The remaining assets, if any, shall be distributed to the common stockholders. These liquidity features cause our convertible preferred stock to be classified as mezzanine equity, rather than a component of stockholders' deficit.

**Dividends**

In each calendar year, the holders of the preferred stock shall be entitled to receive, when, as and if declared by the board of directors, noncumulative dividends at the rate of $0.02, $0.0394 and $0.125 per share (as adjusted for stock splits, stock dividends, combinations, recapitalizations and the like) per annum, prior and in preference to the payment of any dividend on the common stock in such calendar year for Series A, Series B and Series C, respectively.

**Conversion**

Each share of preferred stock is convertible, at the right and option of the stockholder, at any time after the date of issuance of such shares, into such number of fully paid and non-assessable shares of common stock as is determined by dividing $0.25, $0.4925 and $1.56 for Series A, Series B and Series C, respectively, by the conversion price per share, provided, in effect on the date the certificate is surrendered for conversion. The conversion price is equal to the original issue price, which is subject to adjustment for
(7) Convertible Preferred Stock (Continued)

certain dilutive issuances, splits, and combinations. Each of our Series A, B and C convertible preferred stock currently converts on a 1:1 basis.

Each share of preferred stock shall automatically convert into fully paid and non-assessable shares of common stock, on the earlier to occur of (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement covering the offer and sale of our common stock for the account of the Company in which the aggregate public offering price equals or exceeds $50.0 million and the Public Offering price per share of which equals or exceeds $4.68 (as adjusted for stock splits, stock dividends, recapitalizations and the like), and (ii) upon our receipt of the written consent of the holders of a majority of the voting power of the then outstanding shares of preferred stock (calculated on an as converted to common stock basis), voting together as a single class; provided, however, that the consent of holders of a majority of the then outstanding shares of Series C preferred stock, voting separately, shall be required in order to convert all shares of Series C preferred stock pursuant to clause (ii) above unless such conversion is effected in connection with, and contingent upon, the closing of a public offering in which the public offering price per share equals or exceeds $3.12 (as adjusted for stock splits, stock dividends, recapitalizations and the like).

Voting Rights

Each stockholder of the preferred stock is entitled to the number of votes equal to the number of shares of common stock into which the preferred stock can be converted. The holders of Series A preferred stock, voting as a separate class, may elect two members of the board of directors. The holders of Series B preferred stock, voting as a separate class, may elect one member to the board of directors. The holders of Series C preferred stock, voting as a separate class, may elect one member to the board of directors. Common stock holders, voting as a separate class can elect two members and the remaining board seats are elected by all holders of common or preferred stock voting as a single class.

Redemption

The convertible preferred stock is not redeemable by us or at the option of the preferred stockholders.

Warrants to Purchase Convertible Preferred Stock

In September 2008, in connection with a lease and financing agreement, we issued two fully-vested, detachable warrants to purchase 64,906 shares of Series C preferred stock at an exercise price of $1.56 per share. We calculated the fair value of these warrants using the Black-Scholes option-pricing model. The resulting fair value of $63,000 was recorded as a prepaid borrowing cost and included in Prepaid Expenses and Other Current Assets as we had not made any draws under the agreement at January 31, 2009. During fiscal 2010, we expensed these costs as the financing arrangement expired unused. These warrants had not been exercised at October 31, 2011 and expire in 2015. These warrants become a warrant to purchase common stock upon the effectiveness of a registration statement filed under the Securities Act.

In July 2008, we also issued a fully-vested warrant to purchase 404,651 shares of Series C preferred stock at an exercise price of $1.56 per share to a then-current employee. We calculated the fair value of this warrant using the Black-Scholes option-pricing model. The resulting fair value of $0.5 million was recorded
as compensation expense during fiscal 2009. This warrant had not been exercised at October 31, 2011 and expires in 2018. This warrant becomes a warrant to purchase common stock upon the effectiveness of a registration statement filed under the Securities Act.

In June 2004, we issued a fully-vested warrant to purchase 200,000 shares of Series A preferred stock at $0.25 per share to a then-current employee. We calculated the fair value of this warrant using the Black-Scholes option-pricing model. The resulting fair value of $35,000 was recorded as compensation expense during 2004. On December 24, 2011, the warrant to purchase 200,000 shares of Series A preferred stock was exercised for proceeds of $50,000.

The fair value of the outstanding warrants is determined using the Black-Scholes option-pricing model and is classified within Non-Current Liabilities on the consolidated balance sheets. We determined the fair value of each warrant on the issuance date and subsequent reporting dates using the Black-Scholes pricing model utilizing the assumptions noted below. Any changes are reflected in Other Income (Expense), Net. The expected term of the warrant is based on the remaining contractual expiration period. The expected stock price volatility for our stock was determined by examining the historical volatilities of a group of our industry peers as we did not have any trading history of our common stock. The risk-free interest rate was calculated using the average of the published interest rates for U.S. Treasury zero-coupon issues with maturities that approximate the expected term. The dividend yield assumption is zero as we did not have any history of, nor plans for, dividend payments.

The following assumptions were used to estimate the value of the preferred stock warrants:

<table>
<thead>
<tr>
<th>Year ended January 31</th>
<th>Nine months ended October 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009</td>
</tr>
<tr>
<td>Expected volatility</td>
<td>50.2-66.9%</td>
</tr>
<tr>
<td>Risk-free rate</td>
<td>2.23-4.53%</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>0.0%</td>
</tr>
<tr>
<td>Expected term (in years)</td>
<td>remaining contractual term</td>
</tr>
</tbody>
</table>

The change in the fair value of the preferred stock warrant liability is summarized below:

<table>
<thead>
<tr>
<th>Warrant Liability</th>
<th>Balance at beginning of period</th>
<th>Issuance of preferred stock warrants</th>
<th>Increase in fair value</th>
<th>Exercises</th>
<th>Balance at end of period</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 31, 2009</td>
<td>$ 82</td>
<td>$ 522</td>
<td>$ 21</td>
<td>—</td>
<td>$ 625</td>
</tr>
<tr>
<td>January 31, 2010</td>
<td>625</td>
<td>—</td>
<td>22</td>
<td>—</td>
<td>647</td>
</tr>
<tr>
<td>January 31, 2011</td>
<td>647</td>
<td>—</td>
<td>366</td>
<td>—</td>
<td>1,013</td>
</tr>
<tr>
<td>October 31, 2011 (unaudited)</td>
<td>1,013</td>
<td>—</td>
<td>1,515</td>
<td>—</td>
<td>2,528</td>
</tr>
</tbody>
</table>

F-19
(8) Stock Option Plan

The 2003 Plan authorizes the granting of common stock options and restricted stock awards to employees, directors and consultants. The exercise price of all common stock options granted is the fair value of our common stock at the date of grant as determined by the board of directors. The common stock options vest generally over a four-year period and expire ten years from the grant date.

Common stock option activity under the plan was as follows:

<table>
<thead>
<tr>
<th>Options Outstanding</th>
<th>Available for Grant</th>
<th>Shares</th>
<th>Weighted-Average Exercise Price Per Share</th>
<th>Weighted-Average Remaining Contractual Term</th>
<th>Aggregate Intrinsic Value (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balances at January 31, 2010</strong></td>
<td>4,384,497</td>
<td>14,627,055</td>
<td>$0.52</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Shares Authorized</td>
<td>3,955,608</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Options granted</td>
<td>(5,109,500)</td>
<td>5,109,500</td>
<td>1.03</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Options exercised</td>
<td>(2,233,233)</td>
<td>(682,401)</td>
<td>0.46</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Options forfeited</td>
<td>49,561</td>
<td>(49,561)</td>
<td>0.51</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Balances at January 31, 2011</strong></td>
<td>3,962,567</td>
<td>16,771,360</td>
<td>0.67</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Shares Authorized (Unaudited)</td>
<td>4,500,000</td>
<td>—</td>
<td>—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Options granted (Unaudited)</td>
<td>(6,417,800)</td>
<td>6,417,800</td>
<td>2.89</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Options exercised (Unaudited)</td>
<td>(3,340,642)</td>
<td>(395,528)</td>
<td>0.71</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Options forfeited (Unaudited)</td>
<td>22,561</td>
<td>(22,561)</td>
<td>0.80</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Balances at October 31, 2011 (Unaudited)</strong></td>
<td>2,462,856</td>
<td>19,430,429</td>
<td>$1.39</td>
<td>8.12</td>
<td>$66,646</td>
</tr>
<tr>
<td>Vested and expected to vest at January 31, 2011</td>
<td>15,848,158</td>
<td>$0.67</td>
<td>8.03</td>
<td>$23,316</td>
<td></td>
</tr>
<tr>
<td>Exercisable at January 31, 2011</td>
<td>6,734,908</td>
<td>$0.52</td>
<td>7.24</td>
<td>$10,921</td>
<td></td>
</tr>
<tr>
<td>Vested and expected to vest at October 31, 2011 (Unaudited)</td>
<td>18,220,968</td>
<td>$1.38</td>
<td>8.10</td>
<td>$62,597</td>
<td></td>
</tr>
<tr>
<td>Exercisable at October 31, 2011 (Unaudited)</td>
<td>7,097,115</td>
<td>$0.61</td>
<td>6.93</td>
<td>$29,901</td>
<td></td>
</tr>
</tbody>
</table>
(8) Stock Option Plan (Continued)

Stock-Based Compensation

Employee stock-based compensation expense was as follows:

<table>
<thead>
<tr>
<th>(in thousands)</th>
<th>Year ended January 31,</th>
<th>Year ended October 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009</td>
<td>2010</td>
</tr>
<tr>
<td>Cost of revenues</td>
<td>$11</td>
<td>$31</td>
</tr>
<tr>
<td>Research and development</td>
<td>96</td>
<td>215</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>176</td>
<td>382</td>
</tr>
<tr>
<td>General and administrative</td>
<td>484</td>
<td>672</td>
</tr>
<tr>
<td>Total share-based compensation expense</td>
<td>$767</td>
<td>$1,300</td>
</tr>
</tbody>
</table>

No income tax benefit has been recognized relating to stock-based compensation expense and no tax benefits realized from exercised stock options. At January 31, 2009, 2010 and 2011 and at October 31, 2010 and 2011, there was a total unrecognized compensation cost of $3.5 million, $2.9 million, $3.7 million, $3.2 million and $9.5 million, respectively, related to these stock options, which is expected to be recognized over the next 2.93 years, 2.62 years, 2.47 years, 2.41 years and 3.20 years, respectively.

The total intrinsic value of options exercised during fiscal 2009, 2010, 2011 and the nine months ended October 31, 2010 and 2011 was $28,000, $0.6 million, $1.2 million, $0.7 million and $8.7 million, respectively. The weighted-average grant date fair value of options granted was $0.32, $0.36, $0.54 and $1.41 for fiscal 2009, 2010 and 2011 and for the nine months ended October 31, 2011, respectively.

Valuation Assumptions

We estimated the fair values of each option awarded on the date of grant using the Black-Scholes option pricing model utilizing the assumptions noted below. The expected term of the options is based on the average period the stock options are expected to remain outstanding calculated as the midpoint of the options vesting term and contractual expiration period, as we did not have sufficient historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior. The expected stock price volatility for our stock was determined by examining the historical volatilities of a group of our industry peers as we did not have any trading history of our common stock. The risk-free interest rate was calculated using the average of the published interest rates U.S. Treasury zero-coupon issues with maturities that approximate the expected term. The dividend yield assumption is zero as we did not have any history of, nor plans to make, dividend payments.

F-21
(8) Stock Option Plan (Continued)

The following assumptions were used to estimate the fair value of options granted:

<table>
<thead>
<tr>
<th></th>
<th>Year ended January 31,</th>
<th>Nine months ended October 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009</td>
<td>2010</td>
</tr>
<tr>
<td>Expected volatility</td>
<td>57.9-59.2%</td>
<td>59.2%</td>
</tr>
<tr>
<td>Risk-free rate</td>
<td>1.82-3.36%</td>
<td>2.71-2.94%</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>0.0%</td>
<td>0.0%</td>
</tr>
<tr>
<td>Expected term (in years)</td>
<td>6.08</td>
<td>6.08</td>
</tr>
</tbody>
</table>

Forfeitures were estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differed from those estimates. Forfeitures were estimated based on historical experience.

(9) Commitments and Contingencies

Capital Lease Obligation

In September 2008, we entered into a purchase and sale agreement to sell equipment totaling $0.5 million and leaseback the same equipment over a period of 36 months. We have the option to purchase all, but not less than all, of the equipment for a mutually agreed upon market value plus taxes applicable at the end of the lease. Due to our continuing involvement in certain aspects of this equipment, the sale and leaseback of this equipment does not qualify as a sale-leaseback under U.S. generally accepted accounting principles, but rather accounted for as a financing of the equipment. We recorded a financing obligation liability totaling $0.5 million in December 2008. Payments under the financing were made monthly through December 31, 2011 at an interest rate of 8% per annum. At January 31, 2011, we had remaining payments of $0.2 million due within the next twelve months, of which $9,000 represents interest expense.

Operating Lease Commitments

We lease our office spaces under long-term non-cancelable operating leases that expire in 2014. Rent expense for fiscal 2009, 2010 and 2011 was $0.8 million, $1.6 million and $1.6 million, respectively and for the nine months ended October 31, 2010 and October 31, 2011 was $1.2 million and $1.8 million, respectively. Future minimum rental payments required under the operating lease agreements as of January 31, 2011 are as follows:

<table>
<thead>
<tr>
<th>Payments Due by Period</th>
<th>Total</th>
<th>Less Than 1 year</th>
<th>1-3 years (in thousands)</th>
<th>3-5 years</th>
<th>More Than 5 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating lease obligations</td>
<td>$ 5,959</td>
<td>$ 1,862</td>
<td>$ 3,319</td>
<td>$ 689</td>
<td>$ 89</td>
</tr>
</tbody>
</table>

Future operating lease obligations increased during the nine months ended October 31, 2011 for costs related to additional leases. During the nine months ended October 31, 2011, we executed amendments increasing the square footage of our headquarters in San Francisco. In addition, we entered into new
operating lease agreements for our Cupertino and certain international locations. Payments associated with lease agreements increased by $3.4 million, of which $0.6 million is due by January 31, 2012; $2.6 million is due between January 31, 2012 and January 31, 2014 and $0.2 million is due between January 31, 2014 and January 31, 2015.

**Legal Proceedings**

We are subject to certain routine legal proceedings, as well as demands and claims that arise in the normal course of our business. We believe that the ultimate amount of liability, if any, for any pending claims (either individually or in the aggregate) will not materially affect our financial position, results of operations or liquidity.

**Indemnification Arrangements**

During the ordinary course of business, we include indemnification provisions within certain of our contracts. Pursuant to these agreements, we will indemnify, hold harmless and agree to reimburse the indemnified party for losses suffered or incurred by the indemnified party, generally parties with which we have commercial relations, in connection with certain intellectual property infringement claims by any third party with respect to our products and services. To date, there have not been any costs incurred in connection with such indemnification clauses; therefore, there is no accrual of such amounts at January 31, 2010 and 2011 and October 31, 2011.

**Contingency**

Our products are subject to U.S. export controls that prohibit the shipment of certain products and services without the required export authorizations or export to countries, governments, and persons targeted by U.S. sanctions. We shipped our encryption products prior to obtaining the required export authorizations. Accordingly, we have not fully complied with applicable encryption controls in the Export Administration Regulations. Additionally, while we are taking precautions to prevent our products and services from being shipped to U.S. sanctions targets, we believe that certain of our products that are available at no cost have been downloaded by persons in countries that are the subject of these embargoes. In January 2012, we filed Initial Notifications of Voluntary Self Disclosures with the U.S. Department of Commerce's Bureau of Industry and Security and the U.S. Department of Treasury's Office of Foreign Assets Control concerning these potential violations. If we are found to be in violation of U.S. sanctions or export control laws, it could result in fines or penalties for us and for individuals, including civil penalties of up to $250,000 or twice the value of the transaction, whichever is greater, per violation, and in the event of conviction for a criminal violation, fines of up to $1 million and possible incarceration for responsible employees and managers for willful and knowing violations. The voluntary disclosure processes with OFAC and BIS are in the initial stages, and we cannot predict when OFAC and BIS will complete their reviews or what enforcement action, if any, they will take. Therefore, we cannot make any predictions of the outcome of these violations or estimate the potential liability, if any, that will be incurred. It is possible that our business, financial position, results of operations, or cash flows could be negatively affected by an unfavorable resolution to this matter.
In May 2009, we entered into a Loan and Security Agreement with Silicon Valley Bank, which was most recently amended in February 2011. The agreement includes a revolving line of credit facility and a term loan facility described below. The agreement contains financial covenants and other customary affirmative and negative covenants. As part of the agreement, we granted the lender a security interest in our personal property, excluding intellectual property and other intangible assets. The agreement also contains customary events of default provisions. We were in compliance with all covenants at January 31, 2011 and October 31, 2011.

The agreement provides for a revolving line of credit facility, which expires May 28, 2012, and a term loan facility, with each advance amortized over a period of 36 months with equal monthly payments of principal and interest. We may borrow up to $10.0 million under the revolving line of credit facility, subject to a borrowing base determined on eligible accounts receivable and subject to a total maximum outstanding of $10.0 million. At January 31, 2011 and October 31, 2011, we had no balance outstanding on the revolving line of credit. Interest on any drawdown under the revolving line of credit accrues at the prime rate plus 0.75% (4.75% at October 31, 2011). In addition to the line of credit facility, a $3.0 million term loan facility was available for draw through June 30, 2011. At January 31, 2011 and October 31, 2011, we had $0 and $2.5 million outstanding in term debt, consisting of $1 million due between October 31, 2011 and October 31, 2012 and $1.5 million due between October 31, 2012 and October 31, 2014. The interest rate for the term debt is fixed at 5.5%.

**Summary of maturities**

Annual maturities of term loans as of October 31, 2011 (unaudited) were as follows (in thousands):

<table>
<thead>
<tr>
<th>Twelve months ending October 31,</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>$968</td>
</tr>
<tr>
<td>2013</td>
<td>907</td>
</tr>
<tr>
<td>2014</td>
<td>650</td>
</tr>
<tr>
<td><strong>Total minimum payments</strong></td>
<td><strong>2,525</strong></td>
</tr>
<tr>
<td>Less: current portion</td>
<td><em>(968)</em></td>
</tr>
<tr>
<td><strong>Long-term portion</strong></td>
<td><strong>$1,557</strong></td>
</tr>
</tbody>
</table>

**Related Party Transactions**

Our chief executive officer is a member of the board of directors of a Company who is also a customer of Splunk. We recorded revenue from sales to this customer of $0, $0 and $438,000 for the years ended January 31, 2009, 2010 and 2011, respectively. We recorded $0 and $182,000 for the nine months ended October 31, 2010 and 2011. There were no accounts receivable due to Splunk from this customer as of January 31, 2010, 2011 or October 31, 2011. We also recorded $0, $0 and $10,000 in expenses related to purchases made from this Company for the years ended January 31, 2009, 2010 and 2011, respectively. There were no accounts payable to this Company as of January 31, 2010, 2011 or October 31, 2011.
(12) Information About Revenues by Geographic Areas

Revenues by geography are based on the shipping address of the customer. The following tables present our revenues by geographic region for the periods presented (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Year Ended January 31</th>
<th>Nine Months Ended October 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009</td>
<td>2010</td>
</tr>
<tr>
<td>United States</td>
<td>$15,857</td>
<td>$28,388</td>
</tr>
<tr>
<td>International</td>
<td>2,299</td>
<td>6,612</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$18,156</strong></td>
<td><strong>$35,000</strong></td>
</tr>
</tbody>
</table>

No other individual country exceeded 10% of total revenues during any of the periods presented.

(13) Income Taxes

Income (loss) before income tax expense consists of the following for the periods shown below (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Year ended January 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009</td>
</tr>
<tr>
<td>United States</td>
<td>(14,736)</td>
</tr>
<tr>
<td>International</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>(14,736)</td>
</tr>
</tbody>
</table>

Income tax expense consists of the following for the periods shown below (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Year ended January 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009</td>
</tr>
<tr>
<td>Current tax provision:</td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>—</td>
</tr>
<tr>
<td>State</td>
<td>3</td>
</tr>
<tr>
<td>Foreign</td>
<td>33</td>
</tr>
<tr>
<td><strong>Total current tax provision</strong></td>
<td><strong>$36</strong></td>
</tr>
<tr>
<td>Deferred tax provision</td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>—</td>
</tr>
<tr>
<td>State</td>
<td>—</td>
</tr>
<tr>
<td>Foreign</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total deferred tax provision</strong></td>
<td>—</td>
</tr>
<tr>
<td><strong>Total tax provision</strong></td>
<td><strong>$36</strong></td>
</tr>
</tbody>
</table>
(13) Income Taxes (Continued)

For the fiscal years ended January 31, 2009, 2010 and 2011, our tax provision consisted principally of state and foreign income tax expense.

The reconciliation of federal statutory income tax provision to our effective income tax provision is as follows (in thousands):

<table>
<thead>
<tr>
<th>Description</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expected provision at U.S. federal statutory rate</td>
<td>$(5,010)</td>
<td>$(2,506)</td>
<td>$(1,252)</td>
</tr>
<tr>
<td>State income taxes—net of federal benefit</td>
<td>$(860)</td>
<td>$(430)</td>
<td>$(215)</td>
</tr>
<tr>
<td>Stock options</td>
<td>137</td>
<td>196</td>
<td>358</td>
</tr>
<tr>
<td>Tax credits</td>
<td>$(355)</td>
<td>$(336)</td>
<td>$(466)</td>
</tr>
<tr>
<td>Tax reserve for uncertain tax positions</td>
<td>33</td>
<td>78</td>
<td>118</td>
</tr>
<tr>
<td>Change in valuation allowance</td>
<td>6,014</td>
<td>2,973</td>
<td>1,545</td>
</tr>
<tr>
<td>Other</td>
<td>77</td>
<td>104</td>
<td>37</td>
</tr>
<tr>
<td><strong>Total tax provision</strong></td>
<td>$36</td>
<td>$79</td>
<td>$125</td>
</tr>
</tbody>
</table>

Deferred tax assets and liabilities consist of the following (in thousands):

<table>
<thead>
<tr>
<th>Description</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred tax assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net operating loss carryforwards</td>
<td>$12,307</td>
<td>$11,852</td>
</tr>
<tr>
<td>Accrued liabilities</td>
<td>1,683</td>
<td>3,611</td>
</tr>
<tr>
<td>Tax credit carryforwards</td>
<td>941</td>
<td>1,541</td>
</tr>
<tr>
<td>Intangible assets</td>
<td>42</td>
<td>26</td>
</tr>
<tr>
<td>Other</td>
<td>158</td>
<td>—</td>
</tr>
<tr>
<td>Valuation allowance</td>
<td>(15,131)</td>
<td>(16,676)</td>
</tr>
<tr>
<td>Total deferred tax assets</td>
<td>$—</td>
<td>$354</td>
</tr>
<tr>
<td>Deferred tax liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fixed assets</td>
<td>—</td>
<td>(354)</td>
</tr>
<tr>
<td>Total deferred tax liabilities</td>
<td>—</td>
<td>(354)</td>
</tr>
<tr>
<td>Net deferred taxes</td>
<td>$—</td>
<td>$—</td>
</tr>
</tbody>
</table>

F-26
(13) Income Taxes (Continued)

Net operating loss and tax credit carry forwards as of January 31, 2011 are as follows (in thousands):

<table>
<thead>
<tr>
<th>Description</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current deferred tax assets</td>
<td>$931</td>
<td>$1,736</td>
</tr>
<tr>
<td>Current valuation allowance</td>
<td>(931)</td>
<td>(1,736)</td>
</tr>
<tr>
<td>Non-current deferred tax assets</td>
<td>14,200</td>
<td>14,940</td>
</tr>
<tr>
<td>Non-current valuation allowance</td>
<td>(14,200)</td>
<td>(14,940)</td>
</tr>
<tr>
<td>Net deferred tax assets</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

The net change in the valuation allowance was an increase of $1.5 million between fiscal 2010 and 2011. At January 31, 2011, we had federal and state net operating loss carryforwards of $29.6 million and $30.8 million, respectively. The net operating losses for federal and state purposes begin to expire starting in 2024 and 2017, respectively.

Additionally, we had federal and state research and development tax credit carryforwards as of January 31, 2011 of $1.1 million and $0.6 million, respectively. Our federal tax credits will start to expire in 2028 if not utilized.

If certain factors change, we may determine that there is sufficient positive evidence to support a reversal of, or decrease in, the valuation allowance. If we were to reverse all or some part of our valuation allowance our financial statements in the period of reversal would likely reflect an increase in assets on our balance sheet and a corresponding tax benefit to our statement of operations in the amount of the reversal.

Because of certain prior period ownership changes, the utilization of a portion of our United States federal and state NOL and tax credit carryforwards may be limited. We have not finalized our analysis to determine the annual 382 limitation, but if we were to determine that certain amounts of the NOL or tax credits were limited, a portion of our deferred tax asset and valuation allowance could be adjusted.
(13) Income Taxes (Continued)

Effective February 1, 2009, we adopted the guidance on accounting for uncertainty in income taxes as set forth under ASC 740 Income Taxes. This guidance clarified the accounting for uncertainty in income taxes recognized in an entity’s financial statements and prescribes a recognition threshold and measurement attribute for financial statement disclosure of tax positions taken or expected to be taken on a tax return. There was no impact upon adoption as our liability recognized under previous accounting guidance was consistent with that required under the new guidance. At January 31, 2011, our reserve for uncertain tax positions was $0.8 million.

As of January 31, 2011, $0.2 million of the unrecognized tax benefit would, if recognized, impact our effective tax rate. The remainder will not, if recognized, affect the effective income tax rate due to the valuation allowance that currently offsets deferred tax assets.

<table>
<thead>
<tr>
<th></th>
<th>Year ended January 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2010</td>
</tr>
<tr>
<td>Balance at beginning of year</td>
<td>$ 208</td>
</tr>
<tr>
<td>Increase related to prior year tax positions</td>
<td>—</td>
</tr>
<tr>
<td>Decrease related to prior year tax positions</td>
<td>—</td>
</tr>
<tr>
<td>Increase related to current year tax positions</td>
<td>234</td>
</tr>
<tr>
<td>Settlements with tax authorities</td>
<td>—</td>
</tr>
<tr>
<td>Decrease related to lapse of statute of limitations</td>
<td>—</td>
</tr>
<tr>
<td>Balance at end of year</td>
<td>$ 442</td>
</tr>
</tbody>
</table>

The adoption of this guidance required us to identify, evaluate and measure all uncertain tax positions taken or to be taken on tax returns and to record liabilities for the amount of these positions that may not be sustained, or may only partially be sustained, upon examination by the relevant taxing authorities. Although we believe that our estimates and judgments were reasonable, actual results may differ from these estimates. Some or all of these judgments are subject to review by the taxing authorities.

We are subject to income taxes in U.S. federal and various state and local jurisdictions. Generally, we are no longer subject to U.S. federal, state and local tax examinations for tax years ended before December 31, 2007. However, to the extent allowed by law, the tax authorities may have the right to examine prior periods where net operating losses or tax credits were generated and carried forward, and make adjustments up to the amount of the net operating loss or credit carryforward.

We accrue interest and penalties related to unrecognized tax benefits as a component of income tax expense. As of January 31, 2010 and January 31, 2011, there was accrued interest and penalties of $37,000 and $66,000, respectively.

We intend either to invest our non-United States earnings permanently in foreign operations or to remit these earnings to our United States entities in a tax-free manner. For this reason, we do not record federal income taxes on the undistributed earnings of our foreign subsidiaries.
(14) Net Loss Per Share

Basic net loss per share is computed by dividing the net loss by the weighted-average number of shares of common stock outstanding during the period, less the weighted-average unvested common stock subject to repurchase or forfeiture. Diluted net loss per share is computed by giving effect to all potential shares of common stock, including preferred stock, stock options, and warrants, to the extent dilutive.

The following table sets forth the computation of historical basic and diluted net loss per share:

<table>
<thead>
<tr>
<th>(in thousands, except per share data)</th>
<th>Year Ended January 31</th>
<th>Nine Months Ended October 31</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009</td>
<td>2010</td>
</tr>
<tr>
<td>Numerator:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>$(14,772)</td>
<td>$(7,451)</td>
</tr>
<tr>
<td>Denominator:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weighted-average common shares</td>
<td>12,919</td>
<td>14,613</td>
</tr>
<tr>
<td>outstanding</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less: Weighted-average unvested</td>
<td></td>
<td></td>
</tr>
<tr>
<td>common shares subject to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>repurchase or forfeiture</td>
<td>(8)</td>
<td>(221)</td>
</tr>
<tr>
<td>Weighted-average shares used to</td>
<td>12,911</td>
<td>14,392</td>
</tr>
<tr>
<td>compute net loss per share, basic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>and diluted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss per share, basic and</td>
<td>$(1.14)</td>
<td>$(0.52)</td>
</tr>
<tr>
<td>diluted</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Since we were in a loss position for all periods presented, basic net loss per share is the same as diluted net loss per share for all periods as the inclusion of all potential common shares outstanding would have been anti-dilutive. Potentially dilutive securities that were not included in the diluted per share calculations because they would be anti-dilutive were as follows:

| Shares subject to outstanding        | 2009 | 2010 | 2011 | 2010 | 2011 | (Unaudited) |
| common stock options                 |      |      |      |      |      |            |
| Series A convertible preferred stock | 17,099,849 | 14,627,055 | 16,771,360 | 15,653,531 | 19,430,429 |
| Series B Convertible preferred stock | 20,400,000 | 20,400,000 | 20,400,000 | 20,400,000 | 20,400,000 |
| Series C Convertible preferred stock | 16,025,634 | 16,025,634 | 16,025,634 | 16,025,634 | 16,025,634 |
| Shares subject to preferred stock    | 669,557 | 669,557 | 669,557 | 669,557 | 669,557 |
| warrants                             |      |      |      |      |      |            |
| Total                                | 74,499,600 | 72,026,806 | 74,171,111 | 73,053,282 | 76,830,180 |

(15) Pro Forma Net Loss Per Share (Unaudited)

Unaudited pro forma net loss per share for fiscal 2011 and for the unaudited nine months ended October 31, 2011 has been computed to give effect to the automatic conversion of the convertible
SPLUNK INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

YEARS ENDED JANUARY 31, 2009, 2010 AND 2011 AND
NINE MONTHS ENDED OCTOBER 31, 2010 AND 2011 (UNAUDITED)

(15) Pro Forma Net Loss Per Share (Unaudited) (Continued)

preferred stock into common stock, the conversion of the Series C preferred stock warrants into common stock warrants, and the exercise and conversion of the Series A preferred stock warrant to common stock, as though the conversion or exercise had taken place on February 1, 2010.

(16) Subsequent Events

We have evaluated subsequent events from the consolidated balance sheet date through January 12, 2012, the date the audited financial statements for the three years ended January 31, 2011 and the unaudited financial statements for the nine months ended October 31, 2011 were issued.

On December 24, 2011, the warrant to purchase 200,000 shares of Series A preferred stock was exercised for cash proceeds of $50,000.
Splunk Enables Real-time Operational Visibility and Insights

Splunk is Used Across IT and the Business

Application Management  IT Operations  Security  Compliance  Web Intelligence  Business Analytics

DEVELOPER FRAMEWORK

splunk>
PART II
INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

Estimated expenses, other than underwriting discounts and commissions, payable by the Registrant in connection with the sale of the common stock being registered under this registration statement are as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEC registration fee</td>
<td>$14,325</td>
</tr>
<tr>
<td>FINRA filing fee</td>
<td></td>
</tr>
<tr>
<td>Listing fee</td>
<td></td>
</tr>
<tr>
<td>Printing and engraving expenses</td>
<td></td>
</tr>
<tr>
<td>Legal fees and expenses</td>
<td></td>
</tr>
<tr>
<td>Accounting fees and expenses</td>
<td></td>
</tr>
<tr>
<td>Transfer agent and registrar fees</td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$</strong></td>
</tr>
</tbody>
</table>

* To be filed by amendment.


On completion of this offering, the Registrant's amended and restated certificate of incorporation will contain provisions that eliminate, to the maximum extent permitted by the General Corporation Law of the State of Delaware, the personal liability of the Registrant's directors and executive officers for monetary damages for breach of their fiduciary duties as directors or officers. The Registrant's amended and restated certificate of incorporation and bylaws will provide that the Registrant must indemnify its directors and executive officers and may indemnify its employees and other agents to the fullest extent permitted by the General Corporation Law of the State of Delaware.

Sections 145 and 102(b)(7) of the General Corporation Law of the State of Delaware provide that a corporation may indemnify any person made a party to an action by reason of the fact that he or she was a director, executive officer, employee or agent of the corporation or is or was serving at the request of a corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of an action by or in right of the corporation, no indemnification may generally be made in respect of any claim as to which such person is adjudged to be liable to the corporation.

The Registrant has entered into indemnification agreements with its directors and executive officers, in addition to the indemnification provided for in its amended and restated certificate of incorporation and bylaws, and intends to enter into indemnification agreements with any new directors and executive officers in the future.

The Registrant has purchased and intends to maintain insurance on behalf of each and any person who is or was a director or officer of the Registrant against any loss arising from any claim asserted against him or her and incurred by him or her in any such capacity, subject to certain exclusions.

The Underwriting Agreement (Exhibit 1.1 hereto) provides for indemnification by the underwriters of the Registrant and its executive officers and directors, and by the Registrant of the underwriters, for certain liabilities, including liabilities arising under the Securities Act.
See also the undertakings set out in response to Item 17 herein.

Item 15. Recent Sales of Unregistered Securities.

During the last three years, we sold the following unregistered securities:

Option and Common Stock Issuances

From November 1, 2008 through October 31, 2011, the Registrant granted to its directors, employees, consultants and other service providers options to purchase an aggregate of 14,775,592 shares of common stock under the Registrant's 2003 Equity Incentive Plan, or the 2003 Plan, at exercise prices ranging from $0.565 to $3.94 per share, for an aggregate exercise price of $25.8 million.

From November 1, 2008 through October 31, 2011, the Registrant issued and sold to its directors, employees, consultants and other service providers an aggregate of 9,490,572 shares of common stock upon the exercise of options under the 2003 Plan at exercise prices ranging from $0.025 to $2.94 per share, for an aggregate exercise price of $5.1 million.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering, and the Registrant believes that each transaction was exempt from the registration requirements of the Securities Act in reliance on Rule 701 promulgated under the Securities Act as transactions pursuant to a compensatory benefit plan approved by the Registrant's board of directors, or Section 4(2) of the Securities Act, as transactions by an issuer not involving a public offering. Each recipient of the securities in these transactions represented his or her intention to acquire the securities for investment only and not with a view to, or for resale in connection with, any distribution thereof, and appropriate legends were affixed to the share certificates issued in each such transaction. In each case, the recipient represented that such recipient had received adequate information about the Registrant or had adequate access, through his or her relationship with the Registrant, to information about the Registrant.


(a) Exhibits:

We have filed the exhibits listed on the accompanying Exhibit Index of this Registration Statement.

(b) Financial Statement Schedules.

All other schedules have been omitted because the information required to be presented in them is not applicable or is shown in the consolidated financials statements or related notes.

Item 17. Undertakings.

The Registrant hereby undertakes to provide to the underwriters at the closing as specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933, as amended, 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 Securities Act of 1933, as amended, and will be governed by the final adjudication of such issue.

The Registrant hereby undertakes that:

For purposes of determining any liability under the Securities Act of 1933, as amended, the information omitted from a form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act of 1933, as amended, shall be deemed to be part of this registration statement as of the time it was declared effective.

For the purpose of determining any liability under the Securities Act of 1933, as amended, 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.
SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Francisco, State of California, on the 12th day of January, 2012.

SPLUNK INC.

By: /s/ GODFREY R. SULLIVAN

Godfrey R. Sullivan
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Godfrey R. Sullivan, David F. Conte and Leonard R. Stein, jointly and severally, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign the Registration Statement on Form S-1 of Splunk Inc. and any or all amendments (including post-effective amendments) thereto and any new registration statement with respect to the offering contemplated thereby filed pursuant to Rule 462(b) of the Securities Act, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises hereby ratifying and confirming all that said attorneys-in-fact and agents, or his or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated below:

<table>
<thead>
<tr>
<th>Signature</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>/s/ GODFREY R. SULLIVAN</td>
<td>President, Chief Executive Officer and Director (Principal Executive Officer)</td>
<td>January 12, 2012</td>
</tr>
<tr>
<td>Godfrey R. Sullivan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ DAVID F. CONTE</td>
<td>Chief Financial Officer (Principal Financial and Accounting Officer)</td>
<td>January 12, 2012</td>
</tr>
<tr>
<td>David F. Conte</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ JOHN G. CONNORS</td>
<td>Director</td>
<td>January 12, 2012</td>
</tr>
<tr>
<td>John G. Connors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ DAVID M. HORNIK</td>
<td>Director</td>
<td>January 12, 2012</td>
</tr>
<tr>
<td>David M. Hornik</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Signature</td>
<td>Title</td>
<td>Date</td>
</tr>
<tr>
<td>--------------------</td>
<td>-------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>/s/ THOMAS M. NEUSTAETTER</td>
<td>Thomas M. Neustaetter</td>
<td>Director, January 12, 2012</td>
</tr>
<tr>
<td>/s/ GRAHAM V. SMITH</td>
<td>Graham V. Smith</td>
<td>Director, January 12, 2012</td>
</tr>
<tr>
<td>/s/ NICHOLAS G. STURIALE</td>
<td>Nicholas G. Sturiale</td>
<td>Director, January 12, 2012</td>
</tr>
<tr>
<td>/s/ ERIK M. SWAN</td>
<td>Erik M. Swan</td>
<td>Director, January 12, 2012</td>
</tr>
<tr>
<td>/s/ SCOTT THOMPSON</td>
<td>Scott Thompson</td>
<td>Director, January 12, 2012</td>
</tr>
<tr>
<td>Exhibit Number</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>----------------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>1.1*</td>
<td>Form of Underwriting Agreement.</td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>Form of Amended and Restated Certificate of Incorporation of the Registrant, to be in effect upon the completion of this offering.</td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>Form of Amended and Restated Bylaws of the Registrant, to be in effect upon the completion of this offering.</td>
<td></td>
</tr>
<tr>
<td>3.3</td>
<td>Restated Certificate of Incorporation of the Registrant, as amended, as currently in effect.</td>
<td></td>
</tr>
<tr>
<td>3.4</td>
<td>Bylaws of the Registrant, as currently in effect.</td>
<td></td>
</tr>
<tr>
<td>4.1*</td>
<td>Specimen common stock certificate of the Registrant.</td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>Form of Amended and Restated Certificate of Incorporation of the Registrant, to be in effect upon the completion of this offering.</td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>Form of Amended and Restated Bylaws of the Registrant, to be in effect upon the completion of this offering.</td>
<td></td>
</tr>
<tr>
<td>3.3</td>
<td>Restated Certificate of Incorporation of the Registrant, as amended, as currently in effect.</td>
<td></td>
</tr>
<tr>
<td>3.4</td>
<td>Bylaws of the Registrant, as currently in effect.</td>
<td></td>
</tr>
<tr>
<td>4.2*</td>
<td>Second Amended and Restated Investors' Rights Agreement, dated as of August 31, 2007, between the Registrant and certain holders of the Registrant's capital stock named therein.</td>
<td></td>
</tr>
<tr>
<td>5.1*</td>
<td>Opinion of Wilson Sonsini Goodrich &amp; Rosati, Professional Corporation.</td>
<td></td>
</tr>
<tr>
<td>10.1#</td>
<td>Form of Indemnification Agreement between the Registrant and its directors and officers.</td>
<td></td>
</tr>
<tr>
<td>10.2#</td>
<td>2003 Equity Incentive Plan, as amended, and Forms of Stock Option Agreement under 2003 Equity Incentive Plan.</td>
<td></td>
</tr>
<tr>
<td>10.3##</td>
<td>2012 Equity Incentive Plan and Form of Stock Option Agreement under 2012 Equity Incentive Plan.</td>
<td></td>
</tr>
<tr>
<td>10.4##</td>
<td>2012 Employee Stock Purchase Plan.</td>
<td></td>
</tr>
<tr>
<td>10.5</td>
<td>Office Lease, dated as of March 6, 2008, as amended, between Brannan Propco, LLC and the Registrant.</td>
<td></td>
</tr>
<tr>
<td>10.6</td>
<td>First Amendment to Office Lease, dated as of June 10, 2011, between Kilroy Realty, L.P. and the Registrant.</td>
<td></td>
</tr>
<tr>
<td>10.7</td>
<td>Cupertino City Center Net Office Lease, dated as of January 14, 2011, between Cupertino City Center Buildings and the Registrant.</td>
<td></td>
</tr>
<tr>
<td>10.8</td>
<td>Loan and Security Agreement, dated as of May 29, 2009, as amended, between Silicon Valley Bank and the Registrant.</td>
<td></td>
</tr>
<tr>
<td>10.10**</td>
<td>Employment Offer Letter between the Registrant and David F. Conte, dated as of January 11, 2012.</td>
<td></td>
</tr>
<tr>
<td>16.1</td>
<td>Letter from Armanino McKenna LLP addressed to the Securities and Exchange Commission.</td>
<td></td>
</tr>
<tr>
<td>21.1</td>
<td>List of subsidiaries of the Registrant.</td>
<td></td>
</tr>
<tr>
<td>23.1</td>
<td>Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.</td>
<td></td>
</tr>
<tr>
<td>23.2*</td>
<td>Consent of Wilson Sonsini Goodrich &amp; Rosati, Professional Corporation (included in Exhibit 5.1).</td>
<td></td>
</tr>
<tr>
<td>24.1</td>
<td>Power of Attorney (see page II-4 to this Registration Statement on Form S-1).</td>
<td></td>
</tr>
</tbody>
</table>

* To be filed by amendment.

# Indicates management contract or compensatory plan.
Exhibit 3.1

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
SPLUNK INC.
a Delaware corporation

Splunk Inc., a corporation organized and existing under the laws of the State of Delaware (the “Corporation”), hereby certifies as follows:

A. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on April 11, 2006.

B. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the “DGCL”), and restates, integrates and further amends the provisions of the Corporation’s Certificate of Incorporation, and has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 of the DGCL.

C. The text of the Certificate of Incorporation of this Corporation is hereby amended and restated to read in its entirety as follows:

ARTICLE I

The name of the Corporation is Splunk Inc.

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 3500 South DuPont Highway, City of Dover, County of Kent, Delaware 19903. The registered name of its agent at that address is Incorporating Services, Ltd.

ARTICLE III

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which Corporations may be organized under the DGCL.

ARTICLE IV

4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock that the Corporation is authorized to issue is 1,020,000,000 shares, consisting of 1,000,000,000 shares of Common Stock, par value $0.001 per share (the “Common Stock”), and 20,000,000 shares of Preferred Stock, par value $0.001 per share (the “Preferred Stock”).

4.2 Increase or Decrease in Authorized Capital Stock. The number of authorized shares of Preferred Stock or 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 in voting power of the stock of the Corporation entitled to vote generally in the election of directors, irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), voting together as a single class, without a separate vote of the holders of the class or classes the number of authorized shares of which are being increased or decreased, unless a vote by any holders of one or more series of Preferred Stock is required by the express terms of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Section 4.4 of this Article IV.

4.3 Common Stock.
(a) The holders of shares of Common Stock shall be entitled to one vote for each such share on each matter properly submitted to the stockholders on which the holders of shares of Common Stock are entitled to vote. Except as otherwise required by law or this certificate of incorporation (this “Certificate of Incorporation” which term, as used herein, shall mean the certificate of incorporation of the Corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock) and subject to the rights of the holders of Preferred Stock, at any annual or special meeting of the stockholders, the holders of shares of Common Stock shall have the right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders, provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation that relates solely to the terms, number of shares, powers, designations, preferences, or relative participating, optional or other special rights (including, without limitation, voting rights), or to qualifications, limitations or restrictions thereon, of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one more other such series, to vote thereon pursuant to this Certificate of Incorporation (including, without limitation, by any certificate of designations relating to any series of Preferred Stock) or pursuant to the DGCL.
(b) Subject to the rights of the holders of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions (payable in cash, property or capital stock of the Corporation) when, as and if declared thereon by the Board of Directors from time to time out of any assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in such dividends and distributions.
(c) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, and subject to the rights of the holders of Preferred Stock in respect thereof, the holders of shares of Common Stock shall be entitled to receive all the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Common Stock held by them.
ARTICLE V

5.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

5.2 Number of Directors; Election; Term.

(a) Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, the number of directors that constitutes the entire Board of Directors of the Corporation shall be fixed solely by resolution of the Board of Directors.

(b) Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, effective upon the closing date (the "Effective Date") of the initial sale of shares of common stock in the Corporation’s initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, the directors of the Corporation shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. The initial assignment of members of the Board of Directors to each such class shall be made by the Board of Directors. The term of office of the initial Class I directors shall expire at the first regularly-scheduled annual meeting of the stockholders following the Effective Date, the term of office of the initial Class II directors shall expire at the second annual meeting of the stockholders following the Effective Date, and the term of office of the initial Class III directors shall expire at the third annual meeting of the stockholders following the Effective Date. At each annual meeting of stockholders, commencing with the first regularly-scheduled annual meeting of stockholders following the Effective Date, each of the successors elected to replace the directors of a Class whose term shall have expired at such annual meeting shall be elected to hold office until the third annual meeting next succeeding his or her election and until his or her respective successor shall have been duly elected and qualified. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, if the number of directors that constitutes the Board of Directors is changed, any newly created directorships or decrease in directorships shall be so apportioned by the Board of Directors among the classes as to make all classes as nearly equal in number as is practicable, provided that no decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(c) Notwithstanding the foregoing provisions of this Section 5.2, and subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation, or removal.

(d) Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

5.3 Removal. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, a director may be removed from office by the stockholders of the Corporation only for cause.

5.4 Vacancies and Newly Created Directorships. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, and except as otherwise provided in the DGCL, vacancies occurring on the Board of Directors for any reason and newly created directorships resulting from an increase in the authorized number of directors may be filled only by vote of a majority of the remaining members of the Board of Directors, although less than a quorum, or by a sole remaining director, at any meeting of the Board of Directors. A person so elected by the Board of Directors to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been assigned by the Board of Directors and until his or her successor shall be duly elected and qualified.

ARTICLE VI

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

ARTICLE VII

7.1 No Action by Written Consent of Stockholders. Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to act by written consent, any action required or permitted to be taken by stockholders of the Corporation must be effected at a duly called annual or special meeting of the stockholders and may not be effected by written consent in lieu of a meeting.
7.2 Special Meetings. Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to call a special meeting of the holders of such series, special meetings of stockholders of the Corporation may be called only by the Board of Directors, the chairman of the Board of Directors, the chief executive officer or the president (in the absence of a chief executive officer), and the ability of the stockholders to call a special meeting is hereby specifically denied. The Board of Directors may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

7.3 Advance Notice. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

ARTICLE VIII

8.1 Limitation of Personal Liability. To the fullest extent permitted by the DGCL, as it presently exists or may hereafter be amended from time to time, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

8.2 Indemnification.

The Corporation shall indemnify, to the fullest extent permitted by applicable law, any director or officer of the Corporation who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a “Proceeding”) by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding. The Corporation shall be required to indemnify a person in connection with a Proceeding initiated by such person only if the Proceeding was authorized by the Board.

The Corporation shall have the power to indemnify, to the extent permitted by the DGCL, as it presently exists or may hereafter be amended from time to time, any employee or agent of the Corporation who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

Any repeal or amendment of this Article VIII by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate of Incorporation inconsistent with this Article VIII will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors) and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or amendment or adoption of such inconsistent provision with respect to acts or omissions occurring prior to such repeal or amendment or adoption of such inconsistent provision.

ARTICLE IX

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation (including any rights, preferences or other designations of Preferred Stock), in the manner now or hereafter prescribed by this Certificate of Incorporation and the DGCL; and all rights, preferences and privileges herein conferred upon stockholders by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article IX. Notwithstanding any other provision of this Certificate of Incorporation, and in addition to any other vote that may be required by law or the terms of any series of Preferred Stock, the affirmative vote of the holders of at least 66\(\frac{2}{3}\)% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter or repeal, or adopt any provision as part of this Certificate of Incorporation inconsistent with the purpose and intent of Article V, Article VI, Article VII or this Article IX (including, without limitation, any such Article as renumbered as a result of any amendment, alteration, change, repeal or adoption of any other Article).

IN WITNESS WHEREOF, Splunk Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by a duly authorized officer of the Corporation on this day of , 2012.

By:

Godfrey R. Sullivan
President and Chief Executive Officer
# TABLE OF CONTENTS

## ARTICLE I — CORPORATE OFFICES

1.1 REGISTERED OFFICE .................................................. 1
1.2 OTHER OFFICES .................................................. 1

## ARTICLE II — MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS ............................................... 1
2.2 ANNUAL MEETING .................................................. 1
2.3 SPECIAL MEETING .................................................. 1
2.4 ADVANCE NOTICE PROCEDURES ................................. 2
2.5 NOTICE OF STOCKHOLDERS’ MEETINGS ......................... 6
2.6 QUORUM .......................................................... 6
2.7 ADJOURNED MEETING; NOTICE ................................. 6
2.8 CONDUCT OF BUSINESS ........................................... 6
2.9 VOTING ............................................................ 7
2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING .................................................. 7
2.11 RECORD DATES .................................................... 7
2.12 PROXIES .......................................................... 8
2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE ............... 8
2.14 INSPECTORS OF ELECTION ..................................... 9

## ARTICLE III — DIRECTORS

3.1 POWERS ........................................................... 9
3.2 NUMBER OF DIRECTORS ........................................... 9
3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS .................................................. 9
3.4 RESIGNATION AND VACANcies ................................... 10
3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE ............ 10
3.6 REGULAR MEETINGS .............................................. 10
3.7 SPECIAL MEETINGS; NOTICE .................................... 11
3.8 QUORUM; VOTING ............................................... 11
3.9 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING .................................................. 11
3.10 FEES AND COMPENSATION OF DIRECTORS ................... 12
3.11 REMOVAL OF DIRECTORS ....................................... 12

## ARTICLE IV — COMMITTEES

4.1 COMMITTEES OF DIRECTORS ..................................... 12
4.2 COMMITTEE MINUTES ............................................. 12
4.3 MEETINGS AND ACTION OF COMMITTEES ....................... 12
4.4 SUBCOMMITTEES .................................................. 13

## ARTICLE V — OFFICERS

5.1 OFFICERS .......................................................... 13
5.2 APPOINTMENT OF OFFICERS ..................................... 14
5.3 SUBORDINATE OFFICERS ......................................... 14

## TABLE OF CONTENTS (continued)

5.4 REMOVAL AND RESIGNATION OF OFFICERS ...................... 14
ARTICLE I — CORPORATE OFFICES

1.1 REGISTERED OFFICE

The registered office of Splunk Inc. shall be fixed in the corporation’s certificate of incorporation. References in these bylaws to the certificate of incorporation shall mean the certificate of incorporation of the corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock.
ADVANCE NOTICE PROCEDURES

(i) Advance Notice of Stockholder Business. At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be brought: (A) pursuant to the corporation’s proxy materials with respect to such meeting, (B) by or at the direction of the board of directors, or (C) by a stockholder of the corporation who (1) is a stockholder of record at the time of the giving of the notice required by this Section 2.4(i) and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has timely complied in proper written form with the notice procedures set forth in this Section 2.4(i). In addition, for business to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action pursuant to these bylaws and applicable law. Except for proposals properly made in accordance with Rule 14a-8 under the Securities and Exchange Act of 1934, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations), and included in the notice of meeting given by or at the direction of the board of directors, for the avoidance of doubt, clause (C) above shall be the exclusive means for a stockholder to bring business before an annual meeting of stockholders.

(a) To comply with clause (C) of Section 2.4(i) above, a stockholder’s notice must set forth all information required under this Section 2.4(i) and must be timely received by the secretary of the corporation. To be timely, a stockholder’s notice must be received by the secretary at the principal executive offices of the corporation not later than the 45th day nor earlier than the 75th day before the one-year anniversary of the date on which the corporation first mailed its proxy materials or a notice of availability of proxy materials (whichever is earlier) for the preceding year’s annual meeting; provided, however, that in the event that no annual meeting was held in the previous year or if the date of the annual meeting is advanced by more than 30 days prior to or delayed by more than 60 days after the one-year anniversary of the date of the previous year’s annual meeting, then, for notice by the stockholder to be timely, it must be so received by the secretary not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of (i) the 90th day prior to such annual meeting, or (ii) the tenth day following the day on which Public Announcement (as defined below) of the date of such annual meeting is first made. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder’s notice as described in this Section 2.4(i)(a). “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 Securities Exchange Act of 1934, as amended, or any successor thereto (the “1934 Act”).

(b) To be in proper written form, a stockholder’s notice to the secretary must set forth as to each matter of business the stockholder intends to bring before the annual meeting: (1) a brief description of the business intended to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (2) the name and address, as they appear on the corporation’s books, of the stockholder proposing such business and any Stockholder Associated Person (as defined below), (3) the class and number of shares of the corporation that are held of record or are beneficially owned by the stockholder or any Stockholder Associated Person and any derivative positions held or beneficially held by the stockholder or any Stockholder Associated Person, (4) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of such stockholder or any Stockholder Associated Person with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit from share price changes for, or to increase or decrease the voting power of, such stockholder or any Stockholder Associated Person with respect to any securities of the corporation, (5) any material interest of the stockholder or a Stockholder Associated Person in such business, and (6) a statement whether either such stockholder or any Stockholder Associated Person will deliver 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 the proposal (such information provided and statements made as required by clauses 1 through 6), a “Business Solicitation Statement”). In addition, to be in proper written form, a stockholder’s notice to the secretary must be supplemented not later than ten days following the record date for notice of the meeting to disclose the information contained in clauses (3) and (4) above as of the
record date for notice of the meeting. For purposes of this Section 2.4, a “Stockholder Associated Person” of any stockholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of stock of the corporation owned of record or beneficially by such stockholder and on whose behalf the proposal or nomination, as the case may be, is being made, or (iii) any person controlling, controlled by or under common control with such person referred to in the preceding clauses (i) and (ii).

(c) Without exception, no business shall be conducted at any annual meeting except in accordance with the provisions set forth in this Section 2.4(i) and, if applicable, Section 2.4(ii). In addition, business proposed to be brought by a stockholder may not be brought before the annual meeting if such stockholder or a Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Business Solicitation Statement applicable to such business or if the Business Solicitation Statement applicable to such business contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that business was not properly brought before the annual meeting and in accordance with the provisions of this Section 2.4(i), and, if the chairperson should so determine, he or she shall so declare at the annual meeting that any such business not properly brought before the annual meeting shall not be conducted.

(ii) Advance Notice of Director Nominations at Annual Meetings. Notwithstanding anything in these bylaws to the contrary, only persons who are nominated in accordance with the procedures set forth in this Section 2.4(ii) shall be eligible for election or re-election as directors at an annual meeting of stockholders. Nominations of persons for election or re-election to the board of directors of the corporation shall be made at an annual meeting of stockholders only (A) by or at the direction of the board of directors or (B) by a stockholder of the corporation who (1) was a stockholder of record at the time of the giving of the notice required by this Section 2.4(ii) and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has complied with the notice procedures set forth in this Section 2.4(ii). In addition to any other applicable requirements, for a nomination to be made by a stockholder, the stockholder must have given timely notice thereof in proper written form to the secretary of the corporation.

(a) To comply with clause (B) of Section 2.4(ii) above, a nomination to be made by a stockholder must set forth all information required under this Section 2.4(ii) and must be received by the secretary of the corporation at the principal executive offices of the corporation at the time set forth in, and in accordance with, the final three sentences of Section 2.4(i)(a) above.

(b) To be in proper written form, such stockholder’s notice to the secretary must set forth:

(1) as to each person (a “nominee”) whom the stockholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of the nominee, (B) the principal occupation or employment of the nominee, (C) the class and number of shares of the corporation that are held of record or are beneficially owned by the nominee and any derivative positions held or beneficially held by the nominee, (D) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of the nominee with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit of share price changes for, or to increase or decrease the voting power of the nominee, (E) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, (F) a written statement executed by the nominee acknowledging that as a director of the corporation, the nominee will owe a fiduciary duty under Delaware law with respect to the corporation and its stockholders, and (G) any other information relating to the nominee that would be required to be disclosed about such nominee if proxies were being solicited for the election or re-election of the nominee as a director, or that is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation the nominee’s written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected or re-elected, as the case may be); and

(2) as to such stockholder giving notice, (A) the information required to be provided pursuant to clauses (2) through (5) of Section 2.4(i)(b) above, and the supplement referenced in the second sentence of Section 2.4(i)(b) above (except that the references to “business” in such clauses shall instead refer to nominations of directors for purposes of this paragraph), and (B) a statement whether either such stockholder or Stockholder Associated Person will deliver a proxy statement and form of proxy to holders of a number of the corporation’s voting shares reasonably believed by such stockholder or Stockholder Associated Person to be necessary to elect or re-elect such nominee(s) (such information provided and statements made as required by clauses (A) and (B) above, a “Nominee Solicitation Statement”).

(c) At the request of the board of directors, any person nominated by a stockholder for election or re-election as a director must furnish to the secretary of the corporation (1) that information required to be set forth in the stockholder’s notice of nomination of such person as a director as of a date subsequent to the date on which the notice of such person’s nomination was given and (2) such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director or audit committee financial expert of the corporation under applicable law, securities exchange rule or regulation, or any publicly-disclosed corporate governance guideline or committee charter of the corporation and (3) that could be material to a reasonable stockholder’s understanding of the independence, or lack thereof, of such nominee; in the absence of the furnishing of such information if requested, such stockholder’s nomination shall not be considered in proper form pursuant to this Section 2.4(ii).

(d) Without exception, no person shall be eligible for election or re-election as a director of the corporation at an annual meeting of stockholders unless nominated in accordance with the provisions set forth in this Section 2.4(ii). In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or if the Nominee Solicitation Statement applicable to such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that a nomination was not made in accordance with the provisions prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the annual meeting, and the defective nomination shall be disregarded.

(iii) Advance Notice of Director Nominations for Special Meetings.

(a) For a special meeting of stockholders at which directors are to be elected or re-elected, nominations of persons for election or re-election to the board of directors shall be made only (1) by or at the direction of the board of directors or (2) by any stockholder of the corporation who (A) is a stockholder of record at the time of the giving of the notice required by this Section 2.4(iii) and on the record date for the determination of stockholders entitled to vote at the special meeting and (B) delivers a timely written notice of the nomination to the secretary of the corporation that includes the information set forth in
Sections 2.4(ii)(b) and (ii)(c) above. To be timely, such notice must be received by 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 tenth 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 of directors to be elected or re-elected at such meeting. A person shall not be eligible for election or re-election as a director at a special meeting unless the person is nominated (i) by or at the direction of the board of directors or (ii) by a stockholder in accordance with the notice procedures set forth in this Section 2.4(iii). In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or if the Nominee Solicitation Statement applicable to such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading.

(b) The chairperson of the special meeting shall, if the facts warrant, determine and declare at the meeting that a nomination or business was not made in accordance with the procedures prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the meeting, and the defective nomination or business shall be disregarded.

(iv) Other Requirements and Rights. In addition to the foregoing provisions of this Section 2.4, a stockholder must also comply with all applicable requirements of state law and of the 1934 Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.4. Nothing in this Section 2.4 shall be deemed to affect any rights of:

(a) a stockholder to request inclusion of proposals in the corporation’s proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act; or

(b) the corporation to omit a proposal from the corporation’s proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act.

2.5 NOTICE OF STOCKHOLDERS’ MEETINGS

Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour 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, the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the written notice of any meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining stockholders entitled to notice of the meeting.

2.6 QUORUM

The holders of a majority of the stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the certificate of incorporation or these bylaws.

If a quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.7 ADJOURNED MEETING; NOTICE

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and 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 adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the board of directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL and Section 2.110 of these bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

2.8 CONDUCT OF BUSINESS

The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business. The chairperson of any meeting of stockholders shall be designated by the board of directors; in the absence of such designation, the chairperson of the board, if any, the chief executive officer (in the absence of the chairperson) or the president (in the absence of the chairperson of the board and the chief executive officer), or in their absence any other executive officer of the corporation, shall serve as chairperson of the stockholder meeting.

2.9 VOTING

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.
Except as may be otherwise provided in the certificate of incorporation or these bylaws, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

Except as otherwise required by law, the certificate of incorporation or these bylaws, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise required by law, the certificate of incorporation or these bylaws, directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series, except as otherwise provided by law, the certificate of incorporation or these bylaws.

2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Subject to the rights of the holders of the shares of any series of Preferred Stock or any other class of stock or series thereof that have been expressly granted the right to take action by written consent, 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.

2.11 RECORD DATES

In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date may not precede the date upon which the resolution fixing the record date is adopted by the board of directors and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the board of directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the board of directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination.

If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this Section 2.11 at the adjourned meeting.

In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date may not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

2.12 PROXIES

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A written proxy may be in the form of a telegram, cablegram, or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram, or other means of electronic transmission was authorized by the person.

2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The officer who has charge of the stock ledger of the corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date. The stockholder list shall be arranged in alphabetical order and show the address of each stockholder and the number of shares registered in the name of each stockholder. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the corporation’s principal place of business. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

2.14 INSPECTORS OF ELECTION

Before any meeting of stockholders, the board of directors shall appoint an inspector or inspectors of election to act at the meeting or its adjournment. The number of inspectors shall be either one (1) or three (3). If any person appointed as inspector fails to appear or fails or refuses to act, then the chairperson of the meeting may, and upon the request of any stockholder or a stockholder’s proxy shall, appoint a person to fill that vacancy.
Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed and designated shall (i) ascertain the number of shares of capital stock of the corporation outstanding and the voting power of each share, (ii) determine the shares of capital stock of the corporation represented at the meeting and the meeting 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 the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or other communications equipment provided in the certificate of incorporation or these bylaws.

In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the corporation, the inspector or inspectors may consider such information as is permitted by applicable law. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

**ARTICLE III — DIRECTORS**

### 3.1 POWERS

The business and affairs of the corporation shall be managed by or under the direction of the board of directors, except as may be otherwise provided in the DGCL or the certificate of incorporation.

### 3.2 NUMBER OF DIRECTORS

The board of directors shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time solely by resolution of the board of directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director’s term of office expires.

### 3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director’s successor is elected and qualified or until such director’s earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors. If so provided in the certificate of incorporation, the directors of the corporation shall be divided into three classes.

### 3.4 RESIGNATION AND VACANCIES

Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation; provided, however, that if such notice is given by electronic transmission, such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the director. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Acceptance of such resignation shall not be necessary to make it effective. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the board of directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Unless otherwise provided in the certificate of incorporation or these bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class shall be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. If the directors are divided into classes, a person so elected by the directors then in office to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board of directors (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the voting stock at the time constituting the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

### 3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

The board of directors may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or other 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 the meeting.

### 3.6 REGULAR MEETINGS

Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.
3.7 SPECIAL MEETINGS; NOTICE

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairperson of the board of directors, the chief executive officer, the president, the secretary or a majority of the authorized number of directors, at such times and places as he or she or they shall designate.

Notice of the time and place of special meetings shall be:

(i) delivered personally by hand, by courier or by telephone;
(ii) sent by United States first-class mail, postage prepaid;
(iii) sent by facsimile; or
(iv) sent by electronic mail,
directed to each director at that director’s address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the corporation’s records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or (iii) sent by electronic mail, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the corporation’s principal executive office) nor the purpose of the meeting.

3.8 QUORUM; VOTING

At all meetings of the board of directors, a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the board of directors, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

If the certificate of incorporation provides that one or more directors shall have more or less than one vote per director on any matter, every reference in these bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

3.9 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board of directors or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board of directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.10 FEES AND COMPENSATION OF DIRECTORS

Unless otherwise restricted by the certificate of incorporation or these bylaws, the board of directors shall have the authority to fix the compensation of directors.

3.11 REMOVAL OF DIRECTORS

A director may be removed from office by the stockholders of the corporation only for cause.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director’s term of office.

ARTICLE IV — COMMITTEES

4.1 COMMITTEES OF DIRECTORS

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 a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors or in these bylaws, 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 that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the corporation.

4.2 COMMITTEE MINUTES

Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.
4.3 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

(i) Section 3.5 (place of meetings and meetings by telephone);

(ii) Section 3.6 (regular meetings);

(iii) Section 3.7 (special meetings; notice);

(iv) Section 3.8 (quorum; voting);

(v) Section 3.9 (action without a meeting); and

(vi) Section 7.5 (waiver of notice)

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members.

However:

(i) the time of regular meetings of committees may be determined by resolution of the committee;

(ii) special meetings of committees may also be called by resolution of the committee; and

(iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

Any provision in the certificate of incorporation providing that one or more directors shall have more or less than one vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of incorporation or these bylaws.

4.4 SUBCOMMITTEES

Unless otherwise provided in the certificate of incorporation, these bylaws or the resolutions of the board of directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

ARTICLE V — OFFICERS

5.1 OFFICERS

The officers of the corporation shall be a president and a secretary. The corporation may also have, at the discretion of the board of directors, a chairperson of the board of directors, a vice chairperson of the board of directors, a chief executive officer, a chief financial officer or treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

5.2 APPOINTMENT OF OFFICERS

The board of directors shall appoint the officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws, subject to the rights, if any, of an officer under any contract of employment. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Section 5 for the regular election to such office.

5.3 SUBORDINATE OFFICERS

The board of directors may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers and agents as the business of the corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the board of directors at any regular or special meeting of the board of directors or, except in the case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written or electronic notice to the corporation; provided, however, that if such notice is given by electronic transmission, such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the officer. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

5.5 VACANCIES IN OFFICES
5.6 REPRESENTATION OF SHARES OF OTHER CORPORATIONS

The chairperson of the board of directors, the president, any vice president, the treasurer, the secretary or assistant secretary of this corporation, or any other person authorized by the board of directors or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.7 AUTHORITY AND DUTIES OF OFFICERS

All officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the board of directors.

5.8 THE CHAIRPERSON OF THE BOARD

The chairperson of the board shall have the powers and duties customarily and usually associated with the office of the chairperson of the board. The chairperson of the board shall preside at meetings of the stockholders and of the board of directors.

5.9 THE VICE CHAIRPERSON OF THE BOARD

The vice chairperson of the board shall have the powers and duties customarily and usually associated with the office of the vice chairperson of the board. In the case of absence or disability of the chairperson of the board, the vice chairperson of the board shall perform the duties and exercise the powers of the chairperson of the board.

5.10 THE CHIEF EXECUTIVE OFFICER

The chief executive officer shall have, subject to the supervision, direction and control of the board of directors, ultimate authority for decisions relating to the supervision, direction and management of the affairs and business of the corporation customarily and usually associated with the position of chief executive officer, including, without limitation, all powers necessary to direct and control the organizational and reporting relationships within the corporation. If at any time the office of the chairperson and vice chairperson of the board shall not be filled, or in the event of the temporary absence or disability of the chairperson of the board and the vice chairperson of the board, the chief executive officer shall perform the duties and exercise the powers of the chairperson of the board unless otherwise determined by the board of directors.

5.11 THE PRESIDENT

The president shall have, subject to the supervision, direction and control of the board of directors, the general powers and duties of supervision, direction and management of the affairs and business of the corporation customarily and usually associated with the position of president. The president shall have such powers and perform such duties as may from time to time be assigned to him or her by the board of directors, the chairperson of the board or the chief executive officer. In the event of the absence or disability of the chief executive officer, the president shall perform the duties and exercise the powers of the chief executive officer unless otherwise determined by the board of directors.

5.12 THE VICE PRESIDENTS AND ASSISTANT VICE PRESIDENTS

Each vice president and assistant vice president shall have such powers and perform such duties as may from time to time be assigned to him or her by the board of directors, the chairperson of the board, the chief executive officer or the president.

5.13 THE SECRETARY AND ASSISTANT SECRETARIES

(i) The secretary shall attend meetings of the board of directors and meetings of the stockholders and record all votes and minutes of all such proceedings in a book or books kept for such purpose. The secretary shall have all such further powers and duties as are customarily and usually associated with the position of secretary or as may from time to time be assigned to him or her by the board of directors, the chairperson of the board, the chief executive officer or the president.

(ii) Each assistant secretary shall have such powers and perform such duties as may from time to time be assigned to him or her by the board of directors, the chairperson of the board, the chief executive officer, the president or the secretary. In the event of the absence, inability or refusal to act of the secretary, the assistant secretary (or if there shall be more than one, the assistant secretaries in the order determined by the board of directors) shall perform the duties and exercise the powers of the secretary.

5.14 THE CHIEF FINANCIAL OFFICER AND ASSISTANT TREASURERS

(i) The chief financial officer shall be the treasurer of the corporation. The chief financial officer shall have custody of the corporation’s funds and securities, shall be responsible for maintaining the corporation’s accounting records and statements, shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall deposit or cause to be deposited moneys or other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. The chief financial officer shall also maintain adequate records of all assets, liabilities and transactions of the corporation and shall assure that adequate audits thereof are currently and regularly made. The chief financial officer shall have all such further powers and duties as are customarily and usually associated with the position of chief financial officer, or as may from time to time be assigned to him or her by the board of directors, the chairperson, the chief executive officer or the president.
such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The corporation shall not have power to issue a certificate in bearer form.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly-paid shares, or upon the books and records of the corporation in the case of uncertificated partly-paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully-paid shares, the corporation shall declare a dividend upon partly-paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

6.2 SPECIAL DESIGNATION ON CERTIFICATES

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section 6.2 or Sections 156, 202(a) or 218(a) of the DGCL or with respect to this section 6.2 a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

6.3 LOST, STOLEN OR DESTROYED CERTIFICATES

Except as provided in this Section 6.3, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner’s legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

6.4 DIVIDENDS

The board of directors, subject to any restrictions contained in the certificate of incorporation or applicable law, may declare and pay dividends upon the shares of the corporation’s capital stock. Dividends may be paid in cash, in property, or in shares of the corporation’s capital stock, subject to the provisions of the certificate of incorporation.

The board of directors may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.

6.5 TRANSFER OF STOCK

Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, if such stock is certificated, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer; provided, however, that such succession, assignment or authority to transfer is not prohibited by the certificate of incorporation, these bylaws, applicable law or contract.

6.6 STOCK TRANSFER AGREEMENTS
The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

6.7 REGISTERED STOCKHOLDERS

The corporation:

(i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner;

(ii) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and

(iii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII — MANNER OF GIVING NOTICE AND WAIVER

7.1 NOTICE OF STOCKHOLDERS’ MEETINGS

Notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder’s address as it appears on the corporation’s records. An affidavit of the secretary or an assistant secretary of the corporation or of the transfer agent or other agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

7.2 NOTICE BY ELECTRONIC TRANSMISSION

Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the corporation under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if:

(i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and

(ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

(iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iv) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

An “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

7.3 NOTICE TO STOCKHOLDERS SHARING AN ADDRESS

Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under the provisions of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any stockholder who fails to object in writing to the corporation, within 60 days of having been given written notice by the corporation of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice.

7.4 NOTICE TO PERSON WITH WHOM COMMUNICATION IS UNLAWFUL

Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or
permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

7.5 WAIVER OF NOTICE

Whenever notice is required to be given to stockholders, directors or other persons under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. 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. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders or the board of directors, as the case may be, need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

ARTICLE VIII — INDEMNIFICATION

8.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN THIRD PARTY PROCEEDINGS

Subject to the other provisions of this Article VIII, the corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (a "Proceeding") (other than an action by or in the right of the corporation) by reason of the fact that such person was or is a director of the corporation or an officer of the corporation, or while a director of the corporation or officer of the corporation or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees) incurred in connection therewith.

8.2 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION

Subject to the other provisions of this Article VIII, the corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director of the corporation, or while a director of the corporation or officer of the corporation or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person’s conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation.

and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person’s conduct was unlawful.

8.3 SUCCESSFUL DEFENSE

To the extent that a present or former director or officer of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith.

8.4 INDEMNIFICATION OF OTHERS

Subject to the other provisions of this Article VIII, the corporation shall have power to indemnify its employees and its agents to the extent not prohibited by the DGCL or other applicable law. The board of directors shall have the power to delegate the determination of whether employees or agents shall be indemnified to such person or persons as the board of directors.

8.5 ADVANCED PAYMENT OF EXPENSES

Expenses (including attorneys’ fees) incurred by an officer or director of the corporation in defending any Proceeding shall be paid by the corporation in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this Article VIII or the DGCL. Such expenses (including attorneys’ fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems reasonably appropriate and shall be subject to the corporation’s expense guidelines. The right to advancement of expenses shall not apply to any claim for which indemnity is excluded pursuant to these bylaws, but shall apply to any Proceeding referenced in Section 8.6(ii) or 8.6(iii) prior to a determination that the person is not entitled to be indemnified by the corporation.

8.6 LIMITATION ON INDEMNIFICATION

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Subject to the requirements in Section 8.3 and the DGCL, the corporation shall not be obligated to indemnify any person pursuant to this Article VIII in connection with any Proceeding (or any part of any Proceeding):

(i) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(ii) for an accounting or disgorgement of profits pursuant to Section 16(b) of the 1934 Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(iii) for any reimbursement of the corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the corporation, as required in each case under the 1934 Act (including any such reimbursements that arise from an accounting restatement of the corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), or the payment to the corporation of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements);

(iv) initiated by such person against the corporation or its directors, officers, employees, agents or other indemnitees, unless (a) the board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (b) the corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the corporation under applicable law, (c) otherwise required to be made under Section 8.7 or (d) otherwise required by applicable law; or

(v) if prohibited by applicable law; provided, however, that if any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions of this Article VIII (including, without limitation, each portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

8.7 DETERMINATION; CLAIM

If a claim for indemnification or advancement of expenses under this Article VIII is not paid in full within 90 days after receipt by the corporation of the written request therefor, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of expenses. The corporation shall indemnify such person against any and all expenses that are incurred by such person in connection with any action for indemnification or advancement of expenses from the corporation under this Article VIII, to the extent such person is successful in such action, and to the extent not prohibited by law. In any such suit, the corporation shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

8.8 NON-EXCLUSIVITY OF RIGHTS

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding such office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

8.9 INSURANCE

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of any Proceeding, to the extent not prohibited by law. In any such suit, the corporation shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

8.10 SURVIVAL

The rights to indemnification and advancement of expenses conferred by this Article VIII shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

8.11 EFFECT OF REPEAL OR MODIFICATION

Any amendment, alteration or repeal of this Article VIII shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to such amendment, alteration or repeal.

8.12 CERTAIN DEFINITIONS

For purposes of this Article VIII, references to the “corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the
interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Article VIII.

ARTICLE IX — GENERAL MATTERS

9.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

Except as otherwise provided by law, the certificate of incorporation or these bylaws, the board of directors may authorize any officer or officers, or agent or agents, to enter into any contract or execute any document or instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

9.2 FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors.

9.3 SEAL

The corporation may adopt a corporate seal, which shall be adopted and which may be altered by the board of directors. The corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

9.4 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term “person” includes both an entity and a natural person.

ARTICLE X — AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the affirmative vote of the holders of at least 66 2/3% of the total voting power of outstanding voting securities, voting together as a single class, shall be required for the stockholders of the corporation to alter, amend or repeal, or adopt any bylaw inconsistent with, the following provisions of these bylaws: Article II, Sections 3.1, 3.2, 3.4 and 3.11 of Article III, Article VIII and this Article X (including, without limitation, any such Article or Section as renumbered as a result of any amendment, alteration, change, repeal, or adoption of any other Bylaw). The board of directors shall also have the power to adopt, amend or repeal bylaws; provided, however, that a bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the board of directors.

SPLUNK INC.

CERTIFICATE OF AMENDMENT OF BYLAWS

The undersigned hereby certifies that he or she is the duly elected, qualified, and acting Secretary or Assistant Secretary of SPLUNK INC., a Delaware corporation and that the foregoing bylaws, comprising 24 pages, were amended and restated on , 2012 by the corporation’s board of directors.

IN WITNESS WHEREOF, the undersigned has hereunto set his or her hand this day of , 2012.

Secretary
SPLUNK INC.

(Originally incorporated on April 11, 2006 under the name Splunk Inc.)

Splunk Inc., a Delaware corporation, hereby certifies that the Restated Certificate of Incorporation of the corporation attached hereto as Exhibit “1”, which is incorporated herein by this reference, and which restates, integrates and further amends the provisions of the Certificate of Incorporation of this corporation, has been duly adopted by the corporation’s Board of Directors and a majority of the stockholders in accordance with Sections 242 and 245 of the Delaware General Company Law, with the approval of the corporation’s stockholders having been given by written consent without meeting in accordance with Section 228 of the Delaware General Company Law.

IN WITNESS WHEREOF, said corporation has caused this Restated Certificate of Incorporation to be signed by its duly authorized officer and the foregoing facts stated herein are true and correct.

Dated: January 15, 2008

SPLUNK, INC.

By: /s/ Michael Baum

Michael Baum, President

EXHIBIT “1”

SPLUNK INC.

ARTICLE I

The name of the corporation is Splunk Inc.

ARTICLE II

The address of the registered office of the corporation in the State of Delaware is 3500 South DuPont Highway, City of Dover, County of Kent, DE 19903. The registered name of its agent at that address is Incorporating Services, Ltd.

ARTICLE III

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Company Law of the State of Delaware.

ARTICLE IV

This corporation is authorized to issue two classes of shares, designated “Common Stock” and “Preferred Stock,” respectively, both of which shall have $0.001 par value per share. The number of shares of Common Stock authorized to be issued is 80,000,000 shares. The number of shares of Preferred Stock authorized to be issued is 57,904,560 shares, of which 20,600,000 are designated as “Series A Preferred Stock”, 20,304,560 are designated as “Series B Preferred Stock”, and 17,000,000 are designated as “Series C Preferred Stock”.

Effective upon the filing of this Restated Certificate of Incorporation, each outstanding share of Common Stock of the Corporation will be subdivided and reconstituted into two (2) shares of Common Stock and each outstanding share of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock of the Corporation will be subdivided and reconstituted into two (2) shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock, respectively (the “Stock Split”). All numbers set forth in this Restated Certificate of Incorporation take into account and are set forth on a post-Stock Split basis.

ARTICLE V

The rights, preferences, privileges and restrictions granted to and imposed on the Preferred Stock and the Common Stock are as hereinafter set forth in this Article V.

1. Definitions. For purposes of this Article V, the following definitions apply:

   1.1 “Board” shall mean the Board of Directors of the Company.
1.2  "Company" shall mean this corporation.

1.3  "Common Stock" shall mean the Common Stock, $0.001 par value per share, of the Company.

1.4  "Common Stock Dividend" shall mean a stock dividend declared and paid on the Common Stock that is payable in shares of Common Stock.

1.5  "Dividend Rate" shall mean $0.02 per share per annum for the Series A Preferred Stock, $0.0394 per share per annum for the Series B Preferred Stock, $0.125 per share per annum for the Series C Preferred Stock (each as adjusted to the extent necessary to reflect any Preferred Stock Event (as defined below)).

1.6  "Original Issue Price" shall mean $0.25 per share for the Series A Preferred Stock, $0.4925 for the Series B Preferred Stock and $1.56 for the Series C Preferred Stock (each as adjusted to the extent necessary to reflect any Preferred Stock Event (as defined below)).

1.7  "Original Issue Date" shall mean the date on which the Company first issues shares of Series C Preferred Stock.

1.8  "Permitted Repurchases" shall mean the repurchase by the Company of shares of Common Stock held by employees, officers, directors, consultants, independent contractors, advisors, or other persons performing services for the Company or a subsidiary that are subject to restricted stock purchase agreements, vesting agreements, stock option exercise agreements, or similar agreements under which the Company has the option to repurchase such shares: (i) at cost, upon the occurrence of certain events, such as the termination of employment or services; or (ii) at any price pursuant to the Company’s exercise of a right of first refusal to repurchase such shares.

1.9  "Series A Preferred Stock" shall mean the Series A Preferred Stock, $0.001 par value, of the Company.

1.10  "Series B Preferred Stock" shall mean the Series B Preferred Stock, $0.001 par value, of the Company.

1.11  "Series C Preferred Stock" shall mean the Series C Preferred Stock, $0.001 par value, of the Company.

1.12  "Subsidiary" shall mean any corporation of which at least fifty percent (50%) of the outstanding voting stock is at the time owned directly or indirectly by the Company or by one or more of such subsidiary corporations.

1.13  "Preferred Stock" shall mean the Series A Preferred Stock, the Series B Preferred Stock, and the Series C Preferred Stock collectively.

1.14  "Preferred Stock Event" shall mean any of the following events occurring after the filing of this Restated Certificate of Incorporation: (i) the issue by the Company of additional shares of any series of Preferred Stock as a dividend or other distribution on the outstanding shares of any series of Preferred Stock, (ii) a subdivision of the outstanding shares of any series of Preferred Stock into a greater number of shares of such series of Preferred Stock, (iii) a combination of the outstanding shares of any series of Preferred Stock into a smaller number of shares of such series of Preferred Stock, and (iv) the conversion or exchange of the outstanding shares of any series of Preferred Stock into a different number of shares of some other class or classes of stock whether by recapitalization, reclassification or otherwise, a liquidation, dissolution or winding up of the Company provided for in Section 3, or any conversion, recapitalization, reclassification or other event for which adjustment is made under Section 5. For the avoidance of doubt, "Preferred Stock Event" does not include the Stock Split.

2.  **Dividend Rights.**

2.1  **Preferred Stock Dividend Preference.** In each calendar year, the holders of any series of the then outstanding Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of any funds and assets of the Company legally available therefore, noncumulative dividends at the annual Dividend Rate for such series of Preferred Stock, prior and in preference to the payment of any dividend on the Common Stock in such calendar year. No dividends shall be paid, with respect to the Common Stock during any calendar year unless dividends in the total amount of the annual Dividend Rate shall have first been paid or declared and set apart for payment to the holders of such Preferred Stock during that calendar year. Payments of any dividends to the holders of Preferred Stock shall be paid on a pro rata equal priority, pari passu basis according to the respective dividend preferences as set forth herein and the number of outstanding shares of Preferred Stock then held by each holder thereof. Dividends on the Preferred Stock shall not be mandatory or cumulative, and no rights or interest shall accrue to the holders of the Preferred Stock by reason of the fact that the Company shall fail to declare or pay dividends on any series of Preferred Stock in the amount of the annual Dividend Rate for such series of Preferred Stock or in any other amount in any calendar year or any fiscal year of the Company, whether or not the earnings of the Company in any calendar year or fiscal year were sufficient to pay such dividends in whole or in part. Notwithstanding anything to the contrary herein, the provisions of Sections 2.1, 2.2 and 2.3 shall not apply to any Common Stock Dividend, any Permitted Repurchase, or any dividend for which an adjustment is made pursuant to Section 5.5.

2.2  **Participation Rights.** If, after dividends in the full preferential amount specified in Section 2.1 for the Preferred Stock have been paid or declared and set apart in any calendar year of the Company, the Board shall declare additional dividends out of funds legally available therefore in that calendar year, then such additional dividends shall be declared pro rata on the Common Stock and the Preferred Stock on a pan passe basis according to the number of shares of Common Stock held by such holders, where each holder of shares of Preferred Stock is to be treated for this purpose as holding the greatest whole number of shares of Common Stock then issuable upon conversion of all shares of Preferred Stock held by such holder pursuant to Section 5.

2.3  **Non-Cash Dividends.** Whenever a dividend provided for in this Section 2 shall be payable in property other than cash, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the Board.

3.  **Liquidation Rights.** In the event of any Sale of the Company (as defined below), whether voluntary or involuntary, the proceeds, funds and assets that may be legally distributed to the Company’s stockholders (the “Available Funds and Assets”) shall be distributed to stockholders in the following manner:
3.1 Preferred Stock Liquidation Preference. The holder of each share of any series of Preferred Stock then outstanding shall be entitled to be paid, out of the Available Funds and Assets and prior and in preference to any payment or distribution (or any setting aside of any payment or distribution) of any Available Funds and Assets on any share of Common Stock, an amount per share equal to the applicable Original Issue Price for each such series of Preferred Stock plus all declared and unpaid dividends thereon. If upon any Sale of the Company, the Available Funds and Assets to be distributed to the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of their full preferential amount described in this Section 3.1, then all of the Available Funds and Assets shall be distributed among the holders of the then outstanding Preferred Stock pro rata on an equal priority, pari passu basis, according to their respective liquidation preferences as set forth herein.

3.2 No Participation Rights. If there are any Available, Funds and Assets remaining after the payment or distribution (or the setting aside for payment or distribution) to the holders of the Preferred Stock of their full preferential amounts described above in Section 3.1, then all such remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Common Stock pro rata according to the number of shares of Common Stock held by such holders.

3.3 Merger or Sale of Assets. The (i) consolidation or merger of the Company with or into any other entity or entities in which the holders of the Company’s outstanding shares immediately before such consolidation or merger do not, immediately after such consolidation or merger retain stock (or other ownership interests) representing a majority of the voting power of the surviving entity or entities of such consolidation or merger as a result of their shareholdings in the Company immediately prior to the consolidation or merger; (ii) sale, exclusive licensing, or other disposition of all or substantially all of the assets of the Company; or (iii) liquidation, dissolution or winding up of the Company, shall each be deemed to be a “Sale of the Company.”

3.4 Non-Cash Consideration. If any assets of the Company distributed to stockholders in connection with any Sale of the Company are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board, except that any securities to be distributed to stockholders in a Sale of the Company shall be valued as follows:

(a) The method of valuation of securities not subject to investment letter or other similar restrictions on free marketability shall be as follows:

(i) if the securities are then traded on a national securities exchange or the Nasdaq Global Market (or a similar national quotation system), then the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30-day period ending three (3) days prior to the distribution; and

(ii) if actively traded over-the-counter, then the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the 30-day period ending three (3) days prior to the distribution; and

(iii) if there is no active public market, then the value shall be the fair market value thereof, as determined in good faith by the Board.

(b) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in subparagraphs (a)(i),(ii) or (iii) of this Section 3.4 to reflect the approximate fair market value thereof, as determined in good faith by the Board.

3.5 Deemed Conversion of Preferred Stock. Notwithstanding the above, for purposes of determining the amount each holder of shares of a series of Preferred Stock is entitled to receive with respect to a Sale of the Company, each such holder of shares of such series of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder’s shares into shares of Common Stock immediately prior to the Sale of the Company 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 shares such series of Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of any series of Preferred Stock into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of shares of such series of Preferred Stock pursuant to Section 3.1.


4.1 Common Stock. Each holder of shares of Common Stock shall be entitled to one (1) vote for each share thereof held.

4.2 Preferred Stock. Each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which such shares of Preferred Stock could be converted pursuant to the provisions of Section 5 below at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, the date such vote is taken or any written consent of stockholders is solicited.

4.3 General. Subject to the foregoing provisions of this Section 4, each holder of Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to notice of any stockholders’ meeting in accordance with the bylaws of the Company (as in effect at the time in question) and applicable law, and shall be entitled to vote, together with the holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except as may be otherwise provided herein or by applicable law. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

4.4 [Reserved]

4.5 Board of Directors Election and Removal.

(a) Election.
5. **Conversion Rights.** The outstanding shares of Preferred Stock shall be convertible into Common Stock as follows:

5.1 **Optional Conversion.**

6. **Quorum: Required Vote.**

(i) **Quorum.** At any meeting held for the purpose of electing directors, the presence in person or by proxy of the holders of a majority of the shares of the (v) Series C Preferred Stock, (w) Series B Preferred Stock, (x) Series A Preferred Stock, (y) Common Stock, or (z) Preferred Stock and Common Stock then outstanding (voting together as a single class on an as converted to Common Stock basis), respectively, shall constitute a quorum of (a) the Series C Preferred Stock, (b) the Series B Preferred Stock, (c) the Series A Preferred Stock, (d) the Common Stock, or (e) the Preferred Stock and Common Stock (voting together as a single class), as the case may be, for the election of directors to be elected solely by the holders of the Series C Preferred Stock, Series B Preferred Stock, Series A Preferred Stock, Common Stock, or Preferred Stock and Common Stock (voting together as a single class), respectively.

(ii) **Required Vote.** With respect to the election of any director or directors by the holders of the outstanding shares of the specified series, class or classes of stock given the right to elect such director or directors pursuant to Section 4.5(a) above (the "Specified Stock"), that candidate or those candidates (as applicable) shall be elected who either: (i) in the case of any such vote conducted at a meeting of the holders of such Specified Stock, receive the highest number of affirmative votes of the outstanding shares of such Specified Stock, up to the number of directors to be elected by such Specified Stock; or (ii) in the case of any such vote taken by written consent without a meeting, are elected by the written consent of the holders of a majority of the outstanding shares of such Specified Stock (calculated on an as converted to Common Stock basis). Notwithstanding the foregoing, so long as Section 2115 of the California General Company Law purports to make Section 708 subdivisions (a), (b), and (c) of the California General Company Law applicable to the Company, the Company’s stockholders shall have the right to cumulate their votes in connection with the election of directors as provided by Section 708 subdivisions (a), (b), and (c) of the California General Company Law.

(c) **Vacancy.** If there shall be any vacancy in the office of a director elected by the holders of any Specified Stock pursuant to Section 4.5(a), then a successor to hold office for the unexpired term of such director may be elected by either: (i) the remaining director or directors in office by the affirmative vote of a majority of such directors, (ii) the required vote of holders of the shares of such Specified Stock specified in Section 4.5(b)(ii) above that are entitled to elect such director under Section 4.5(a), or (iii) as otherwise permitted by applicable law, or in the event that Section 305 of the California General Company Law is not applicable to the Company as a result of Section 2115 of the California General Company Law, by the remaining director or directors (if any) in office that were so elected by the holders of such Specified Stock, by the affirmative vote of a majority of such directors (or by the sole remaining director elected by the holders of such Specified Stock if there be but one).  

(d) **Removal.** Subject to Section 141(k) of the Delaware General Company Law, any director who shall have been elected to the Board by the holders of any Specified Stock pursuant to Section 4.5(a), or as otherwise provided in Section 4.5(c), may be removed during his or her term of office, either with or without cause, by the affirmative vote of shares representing a majority of the voting power of all the outstanding shares of such Specified Stock entitled to vote, given either at a meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders without a meeting, or as otherwise permitted by applicable law, and any vacancy created by such removal may be filled only in the manner provided in Section 4.5(c). Notwithstanding the foregoing, so long as Section 2115 of the California General Company Law purports to make Section 708 subdivisions (a), (b) and (c) of the California General Company Law applicable to the Company, if less than the entire Board is to be removed, then no director may be removed without cause if the votes cast against such director’s removal would be sufficient to elect such director if then cumulatively voted at an election of the entire Board, or if there are classes of directors, at an election of the class of directors of which such director is a part (provided that this provision shall apply, in respect to the removal without cause of a director elected by a class or series entitled by this Restated Certificate of Incorporation to elect one or more directors, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole).

(e) **Procedures.** Any meeting of the holders of any Specified Stock, and any action taken by the holders of any Specified Stock by written consent without a meeting, in order to elect or remove a director under this Section 4.5, shall be held in accordance with the procedures and provisions of the Company’s Bylaws, the Delaware General Company Law and applicable law regarding stockholder meetings and stockholder actions by written consent, as such are then in effect (including but not limited to procedures and provisions for determining the record date for shares entitled to vote).

4.6 **Vote by Ballot.** Election of directors need not be by written ballot unless the Bylaws of the Company shall so provide.
5.2 **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock, as provided herein, on the earlier to occur of (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which the aggregate public offering price (before deduction of underwriters’ discounts and commissions) equals or exceeds Fifty Million Dollars ($50,000,000) (a “Public Offering”) and the Public Offering price per share of which equals or exceeds $4.68 (as adjusted for stock splits, stock dividends, recapitalizations and the like), and (ii) upon the Company’s receipt of the written consent of the holders of a majority of the voting power of the then outstanding shares of Preferred Stock (calculated on an as converted to Common Stock basis), voting together as a single class; provided, however, that the consent of holders of a majority of the then outstanding shares of Series C Preferred Stock, voting separately, shall be required in order to convert all shares of Series C Preferred Stock pursuant to clause (ii) above unless such conversion is effected in connection with, and contingent upon, the closing of a Public Offering in which the Public Offering price per share equals or exceeds $3.12 (as adjusted for stock splits, stock dividends, recapitalizations and the like).

5.3 **Conversion Price.** Each share of each series of Preferred Stock shall be convertible in accordance with Section 5.1 or Section 5.2 above into the number of shares of Common Stock which results from dividing the Original Issue Price of such series of Preferred Stock by the Conversion Price (as defined below) for such series of Preferred Stock that is in effect at the time of conversion. The initial Conversion Price per share for a series of Preferred Stock shall be equal to the Original Issue Price of such series of Preferred Stock; provided, however, that such Conversion Price shall be subject to adjustment from time to time as provided below and to the extent necessary to reflect any Preferred Stock Event (such price, as adjusted from time to time, the “Conversion Price”).

5.4 **Adjustment Upon Common Stock Event.** Upon the happening of any Common Stock Event (as defined below) after the filing of this Restated Certificate of Incorporation, the Conversion Price shall, simultaneously with the happening of such Common Stock Event, be adjusted by multiplying the Conversion Price in effect immediately prior to such Common Stock Event by a fraction, (i) the numerator of which shall be the number of shares of Common Stock issued and outstanding immediately prior to such Common Stock Event, and (ii) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately prior to such Common Stock Event, and (iii) the product so obtained shall thereafter be the Conversion Price. The Conversion Price shall be readjusted in the same manner upon the happening of each subsequent Common Stock Event. As used herein, the term “Common Stock Event” shall mean (1) the issue by the Company of additional shares of Common Stock as a dividend or other distribution on outstanding Common Stock, (ii) a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock, or (iii) a combination of the outstanding shares of Common Stock into a smaller number of shares of Common Stock. For the avoidance of doubt, “Common Stock Event” does not include the Stock Split.

5.5 **Adjustments for Other Dividends and Distributions.** If at any time or from time to time after the Original Issue Date the Company pays a dividend or makes another

distribution to the holders of the Common Stock payable in securities of the Company other than shares of Common Stock, then in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable upon conversion thereof, the amount of securities of the Company which they would have received had their Preferred Stock been converted into Common Stock on the date of such event (or such record date, as applicable) and had they thereafter, during the period from the date of such event (or such record date, as applicable) to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Preferred Stock or with respect to such other securities by their terms. For the avoidance of doubt, the Stock Split shall not be deemed to be a dividend or distribution subject to this Section 5.5.

5.6 **Reorganizations, Mergers and Consolidations.** If at any time or from time to time after the Original Issue Date there is a reorganization of the Company (other than a recapitalization, subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 5) or a merger or consolidation of the Company with or into another entity (except a Sale of the Company which is governed by Section 3), then, as a part of such reorganization, merger or consolidation, provision shall be made so that the holders of Preferred Stock thereafter shall be entitled to receive, upon conversion of the Preferred Stock, the number of shares of stock or other securities or property of the Company, or of such successor entity resulting from such reorganization, merger or consolidation, to which a holder of Common Stock deliverable upon conversion would have been entitled on such reorganization, merger or consolidation. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of the Preferred Stock after the reorganization, merger or consolidation to the end that the provisions of this Section 5 (including adjustment of the Conversion Price then in effect and number of shares issuable upon conversion of the Preferred Stock) shall be applicable after that event and be as nearly equivalent to the provisions hereof as may be practicable. This Section 5.6 shall similarly apply to successive reorganizations, mergers and consolidations.

5.7 **Price-Based Anti-Dilution Protection for the Preferred Stock.**
number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold) by the Conversion Price in effect immediately prior to such issue or sale; and

(b) the denominator of which shall be the sum of (x) the number of Common Stock Equivalents Outstanding immediately prior to such issue or sale plus (y) the number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold).
portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights or Options.

(iii) “Common Stock Equivalents Outstanding” shall mean the number of shares of Common Stock that is equal to the sum of (A) all shares of Common Stock of the Company that are outstanding at the time in question, plus (13) all shares of Common Stock of the Company issuable upon conversion of all shares of Series A Preferred Stock or other Convertible Securities that are outstanding at the time in question, plus (C) all shares of Common Stock of the Company that are issuable upon the exercise of Rights or Options that are outstanding at the time in question assuming the full conversion or exchange into Common Stock of all such Rights or Options that are Rights or Options to purchase or acquire Convertible Securities into or for Common Stock.

(iv) “Convertible Securities” shall mean stock or other securities convertible into or exchangeable for shares of Common Stock.

(v) The “Effective Price” of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold, by the Company under this Section 5.7, into the Aggregate Consideration Received, or deemed to have been received, by the Company under this Section 5.7, for the issue of such Additional Shares of Common Stock.

(vi) “Rights or Options” shall mean warrants, options or other rights to purchase or acquire shares of Common Stock or Convertible Securities.

(c) Deemed Issuances. For the purpose of making any adjustment to the Conversion Price required under this Section 5.7, if the Company issues or sells any Rights or Options or Convertible Securities and if the Effective Price of the shares of Common Stock issuable upon exercise of such Rights or Options and/or the conversion or exchange of Convertible Securities (computed without reference to any additional or similar protective or antidilution clauses) is less than the Conversion Price then in effect, then the Company shall be deemed to have issued, at the time of the issuance of such Rights, Options or Convertible Securities, that number of Additional Shares of Common Stock that is equal to the maximum number of shares of Common Stock issuable upon exercise or conversion of such Rights, Options or Convertible Securities upon their issuance and to have received, as the Aggregate Consideration Received for the issuance of such shares, an amount equal to the total amount of the considered conversion, if any, received by the Company for the issuance of such Rights or Options or Convertible Securities, plus, in the case of such Rights or Options, the minimum amounts of consideration, if any, payable to the Company upon the exercise in full of such Rights or Options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange thereof; provided that:

(i) if the minimum amount of consideration payable to the Company upon the exercise of Rights or Options or the conversion or exchange of Convertible Securities is reduced over time or upon the occurrence or non-occurrence of specified events, then the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; and

(ii) if the minimum amount of consideration payable to the Company upon the exercise of such Rights or Options or the conversion or exchange of Convertible Securities is subsequently increased, then the Effective Price shall again be recalculated using the increased minimum amount of consideration payable to the Company upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities.

No further adjustment of the Conversion Price, adjusted upon the issuance of such Rights or Options or Convertible Securities, shall be made as a result of the actual issuance of shares of Common Stock on the exercise of any such Rights or Options or the conversion or exchange of any such Convertible Securities. If any such Rights or Options or the conversion rights represented by any such Convertible Securities shall expire without having been fully exercised, then the Conversion Price as adjusted upon the issuance of such Rights or Options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only shares of Common Stock so issued were the shares of Common Stock, if any, that were actually issued or sold on the exercise of such Rights or Options or rights of conversion or exchange of such Convertible Securities, and such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such Rights or Options, whether or not exercised, plus the consideration received for issuing or selling all such Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Preferred Stock.

5.8 Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price, the Company, at its expense, shall cause its Chief Financial Officer or other duly authorized officer to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Preferred Stock at the holder’s address as shown in the Company’s books.

5.9 Fractional Shares. No fractional shares of Common Stock shall be issued upon any conversion of Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Company shall pay the holder cash equal to the product of such fraction multiplied by the Common Stock’s fair market value as determined in good faith by the Board as of the date of conversion. All shares of Preferred Stock to be converted by a holder of such Preferred Stock on any date shall be aggregated for purposes of determining whether any fractional shares are to be issued.

5.10 Reservation of Stock Issuable Upon Conversion. The Company 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, the Company 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 purpose.
5.11 Notices. Any notice required by the provisions of this Certificate of Incorporation to be given to the holders of shares of the Preferred Stock shall be deemed given upon the earlier of (i) actual receipt (whether by physical delivery or facsimile transmission), (ii) one (1) business day after deposit with a nationally recognized express courier (delivery fees prepaid) for deliveries within the United States (with instructions to deliver such notice on an expedited basis), (iii) three (3) business days after deposit with an internationally recognized express courier service (delivery fees prepaid) for deliveries across international borders (with instructions to deliver such notice on an expedited basis); or (iv) three (3) calendar days after deposit in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, addressed to each holder of record at the address of such holder appearing on the books of the Company. The provisions of this Section 5.11 may be waived, either prospectively or retroactively, with the written consent of holders of a majority of the then outstanding shares of Preferred Stock, voting together as a single class on an as-converted to Common Stock basis.

6. Restriction and Limitations.

6.1 Preferred Stock. For so long as at least Eight Million (8,000,000) shares of Preferred Stock remain outstanding (as such number may be adjusted for any Preferred Stock Event), the Company shall not (by amendment of the Certificate of Incorporation, merger, consolidation or otherwise), without the approval, by vote or written consent, of the holders of a majority of the Preferred Stock then outstanding, voting together as a single class and on an as-converted to Common Stock basis, and such other approvals as may be required by law:

   (1) amend the Certificate of Incorporation or bylaws or change any of the rights, preferences or privileges of any series of Preferred Stock under the Certificate of Incorporation;
   (2) increase or decrease (other than by redemption or conversion) the total number of authorized shares of Preferred Stock or Common Stock;
   (3) authorize or issue (whether by reclassification or otherwise), or obligate itself to issue, shares of any new class or series of stock (excluding the Series C Preferred Stock) having rights, preferences or privileges senior to or on a parity with the any series of Preferred Stock as to dividend rights, redemption, liquidation or voting preferences;
   (4) redeem (other than Permitted Repurchases) any shares of Common Stock or Preferred Stock;
   (5) declare or pay any dividends on, or declare or make any other distribution (other than Permitted Repurchases) directly or indirectly, on account of any shares of Common Stock or Preferred Stock;
   (6) change the authorized number of directors of the Company from seven (7); or
   (7) consummate any Sale of the Company.

6.2 Series C Preferred Stock. For so long as at least Four Million (4,000,000) shares of Series C Preferred Stock remain outstanding (as such number may be adjusted for any Preferred Stock Event), the Company shall not (by amendment of the Certificate of Incorporation, merger, consolidation or otherwise), without the approval, by vote or written consent, of the holders of a majority of the Series C Preferred Stock then outstanding, voting separately, and such other approvals as may be required by law:

   (1) reduce the Original Issue Price of the Series C Preferred Stock or otherwise amend Section 3.1 to provide that the liquidation preference amount per share for the Series C Preferred Stock is less than its Original Issue Price plus any declared but unpaid dividends thereon (the authorization or issuance of a new series of preferred stock, whether or not senior to the Series C Preferred Stock in liquidation preference, shall not be deemed to reduce the liquidation preference amount of the Series C Preferred Stock under Section 3.1), or effect any other amendment to the rights, preferences or privileges of the Series C Preferred Stock in the Certificate of Incorporation requiring the approval of the Series C Preferred Stock, voting as a separate series, pursuant to Section 242(b)(2) of the Delaware General Corporation Law;
   (2) effect any Sale of the Company in which the proceeds per share to the holders of Series C Preferred Stock are less than $3.12 (as adjusted for stock splits, stock dividends, recapitalizations and the like);
   (3) effect any change to the rights, preferences or privileges of the Series C Preferred Stock in the Certificate of Incorporation through a merger of the Company with or into any other entity, a consolidation, or any other transaction or series of related transactions, if such change, had it been effected by and amendment to the Certificate of Incorporation, would have required the approval of the Series C Preferred Stock, voting as a separate series, pursuant to Section 242(b)(2) of the Delaware General Corporation Law;
   (4) amend the Certificate of Incorporation so as to increase any of the express rights of the Series A Preferred Stock or Series B Preferred Stock set forth in the Certificate of Incorporation unless the rights of the Series C Preferred Stock are also so increased; or
   (5) offer or sell any additional shares of Series A Preferred Stock or Series B Preferred Stock (other than pursuant to outstanding warrants) or shares of any new series of preferred stock in a financing in which the price per share paid for such shares is less than the than the Original Issue Price of the Series C Preferred Stock (as adjusted for stock splits, stock dividends, recapitalizations and the like).

7. Miscellaneous

7.1 No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired and eliminated from the shares which the Company shall be authorized to issue.
7.2 Consent to Certain Transactions. So long as Section 2115 of the California General Company Law purports to make Sections 502 and 503 of the California General Company Law applicable to the Company, each holder of shares of Preferred Stock shall, by virtue of its acceptance of a stock certificate evidencing shares of Preferred Stock, be deemed to have consented, for purposes of Section 502 and 03 of the California Corporations Code, to all Permitted Repurchases.

ARTICLE VI: AMENDMENT OF BYLAWS

The Board of Directors of the corporation shall have the power to adopt, amend or repeal Bylaws of the corporation.

ARTICLE VII: INDEMNIFICATION AND DIRECTOR LIABILITY

1. Directors and Officers. The Company shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or officer of the Company or is or was serving any other enterprise as a director or officer at the request of the Company.

To the fullest extent permitted by law, no director of the Company shall be personally liable for monetary damages for breach of fiduciary duty as a director. Without limiting the effect of the preceding sentence, if the Delaware General Company Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the Delaware General Company Law, as so amended.

2. Employees and Agents. The Company may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was an employee or agent of the Company or is or was serving any other enterprise as an employee or agent at the request of the Company.

3. Amendment of Article VII. Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of such an inconsistent provision.

CERTIFICATE OF AMENDMENT
OF
RESTATED CERTIFICATE OF INCORPORATION
OF
SPLUNK INC.

Splunk Inc., a Delaware corporation, does hereby certify that the following amendment to the corporation’s Restated Certificate of Incorporation have been duly adopted in accordance with the provisions of Section 242 of the Delaware General Corporation Law, with the approval of such amendment by the corporation’s stockholders having been given by written consent without a meeting in accordance with Sections 228(d) and 242 of the Delaware General Corporation Law:

The first paragraph of ARTICLE IV of the Restated Certificate of Incorporation, relating to authorized capital stock of the corporation is amended to read in its entirety as follows:

“This corporation is authorized to issue two classes of shares, designated “Common Stock” and “Preferred Stock,” respectively, both of which shall have $0.001 par value per share. The number of shares of Common Stock authorized to be issued is 100,000,000 shares. The number of shares of Preferred Stock authorized to be issued is 57,904,560 shares, of which 20,600,000 are designated as “Series A Preferred Stock”, 20,304,560 are designated as “Series B Preferred Stock”, and 17,000,000 are designated as “Series C Preferred Stock”.”

IN WITNESS WHEREOF, said corporation has caused this Certificate of Amendment to be signed by its duly authorized officer this 27th day of October, 2008 and the foregoing facts stated herein are true and correct.

SPLUNK INC.

By: /s/ Godfrey Sullivan
Godfrey Sullivan
President and Chief Executive Officer

CERTIFICATE OF AMENDMENT
OF
RESTATED CERTIFICATE OF INCORPORATION
OF
SPLUNK INC.

Splunk Inc., a Delaware corporation (the “Company”), does hereby certify that the following amendment to the Company’s Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware, with the approval of such amendment by the Company’s stockholders having been given by written consent without a meeting in accordance with Sections 228(d) and 242 of the General Corporation Law of the State of Delaware:
1. The name of the Company is Splunk Inc. The original Certificate of Incorporation of the Company was filed with the Secretary of State of the State of Delaware on April 11, 2006.

2. The first paragraph of ARTICLE IV of the Restated Certificate of Incorporation, relating to authorized capital stock of the Company is amended to read in its entirety as follows:

“This corporation is authorized to issue two classes of shares, designated “Common Stock” and “Preferred Stock”, respectively, both of which shall have $0.001 par value per share. The number of shares of Common Stock authorized to be issued is 106,511,960 shares. The number of shares of Preferred Stock authorized to be issued is 57,904,560 shares, of which 20,600,000 are designated as “Series A Preferred Stock”, 20,304,560 are designated as “Series B Preferred Stock”, and 17,000,000 are designated as “Series C Preferred Stock”.”

IN WITNESS WHEREOF, the Company has caused this Certificate of Amendment to be signed by its duly authorized officer this 18th day of October 2011 and the foregoing facts stated herein are true and correct.

SPLUNK INC.

By: /s/ Godfrey R. Sullivan

Godfrey R. Sullivan
President and Chief Executive Officer
CERTIFICATION OF BYLAWS
OF
SPLUNK INC.
(a Delaware corporation)

KNOW ALL BY THESE PRESENTS:

I, Michael Baum, certify that I am Secretary of Splunk Inc., a Delaware corporation (the “Company”), that I am duly authorized to make and deliver this certification, that the attached Bylaws are a true and correct copy of the Bylaws of the Company in effect as of the date of this certificate.

Dated: August 31, 2007

/s/ Michael Baum
Michael Baum, Secretary

BYLAWS
OF
SPLUNK INC.
(a Delaware corporation)
As Adopted on April 12, 2006

ARTICLE I
STOCKHOLDERS

Section 1.1: Annual Meetings. Unless directors are elected by written consent in lieu of an annual meeting as permitted by Section 211 of the Delaware General Corporation Law, an annual meeting of stockholders shall be held for the election of directors at such date and time as the Board of Directors shall each year fix. The meeting may be held either at a place, within or without the State of Delaware, or by means of remote communication as the Board of Directors in its sole discretion may determine. Any other proper business may be transacted at the annual meeting.

Section 1.2: Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by the Board of Directors, the Chairperson of the Board of Directors, the Chief Executive Officer, the President, the holders of shares of the Corporation that are entitled to cast not less than ten percent (10%) of the total number of votes entitled to be cast by all stockholders at such meeting, or by a majority of the members of the Board of Directors. Special meetings may not be called by any other person or persons.

Section 1.3: Notice of Meetings. Notice of all meetings of stockholders shall be given in writing or by electronic transmission in the manner provided by law (including, without limitation, as set forth in Section 7.1(b) of these Bylaws) stating the date, time and place, if any, of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by applicable law or the Certificate of Incorporation of the Corporation, such notice shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting.

Section 1.4: Adjournments. The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seems to him or her to be in order. The chair shall have the power to adjourn the meeting to another time, date and place (if any). Any meeting of stockholders may adjourn from time to time, and notice need not be given of any such adjourned meeting if the time, date and place (if any) thereof are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, then a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting.

Section 1.5: Quorum. At each meeting of stockholders the holders of a majority of the shares of stock entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business, except if otherwise required by applicable law. If a quorum shall fail to attend any meeting, the chairperson of the meeting or the holders of a majority of the shares entitled to vote who are present, in person or by proxy, at the meeting may adjourn the meeting. Shares of the Corporation’s stock belonging to the Corporation (or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation are held, directly or indirectly, by the Corporation), shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that if the foregoing shall not limit the right of the Corporation or any other corporation to vote any shares of the Corporation’s stock held by it in a fiduciary capacity and to count such shares for purposes of determining a quorum.

Section 1.6: Organization. Meetings of stockholders shall be presided over by such person as the Board of Directors may designate, or, in the absence of such a person, the Chairperson of the Board of Directors, or, in the absence of such person, the President of the Corporation, or, in the absence of such person, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, at the meeting. Such person shall be chairperson of the meeting and, subject to Section 1.11 hereof, shall determine the order of business and the procedure at the meeting, including...
Section 1.7: Voting; Proxies. Unless otherwise provided by law or the Certificate of Incorporation, and subject to the provisions of Section 1.8 of these Bylaws, each stockholder shall be entitled to one (1) vote for each share of stock held by such stockholder. Each stockholder entitled to vote at a meeting of stockholders, or to take corporate action by written consent without a meeting, may authorize another person or persons to act for such stockholder by proxy. Such a proxy may be prepared, transmitted and delivered in any manner permitted by applicable law. Voting at meetings of stockholders need not be by written ballot unless such is demanded at the meeting before voting begins by a stockholder or stockholders holding shares representing at least one percent (1%) of the votes entitled to vote at such meeting, or by such stockholder’s or stockholders’ proxy; provided, however, that an election of directors shall be by written ballot if demand is so made by any stockholder at the meeting before voting begins. If a vote is to be taken by written ballot, then each such ballot shall state the name of the stockholder or proxy voting and such other information as the chairperson of the meeting deems appropriate and, if authorized by the Board of Directors, the ballot may be submitted by electronic transmission in the manner provided by law. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Unless otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, every matter other than the election of directors shall be decided by the affirmative vote of the holders of a majority of the shares of stock entitled to vote thereon that are present in person or represented by proxy at the meeting and are voted for or against the matter.

Section 1.8: Fixing Date for Determination of Stockholders of Record. Generally, in order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to take corporate action by written consent without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed by the Board of Directors, then the record date shall be as provided by applicable law. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 1.9: List of Stockholders Entitled to Vote. A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder, shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either on a reasonably accessible electronic network as permitted by law (provided that the information required to gain access to the list is provided with the notice of the meeting) or during ordinary business hours at the principal place of business of the Corporation. If the meeting is held at a place, the list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present at the meeting. If the meeting is held solely by means of remote communication, then the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list shall be provided with the notice of the meeting.

Section 1.10: Action by Written Consent of Stockholders. (a) Procedure. Unless otherwise provided by the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed in the manner permitted by law by the holders of outstanding stock having not less than the number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Written stockholder consents shall bear the date of signature of each stockholder who signs the consent in the manner permitted by law and shall be delivered to the Corporation as provided in subsection (b) below. No written consent shall be effective to take the action set forth therein unless, within sixty (60) days of the earliest dated consent delivered to the Corporation in the manner provided above, written consents signed by a sufficient number of stockholders to take the action set forth therein are delivered to the Corporation in the manner provided above.

(b) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purpose of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the Corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a Corporation’s registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the Corporation or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the Board of Directors of the Corporation.

(c) Notice of Consent. Prompt notice of the taking of corporate action by stockholders without a meeting by less than unanimous written consent of the stockholders shall be given to those stockholders who have not consented thereto in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation as required by law. In the case of a Certificate Action (as defined below), if the Delaware General Corporation Law so requires, such notice shall be given prior to filing of the certificate in question. If the action which is consented to requires the filing of a certificate under the Delaware General Corporation Law (a “Certificate Action”), then if the Delaware General Corporation Law so requires, the certificate so filed shall state that
written stockholder consent has been given in accordance with Section 228 of the Delaware General Corporation Law and that written notice of the taking of corporate action by stockholders without a meeting as described herein has been given as provided in such section.

Section 1.11: Inspectors of Elections

(a) Applicability. Unless otherwise provided in the Corporation’s Certificate of Incorporation or required by the Delaware General Corporation Law, the following provisions of this

Section 1.11 shall apply only if and when the Corporation has a class of voting stock that is: (i) listed on a national securities exchange; (ii) authorized for quotation on an automated interdealer quotation system of a registered national securities association; or (iii) held of record by more than 2,000 stockholders; in all other cases, observance of the provisions of this Section 1.11 shall be optional, and at the discretion of the Corporation.

(b) Appointment. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting.

(c) Inspector’s Oath. Each inspector of election, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector’s ability.

(d) Duties of Inspectors. At a meeting of stockholders, the inspectors of election shall (i) ascertain the number of shares outstanding and the voting power of each share, (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period of time a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

(e) Opening and Closing of Polls. 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 shall be announced by the inspectors at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.

(f) Determinations. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in connection with proxies in accordance with Section 212(c)(2) of the Delaware General Corporation Law, ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification of their determinations pursuant to this Section 1.11 shall specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors’ belief that such information is accurate and reliable.

ARTICLE II

BOARD OF DIRECTORS

Section 2.1: Number; Qualifications. The Board of Directors shall consist of one or more members. The initial number of directors shall be one (1), and thereafter shall be fixed from time to time by resolution of the Board of Directors. No decrease in the authorized number of directors constituting the Board of Directors shall shorten the term of any incumbent director. Directors need not be stockholders of the Corporation.

Section 2.2: Election; Resignation; Removal; Vacancies. The Board of Directors shall initially consist of the person or persons elected by the incorporator or named in the Corporation’s initial Certificate of Incorporation. Each director shall hold office until such director’s successor is elected and qualified, or until such director’s earlier death, resignation or removal. Any director may resign at any time upon notice to the Corporation given in writing or by electronic transmission. Subject to the rights of any holders of Preferred Stock then outstanding: (i) any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors and (ii) any vacancy occurring in the Board of Directors for any cause, and any newly created directorship resulting from any increase in the authorized number of directors to be elected by all stockholders having the right to vote as a single class, may be filled by the stockholders, by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

Section 2.3: Regular Meetings. Regular meetings of the Board of Directors may be held at such places, within or without the State of Delaware, and at such times as the Board of Directors may from time to time determine. Notice of regular meetings need not be given if the date, times and places thereof are fixed by resolution of the Board of Directors.

Section 2.4: Special Meetings. Special meetings of the Board of Directors may be called by the Chairperson of the Board of Directors, the President or a majority of the members of the Board of Directors then in office and may be held at any time, date or place, within or without the State of Delaware, as the person or persons calling the meeting shall fix. Notice of the time, date and place of such meeting shall be given, orally, in writing or by electronic transmission (including electronic mail), by the person or persons calling the meeting to all directors at least four (4) days before the meeting if the notice is mailed, or at least twenty-four (24) hours before the meeting if such notice is given by telephone, hand delivery, telegram, telex, mailgram, facsimile, electronic mail or other means of electronic transmission. Unless otherwise indicated in the notice, any and all business may be transacted at a special meeting.

Section 2.5: Remote Meetings Permitted. Members of the Board of Directors, or any committee of the Board, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to
executed on behalf of the Corporation; to sign certificates for shares of stock of
papers and instruments in writing which have been authorized by the Board of Directors or which, in the judgment of the Chief Executive Officer, should be
as he or she shall deem proper; and
business and affairs of the Corporation;
Board of Directors, the powers and duties of the Chief Executive Officer of the Corporation are:
removal. Any number of offices may be held by the same person. Any officer may resign at any time upon written notice to the Corporation. Any vacancy
canvoked by the Board of Directors. All officers shall be elected by the Board of Directors;
a Secretary, a Treasurer and such other officers, including a Chairperson of the Board of Directors and/or Chief Financial Officer, as may from time to time be
Directors conducts its business pursuant to Article II of these Bylaws.
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
committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing, or
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 that may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or
(section 2.7: Organization). Meetings of the Board of Directors shall be presided over by the Chairperson of the Board of Directors, or in such person’s absence by the President, or in such person’s absence by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in such person’s absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.
any meeting of such committee who are not disqualified from voting, whether or not such member or members 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 provided in
a 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 that may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or
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 that may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or
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 that may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or
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 that may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or
the Corporation; and, subject to the direction of the Board of Directors, to have general charge of the property of the Corporation and to supervise and control all
officers, agents and employees of the Corporation.

The President shall be the Chief Executive Officer of the Corporation unless the Board of Directors shall designate another officer to be the Chief Executive
Officer. If there is no President, and the Board of Directors has not designated any other officer to be the Chief Executive Officer, then the Chairperson of the
Board of Directors shall be the Chief Executive Officer.

Section 4.3: Chairperson of the Board. The Chairperson of the Board of Directors shall have the power to preside at all meetings of the Board of
 Directors and shall have such other powers and duties as provided in these Bylaws and as the Board of Directors may from time to time prescribe.

Section 4.4: President. The President shall be the Chief Executive Officer of the Corporation unless the Board of Directors shall have designated
another officer as the Chief Executive Officer of the Corporation. Subject to the provisions of these Bylaws and to the direction of the Board of Directors, and
subject to the supervisory powers of the Chief Executive Officer (if the Chief Executive Officer is an officer other than the President), and subject to such
supervisory powers and authority as may be given by the Board of Directors to the Chairperson of the Board of Directors, and/or to any other officer, the President
shall have the responsibility for the general management the control of the business and affairs of the Corporation and the general supervision and direction of all
of the officers, employees and agents of the Corporation (other than the Chief Executive Officer, if the Chief Executive Officer is an officer other than the
President) and shall perform all duties and have all powers that are commonly incident to the office of President or that are delegated to the President by the Board of
Directors.

Section 4.5: Vice President. Each Vice President shall have all such powers and duties as are commonly incident to the office of Vice President, or
that are delegated to him or her by the Board of Directors or the Chief Executive Officer. A Vice President may be designated by the Board to perform the duties
and exercise the powers of the Chief Executive Officer in the event of the Chief Executive Officer’s absence or disability.

Section 4.6: Chief Financial Officer. The Chief Financial Officer shall be the Treasurer of the Corporation unless the Board of Directors shall have
designated another officer as the Treasurer of the Corporation. Subject to the direction of the Board of Directors and the Chief Executive Officer, the Chief
Financial Officer shall perform all duties and have all powers that are commonly incident to the office of Chief Financial Officer.

Section 4.7: Treasurer. The Treasurer shall have custody of all monies and securities of the Corporation. The Treasurer shall make such
dischursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions. The Treasurer shall also
perform such other duties and have such other powers as are commonly incident to the
office of Treasurer, or as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 4.8: Secretary. The Secretary shall issue or cause to be issued all authorized notices for, and shall keep, or cause to be kept, minutes of all
meetings of the stockholders and the Board of Directors. The Secretary shall have charge of the corporate minute books and similar records and shall perform
such other duties and have such other powers as are commonly incident to the office of Secretary, or as the Board of Directors or the Chief Executive Officer may
from time to time prescribe.

Section 4.9: Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other
officers or agents, notwithstanding any provision hereof.

Section 4.10: Removal. Any officer of the Corporation shall serve at the pleasure of the Board of Directors and may be removed at any time, with
or without cause, by the Board of Directors. Such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation.

ARTICLE V

STOCK

Section 5.1: Certificates. Every holder of stock shall be entitled to have a certificate signed by or in the name of the Corporation by the
Chairperson or Vice-Chairperson 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, certifying the number of shares owned by such stockholder in the Corporation. Any or all of the signatures on the
certificate may be a facsimile.

Section 5.2: Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate of stock in
the place of any certificate previously issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or
destroyed certificate, or such owner’s legal representative, to agree to indemnify the Corporation and/or to give the Corporation a bond sufficient to indemnify it,
against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 5.3: Other Regulations. The issue, transfer, conversion and registration of stock certificates shall be governed by such other regulations as
the Board of Directors may establish.

ARTICLE VI

INDEMNIFICATION

Section 6.1: Indemnification of Officers and Directors. Each person who was or is made a party to, or is threatened to be made a party to, or is
involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a “Proceeding”), by reason of the fact that such person (or a
person of whom such person is the legal representative), is or was a director or officer of the Corporation or a Reincorporated Predecessor (as defined below) or is
or was serving at the request of the Corporation or a Reincorporated Predecessor (as defined below) as a director or officer of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the Delaware General Corporation Law, against all expenses, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith, provided such person acted in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person’s conduct was unlawful. Such indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of such person’s heirs, executors and administrators. Notwithstanding the foregoing, the Corporation shall indemnify any such person seeking indemnity in connection with a Proceeding (or part thereof) initiated by such person only if such Proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. As used herein, the term “Reincorporated Predecessor” means a corporation that is merged with and into the Corporation in a statutory merger where (a) the Corporation is the surviving corporation of such merger; (b) the primary purpose of such merger is to change the corporate domicile of the Reincorporated Predecessor to Delaware.

Section 7.1: Notice

(a) Except as otherwise specifically provided in these Bylaws (including, without limitation, Section 7.1(b) below) or required by law, all notices required to be given pursuant to these Bylaws shall be in writing and may in every instance be effectively given by hand delivery (including use of a delivery service), by depositing such notice in the mail, postage prepaid, or by sending such notice by prepaid telegram, telex, overnight express courier, mailgram or facsimile. Any such notice shall be addressed to the person to whom notice is to be given at such person’s address as it appears on the records of the Corporation. The notice shall be deemed given (i) in the case of hand delivery, when received by the person to whom notice is to be given or by any person accepting such notice on behalf of such person, (ii) in the case of delivery by mail, upon deposit in the mail, (iii) in the case of delivery by overnight express courier, when dispatched, and (iv) in the case of delivery via telegram, telex, mailgram or facsimile, when dispatched.

(b) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the Delaware General Corporation Law, the Certificate of Incorporation, or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if (i) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this Section 7.1(b) shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder.

(c) An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given in writing or by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Section 7.2: Waiver of Notice

Whenever notice is required to be given under any provision of these Bylaws, a written waiver of notice, signed by the person entitled to notice, or waiver by electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. 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. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any waiver of notice.
ARTICLE VIII
INTERESTED DIRECTORS

Section 8.1: Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof that authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if: (i) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (ii) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE IX
MISCELLANEOUS

Section 9.1: Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 9.2: Seal. The Board of Directors may provide for a corporate seal, which shall have the name of the Corporation inscribed thereon and shall otherwise be in such form as may be approved from time to time by the Board of Directors.

Section 9.3: Form of Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on or by means of, or be in the form of, diskettes or any other information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the Delaware General Corporation Law.

Section 9.4: Reliance Upon Books and Records. A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of such person’s duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation’s officers or employees, or committees of the Board of Directors, or by any other person as to matters the member reasonably believes are within such other person’s professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 9.5: Certificate of Incorporation Governs. In the event of any conflict between the provisions of the Corporation’s Certificate of Incorporation and Bylaws, the provisions of the Certificate of Incorporation shall govern.

Section 9.6: Severability. If any provision of these Bylaws shall be held to be invalid, illegal, unenforceable or in conflict with the provisions of the Corporation’s Certificate of Incorporation, then such provision shall nonetheless be enforced to the maximum extent possible consistent with such holding and the remaining provisions of these Bylaws (including without limitation, all portions of any section of these Bylaws containing any such provision held to be invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation, that are not themselves invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation) shall remain in full force and effect.

ARTICLE X
AMENDMENT

Section 10.1: Amendments. Stockholders of the Corporation holding a majority of the Corporation’s outstanding voting stock then entitled to vote at an election of directors shall have the power to adopt, amend or repeal Bylaws. To the extent provided in the Corporation’s Certificate of Incorporation, the Board of Directors of the Corporation shall also have the power to adopt, amend or repeal Bylaws of the Corporation.
SPLUNK INC.

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "Agreement") is dated as of [insert date], and is between Splunk Inc., a Delaware corporation (the "Company"), and [insert name of indemnitee] ("Indemnitee").

RECITALS

A. Indemnitee’s service to the Company substantially benefits the Company.

B. Individuals are reluctant to serve as directors or officers of corporations or in certain other capacities unless they are provided with adequate protection through insurance or indemnification against the risks of claims and actions against them arising out of such service.

C. Indemnitee does not regard the protection currently provided by applicable law, the Company’s governing documents and any insurance as adequate under the present circumstances, and Indemnitee may not be willing to serve as a director or officer without additional protection.

D. In order to induce Indemnitee to continue to provide services to the Company, it is reasonable, prudent and necessary for the Company to contractually obligate itself to indemnify, and to advance expenses on behalf of, Indemnitee as permitted by applicable law.

E. This Agreement is a supplement to and in furtherance of the indemnification provided in the Company’s certificate of incorporation and bylaws, and any resolutions adopted pursuant thereto, and this Agreement shall not be deemed a substitute therefor, nor shall this Agreement be deemed to limit, diminish or abrogate any rights of Indemnitee thereunder.

The parties therefore agree as follows:

1. Definitions.

   (a) A “Change in Control” shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

      (i) Acquisition of Stock by Third Party. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company’s then outstanding securities;

      (ii) Change in Board Composition. During any period of two consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Company’s board of directors, and any new directors (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 1(a)(i), 1(a)(i) or 1(a)(iv)) whose election by the board of directors or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Company’s board of directors;

      (iii) Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the surviving entity immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

      (iv) Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company’s assets; and

   (b) Other Events. Any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended, whether or not the Company is then subject to such reporting requirement.

For purposes of this Section 1(a), the following terms shall have the following meanings:

(1) “Person” shall have the meaning as set forth in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended; provided, however, that “Person” shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(2) “Beneficial Owner” shall have the meaning given to such term in Rule 13d-3 under the Securities Exchange Act of 1934, as amended; provided, however, that “Beneficial Owner” shall exclude any Person otherwise becoming a Beneficial Owner by reason of (i) the stockholders of the Company approving a merger of the Company with another entity or (ii) the Company’s board of directors approving a sale of securities by the Company to such Person.

(b) “Corporate Status” describes the status of a person who is or was a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise.

(c) “DGCL” means the General Corporation Law of the State of Delaware.
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 include (i) 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, supersedeas bond or other appeal bond or their equivalent, and (ii) for purposes of Section 12(c), Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement or under any directors’ and officers’ liability insurance policies maintained by the Company. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) "Independent Counsel" means a law firm, or a partner or member of 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 as Independent Counsel with respect to matters concerning Indemnitee under this Agreement, or 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.

(h) "Proceeding" means any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, including any appeal therefrom and including without limitation any such Proceeding pending as of the date of this Agreement, in which Indemnitee was, is or will be involved as a party, a potential party, a non-party witness or otherwise by reason of (i) the fact that Indemnitee is or was a director or officer of the Company, (ii) any action taken by Indemnitee or any action or inaction on Indemnitee’s part while acting as a director or officer of the Company, or (iii) the fact that he or she is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification or advancement of expenses can be provided under this Agreement.

(i) Reference to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Company" as referred to in this Agreement.

2. Indemnity in Third-Party Proceedings. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 2 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 2, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

3. Indemnity in Proceedings by or in the Right of the Company. 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 by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she 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 3 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged by a court of competent jurisdiction to be liable to the Company, unless and only to the extent that the Delaware Court of Chancery 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 of Chancery or such other court shall deem proper.

4. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. To the extent that Indemnitee is a party to or a participant in and is successful (on the merits or otherwise) in defense of any Proceeding or any claim, issue or matter therein, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection therewith. To the extent permitted by applicable law, if Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, in defense of one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection with (a) each successfully resolved claim, issue or matter and (b) any claim, issue or matter related to any such successfully resolved claim, issuer or matter. For purposes of this section, 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.
5. **Indemnification for Expenses of a Witness.** To the extent that Indemnitee is, by reason of his or her Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified to the extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee’s behalf in connection therewith.

6. **Additional Indemnification.**
   (a) Notwithstanding any limitation in Sections 2, 3 or 4, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is, or is threatened to be made, a party to or a participant in 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 or on his or her behalf in connection with the Proceeding or any claim, issue or matter therein.

   (b) For purposes of Section 6(a), the meaning of the phrase “to the fullest extent permitted by applicable law” shall include, but not be limited to:

      (i) 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) 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.

7. **Exclusions.** Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any Proceeding (or any part of any Proceeding):
   (a) for which payment has actually been made to or on behalf of Indemnitee under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

   (b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of federal, state or local statutory law or common law, if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

   (c) for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Securities Exchange Act of 1934, as amended (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

   (d) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees, unless (i) the Company’s board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) otherwise authorized in Section 12(d) or (iv) otherwise required by applicable law; or

   (e) if prohibited by applicable law.

8. **Advances of Expenses.** The Company shall advance the Expenses incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made as soon as reasonably practicable, but in any event no later than 60 days, after the receipt by the Company of a written statement or statements requesting such advances from time to time (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 expenditure made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice). Advances shall be unsecured and interest free and made without regard to Indemnitee’s ability to repay such advances. Indemnitee hereby undertakes to repay any advance to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company. This Section 8 shall not apply to the extent advancement is prohibited by law and shall not apply to any Proceeding for which indemnity is not permitted under this Agreement, but shall apply to any Proceeding referenced in Section 7(b) or 7(c) prior to a determination that Indemnitee is not entitled to be indemnified by the Company.

9. **Procedures for Notification and Defense of Claim.**
   (a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses as soon as reasonably practicable following the receipt by Indemnitee of notice thereof. The written notification to the Company shall include, in reasonable detail, a description of the nature of the Proceeding and the facts underlying the Proceeding. The failure by Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights.

   (b) If, at the time of the receipt of a notice of a Proceeding pursuant to the terms hereof, the Company has directors’ and officers’ liability insurance in effect, the Company shall give prompt notice of the commencement of the Proceeding to the insurers in accordance with the procedures set forth in the applicable policies. The Company shall thereafter take all commercially-reasonable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

   (c) The Company shall be entitled to participate in the Proceeding at its own expense. Indemnitee agrees to consult with the Company and to consider in good faith the advisability and appropriateness of joint representation in the event that either the Company or other indemnitees in addition to Indemnitee require representation in connection with any Proceeding.
by the stockholders of the Company. If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within ten days after such determination. Indemnitee shall cooperate with the person, persons or entity making the determination with respect to Indemnitee’s entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information that is not privileged or otherwise protected from disclosure and that is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys’ fees and disbursements) reasonably incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company, to the extent permitted by applicable law.

(c) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(b), the Independent Counsel shall be selected as provided in this Section 10(c). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Company’s board of directors, and the Company shall give written notice to Indemnitee advising him or her of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Company’s board of directors, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, 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 1 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 (i) submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof and (ii) the final disposition of the Proceeding, the parties have not agreed upon an Independent Counsel, either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other’s selection of Independent Counsel and 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 10(b) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, the Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(d) The Company agrees to pay the reasonable fees and expenses of any Independent Counsel 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.


(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by law, 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, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption in connection with the making by such person, persons or entity of any determination contrary to that presumption.

(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 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 or she 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 or her conduct was unlawful.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith to the extent Indemnitee relied in good faith on (i) the records or books of account of the Enterprise, including financial statements, (ii) information supplied to Indemnitee by the officers of the
12. Remedies of Indemnitee.

(a) Subject to Section 12(e), in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 8 or 12(d) of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10 of this Agreement within 90 days after the later of the receipt by the Company of the request for indemnification or the final disposition of the Proceeding, (iv) payment of indemnification pursuant to this Agreement is not made (A) within ten days after a determination has been made that Indemnitee is entitled to indemnification or (B) with respect to indemnification pursuant to Sections 4, 5 and 12(d) of this Agreement, within 30 days after receipt by the Company of a written request therefor, or (v) the Company or any other person or entity takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his or her option, may seek an award in arbitration with respect to his or her entitlement to such indemnification or advancement of Expenses, 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 one year following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 12(a); provided, however, that the foregoing clause shall not apply in respect of a proceeding brought by Indemnitee to enforce his or her rights under Section 4 of this Agreement. The Company shall not oppose Indemnitee’s right to seek any such adjudication or an award in arbitration in accordance with this Agreement.

(b) Neither (i) the failure of the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor (ii) an actual determination by the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders that Indemnitee has not met the applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has or has not met the applicable standard of conduct. In the event that a determination shall have been made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 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 12, the Company shall, to the fullest extent not prohibited by law, have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) To the fullest extent not prohibited by law, the Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 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. If a determination shall have been made pursuant to Section 10 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 12, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee’s statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) To the extent not prohibited by law, the Company shall indemnify Indemnitee against all Expenses that are incurred by Indemnitee in connection with any action for indemnification or advancement of Expenses from the Company under this Agreement or under any directors’ and officers’ liability insurance policies maintained by the Company to the extent Indemnitee is successful in such action, and, if requested by Indemnitee, shall (as soon as reasonably practicable, but in any event no later than 60 days, after receipt by the Company of a written request therefor) advance such Expenses to Indemnitee, subject to the provisions of Section 8.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification shall be required to be made prior to the final disposition of the Proceeding.

13. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amounts incurred by Indemnitee, whether for Expenses, judgments, fines or amounts paid or to be paid in settlement, 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 from the Enterprise in the course of their duties, (iii) the advice of legal counsel for the Enterprise or its board of directors or counsel selected by any committee of the board of directors or (iv) information or records given or reports made to the Enterprise by an independent certified public accountant, an appraiser, investment banker or other expert selected with reasonable care by the Enterprise or its board of directors or any committee of the board of directors. The provisions of this Section 11(c) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(d) Neither the knowledge, actions nor failure to act of any other director, officer, agent or employee of the Enterprise shall be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

14. Non-exclusivity. 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 Company’s certificate of incorporation or bylaws,
15. **Primary Responsibility.** The Company acknowledges that to the extent Indemnitee is serving as a director of the Company’s board of directors at the request or direction of a venture capital fund or other entity and/or certain of its affiliates (collectively, the “Secondary Indemnitees”), Indemnitee may have certain rights to indemnification and advancement of expenses provided by such Secondary Indemnitees. The Company agrees that, as between the Company and the Secondary Indemnitees, the Company is primarily responsible for amounts required to be indemnified or advanced under the Company’s certificate of incorporation or bylaws or this Agreement and any obligation of the Secondary Indemnitees to provide indemnification or advancement for the same amounts is secondary to those Company obligations. To the extent not in contravention of any insurance policy or policies providing liability or other insurance for the Company or any director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, the Company waives any right of contribution or subrogation against the Secondary Indemnitee with respect to the liabilities for which the Company is primarily responsible under this Section 15. In the event of any payment by the Secondary Indemnitees of amounts otherwise required to be indemnified or advanced by the Company under the Company’s certificate of incorporation or bylaws or this Agreement, the Secondary Indemnitees shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee for indemnification or advancement of expenses under the Company’s certificate of incorporation or bylaws or this Agreement or, to the extent such subrogation is unavailable and contribution is found to be the applicable remedy, shall have a right of contribution with respect to the amounts paid. The Secondary Indemnitees are express third-party beneficiaries of the terms of this Section 15.

16. **No Duplication of Payments.** Subject to any subrogation rights set forth in Section 15, the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received payment for such amounts under any insurance policy, contract, agreement or otherwise.

17. **Insurance.** To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, trustees, general partners, managing members, officers, employees, agents or fiduciaries of the Company or any other Enterprise, Indemnitee shall be covered by such policy or policies to the same extent as the most favorably-insured persons under such policy or policies in a comparable position.

18. **Subrogation.** 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.

19. **Services to the Company.** Indemnitee agrees to serve as a director or officer of the Company or, at the request of the Company, as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of another Enterprise, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his or her resignation or is removed from such position. 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. Indemnitee specifically acknowledges that any employment with the Company (or any of its subsidiaries or any Enterprise) is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, with or without notice, except as may be otherwise expressly provided in any executed, written employment contract between Indemnitee and the Company (or any of its subsidiaries or any Enterprise), any existing formal severance policies adopted by the Company’s board of directors or, with respect to service as a director or officer of the Company, the Company’s certificate of incorporation or bylaws or the DGCL. No such document shall be subject to any oral modification thereof.

20. **Duration.** This Agreement shall continue until and terminate upon the later of (a) ten years after the date that Indemnitee shall have ceased to serve as a director or officer of the Company or as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of any other Enterprise, as applicable; or (b) one year after the final termination of any Proceeding, including any appeal, 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 12 of this Agreement relating thereto.

21. **Successors.** This Agreement shall be binding upon the Company and its successors and assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company, and shall inure to the benefit of Indemnitee and Indemnitee’s heirs, executors and administrators. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, by written agreement, 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.

22. **Severability.** Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company’s inability, pursuant to court order or other applicable law, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) 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; (ii) 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 (iii) 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.

23. **Enforcement.** 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 or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

24. ** Entire Agreement.** 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 Company’s certificate of incorporation and bylaws and applicable law.
25. **Modification and Waiver.** No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the parties hereto. No amendment, alteration or repeal of this Agreement shall adversely affect any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. No waiver of any of the provisions of this Agreement shall constitute or be deemed a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

26. **Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, sent by facsimile or electronic mail or otherwise delivered by hand, messenger or courier service addressed:

   (a) if to Indemnitee, to Indemnitee’s address, facsimile number or electronic mail address as shown on the signature page of this Agreement or in the Company’s records, as may be updated in accordance with the provisions hereof; or

   (b) if to the Company, to the attention of the Chief Executive Officer or Chief Financial Officer of the Company at 250 Brannan Street, 2nd Floor, San Francisco, California 94107, or at such other current address as the Company shall have furnished to Indemnitee, with a copy (which shall not constitute notice) to Jeffrey D. Saper, Esq., Wilson Sonsini Goodrich & Rosati, P.C., 650 Page Mill Road, Palo Alto, California 94304.

   Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given (i) if delivered by hand, messenger or courier service, when delivered (or if sent via a nationally-recognized overnight courier service, freight prepaid, specifying next-business-day delivery, one business day after deposit with the courier), or (ii) if sent via mail, at the earlier of its receipt or five days after the same has been deposited in a regularly-maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid, or (iii) if sent via facsimile, upon confirmation of facsimile transfer or, if sent via electronic mail, upon confirmation of delivery when directed to the relevant electronic mail address, if sent during normal business hours of the recipient, or if not sent during normal business hours of the recipient, then on the recipient’s next business day.

27. **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 12(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 of Chancery, 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 of Chancery 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, The Corporation Trust Company, Wilmington, 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 of Chancery, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court of Chancery has been brought in an improper or inconvenient forum.

28. **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. This Agreement may also be executed and delivered by facsimile signature and in 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.

29. **Captions.** 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.

(signature page follows)

The parties are signing this Indemnification Agreement as of the date stated in the introductory sentence.

**SPLUNK INC.**

__________________________  
(Signature)

__________________________  
(Print name)

__________________________  
(Title)

[INSERT INDEMNITEE NAME]

__________________________  
(Signature)
(Print name)

(Street address)

(City, State and ZIP)

(Signature page to Indemnification Agreement)
2003 EQUITY INCENTIVE PLAN
As Adopted on November 28, 2003

(1) Initial adoption of the Plan and the authorization of 2,500,000 shares was approved by the board on November 28, 2003 and the shareholders on November 28, 2003. On August 16, 2004, the Company’s common stock was reverse split 2.5-for-1, resulting in an authorized number of shares of 1,000,000. An amendment to the Plan increasing the authorized number of shares to 2,000,000 shares was approved by the board and shareholders on August 16, 2004. On October 20, 2004, the Company’s common stock was forward split 1-for-2, resulting in an authorized number of shares of 4,000,000. On February 12, 2008, the Company’s common stock was forward split 1-for-2, resulting in an authorized number of shares of 8,000,000. An amendment to the Plan increasing the authorized number of shares to 12,000,000 shares (post-split) was approved by the board on April 10, 2008. An amendment to the Plan increasing the authorized number of shares to 23,858,078 was approved by the board effective as of September 17, 2008. An amendment to the Plan increasing the authorized number of shares to 27,813,686 was approved by the board effective as of July 22, 2010. An amendment to the Plan increasing the authorized number of shares to 29,813,686 was approved by the board effective as of June 14, 2011. An amendment to the Plan increasing the authorized number of shares to 30,801,726 was approved by the board effective as of September 15, 2011. An amendment to the Plan increasing the authorized number of shares to 32,313,686 was approved by the board on October 11, 2011, effective as of October 18, 2011. An amendment to the Plan increasing the authorized number of shares to 36,313,686 was approved by the board on December 15, 2011, effective as of December 15, 2011.

1. PURPOSE. The purpose of this Plan is to provide incentives to attract, retain and motivate eligible persons whose present and potential contributions are important to the success of the Company, its Parent and Subsidiaries, by offering them an opportunity to participate in the Company’s future performance through awards of Options and Restricted Stock. Capitalized terms not defined in the text are defined in Section 22 hereof. Although this Plan is intended to be a written compensatory benefit plan within the meaning of Rule 701 promulgated under the Securities Act, grants may be made pursuant to this Plan which do not qualify for exemption under Rule 701 or Section 25102(o) of the California Corporations Code. Any requirement of this Plan which is required in law only because of Section 25102(o) need not apply if the Committee so provides.

2. SHARES SUBJECT TO THE PLAN.

2.1 Number of Shares Available. Subject to Sections 2.2 and 17 hereof, the total number of Shares reserved and available for grant and issuance pursuant to this Plan will be 36,313,686 Shares(1) or such lesser number of Shares as permitted by applicable law. Subject to Sections 2.2, 5.10 and 17 hereof, Shares subject to Awards previously granted will again be available for grant and issuance in connection with future Awards under this Plan to the extent such Shares: (i) cease to be subject to issuance upon exercise of an Option, other than due to exercise of such Option; (ii) are subject to an Award granted hereunder but the Shares subject to such Award are forfeited or repurchased by the Company at the original issue price; or (iii) are subject to an Award that otherwise terminates without Shares being issued. At all times the Company will reserve and keep available a sufficient number of Shares as will be required to satisfy the requirements of all Awards granted and outstanding under this Plan.

2.2 Adjustment of Shares. In the event that the number of outstanding shares of the Company’s Common Stock is changed by a stock dividend, recapitalization, stock split, reverse stock split, subdivision, combination, reclassification or similar change in the capital structure of the Company without consideration, then (i) the number of Shares reserved for issuance under this Plan, (ii) the Exercise Prices of and number of Shares subject to outstanding Options and (iii) the Purchase Prices of and number of Shares subject to other outstanding Awards will be proportionately adjusted, subject to any required action by the Board or the shareholders of the Company and compliance with applicable securities laws; provided, however, that fractions of a Share will not be issued but will either be paid in cash at the Fair Market Value of such fraction of a Share or will be rounded down to the nearest whole Share, as determined by the Committee.

3. ELIGIBILITY. ISOs (as defined in Section 5 hereof) may be granted only to employees (including officers and directors who are also employees) of the Company or of a Parent or Subsidiary of the Company. NQSOs (as defined in Section 5 hereof) and Restricted Stock Awards may be granted to employees, officers, directors and consultants of the Company or any Parent or Subsidiary of the Company; provided such consultants are not entities or non-natural persons and/or render bona fide services that are not in connection with the offer and sale of securities in a capital-raising transaction. A person may be granted more than one Award under this Plan.

4. ADMINISTRATION.

4.1 Committee Authority. This Plan will be administered by the Committee or the Board if no Committee is created by the Board. Subject to the general purposes, terms and conditions of this Plan, and to the direction of the Board, the Committee will have full power to implement and carry out this Plan. Without limitation, the Committee will have the authority to:

(a) construe and interpret this Plan, any Award Agreement and any other agreement or document executed pursuant to this Plan;
(b) prescribe, amend and rescind rules and regulations relating to this Plan;
(c) approve persons to receive Awards;
(d) determine the form and terms of Awards;
(e) determine the number of Shares or other consideration subject to Awards;
(f) determine whether Awards will be granted singly, in combination with, in tandem with, in replacement of, or as alternatives to, other Awards under this Plan or awards under any other incentive or compensation plan of the Company or any Parent or Subsidiary of the Company;
grant waivers of any conditions of this Plan or any Award;

determine the terms of vesting, exercisability and payment of Awards;

correct any defect, supply any omission, or reconcile any inconsistency in this Plan, any Award, any Award Agreement, any Exercise Agreement or any Restricted Stock Purchase Agreement;
determine whether an Award has been earned;
make all other determinations necessary or advisable for the administration of this Plan; and
extend the vesting period beyond a Participant’s Termination Date.

4.2 Committee Discretion. Unless in contravention of any express terms of this Plan or Award, any determination made by the Committee with respect to any Award will be made in its sole discretion either (i) at the time of grant of the Award, or (ii) subject to Section 5.9 hereof, at any later time. Any such determination will be final and binding on the Company and on all persons having an interest in any Award under this Plan. The Committee may delegate to one or more officers of the Company the authority to grant or cancel Awards to such one or more officers.

5. OPTIONS. The Committee may grant Options to eligible persons described in Section 3 hereof and will determine whether such Options will be Incentive Stock Options within the meaning of the Code (“ISOs”) or Nonqualified Stock Options (“NQSOs”), the number of Shares subject to the Option, the Exercise Price of the Option, the period during which the Option may be exercised, and all other terms and conditions of the Option, subject to the following:

5.1 Form of Option Grant. Each Option granted under this Plan will be evidenced by an Agreement which will expressly identify the Option as an ISO or an NQSO (“Stock Option Agreement”), and will be in such form and contain such provisions (which need not be the same for each Participant) as the Committee may from time to time approve, and which will comply with and be subject to the terms and conditions of this Plan.

5.2 Date of Grant. The date of grant of an Option will be the date on which the Committee makes the determination to grant such Option, unless a later date is otherwise specified by the Committee. The Stock Option Agreement and a copy of this Plan will be delivered to the Participant within a reasonable time after the granting of the Option.

5.3 Exercise Period. Options may be exercisable immediately but subject to repurchase pursuant to Section 11 hereof or may be exercisable within the times or upon the events determined by the Committee as set forth in the Stock Option Agreement governing such Option; provided, however, that no Option will be exercisable after the expiration of ten (10) years from the date the Option is granted; and provided further that no ISO granted to a person who directly or by attribution owns more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any Parent or Subsidiary of the Company (“Ten Percent Shareholder”) will be exercisable after the expiration of five (5) years from the date the ISO is granted. The Committee also may provide for Options to become exercisable at one time or from time to time, periodically or otherwise, in such number of Shares or percentage of Shares as the Committee determines. Subject to earlier termination of the Option as provided herein, to the extent section 25102(o) of the California Corporations Code is intended to apply, each Participant who is not an officer, director or consultant of the Company or of a Parent or Subsidiary of the Company shall have the right to exercise an Option granted hereunder at the rate of no less than twenty percent (20%) per year over five (5) years from the date such Option is granted.

5.4 Exercise Price. The Exercise Price of an Option will be determined by the Committee when the Option is granted and may not be less than eighty-five percent (85%) of the Fair Market Value of the Shares on the date of grant; provided that (i) the Exercise Price of an ISO will not be less than one hundred percent (100%) of the Fair Market Value of the Shares on the date of grant and (ii) the Exercise Price of any Option granted to a Ten Percent Shareholder will not be less than one hundred ten percent (110%) of the Fair Market Value of the Shares on the date of grant. Payment for the Shares purchased must be made in accordance with Section 7 hereof.

5.5 Method of Exercise. Options may be exercised only by delivery to the Company of a written stock option exercise agreement (the “Exercise Agreement”) in a form approved by the Committee (which need not be the same for each Participant). The Exercise Agreement will state (i) the number of Shares being purchased, (ii) the restrictions imposed on the Shares purchased under such Exercise Agreement, if any, and (iii) such representations and agreements regarding Participant’s investment intent and access to information and other matters, if any, as may be required or desirable by the Company to comply with applicable securities laws. Participant shall execute and deliver to the Company the Exercise Agreement together with payment in full of the Exercise Price, and any applicable taxes, for the number of Shares being purchased.

5.6 Termination. Subject to earlier termination pursuant to Sections 17 and 18 hereof and notwithstanding the exercise periods set forth in the Stock Option Agreement, exercise of an Option will always be subject to the following:

(a) If the Participant is Terminated for any reason other than death, Disability or for Cause, then the Participant may exercise such Participant’s Options only to the extent that such Options are exercisable as to Vested Shares upon the Termination Date or as otherwise determined by the Committee. Such Options must be exercised by the Participant, if at all, as to all or some of the Vested Shares calculated as of the Termination Date or such other date determined by the Committee, within three (3) months after the Termination Date or within such shorter time period, not less than thirty (30) days, or within such longer time period, not exceeding five (5) years, after the Termination Date as may be determined by the Committee, with any exercise beyond three (3) months after the Termination Date deemed to be an NQSO but in any event, no later than the expiration date of the Options.

(b) If the Participant is Terminated because of Participant’s death or Disability (or the Participant dies within three (3) months after a Termination other than for Cause), then Participant’s Options may be exercised only to the extent that such Options are exercisable as to Vested Shares by Participant on the Termination Date or as otherwise determined by the Committee. Such Options must be exercised by Participant (or Participant’s legal representative or authorized assignee), if at all, as to all or some of the Vested Shares calculated as of the Termination Date or such other date determined by the
Within the meaning of SEC Rule 144 (and, if such shares were purchased from the Company by use of a promissory note, such note has been fully paid with
inconsistent with Section 25102(o) of the California Corporations Code.

Value on the date the Restricted Stock Award is granted or at the time the purchase is consummated. Payment of the Purchase Price must be made in accordance
consummated, except in the case of a sale to a Ten Percent Shareholder, in which case the Purchase Price will be one hundred percent (100%) of the Fair Market

date the Restricted Stock Purchase Agreement is delivered to the person. If such person does not execute and deliver the Restricted Stock Purchase Agreement

Participant's execution and delivery of the Restricted Stock Purchase Agreement and full payment for the Shares to the Company within thirty (30) days from the

restrictions to which the Shares will be subject, and all other terms and conditions of the Restricted Stock Award, subject to the following:

specified restrictions. The Committee will determine to whom an offer will be made, the number of Shares the person may purchase, the Purchase Price, the

exceed 25,000,000 Shares (adjusted in proportion to any adjustments under Section 2.2 hereof) over the term of the Plan.

amended or altered, nor will any discretion or authority granted under this Plan be exercised, so as to disqualify this Plan under Section 422 of the Code or,

permitted under Section 5.4 hereof for Options granted on the date the action is taken to reduce the Exercise Price.

Section 424(h) of the Code. Subject to Section 5.10 hereof, the Committee may reduce the Exercise Price of outstanding Options without the consent of

Participants by a written notice to them; provided, however, that the Exercise Price may not be reduced below the minimum Exercise Price that would be

Options for the first One Hundred Thousand Dollars ($100,000) worth of Shares to become exercisable in such calendar year will be ISOs and the Options for the

respect to which ISOs are exercisable for the first time by a Participant during any calendar year exceeds One Hundred Thousand Dollars ($100,000), then the

not exceed One Hundred Thousand Dollars ($100,000). If the Fair Market Value of Shares on the date of grant with respect to which ISOs are exercisable for the first time by a Participant during any calendar year exceeds One Hundred Thousand Dollars ($100,000), then the Options for the first One Hundred Thousand Dollars ($100,000) worth of Shares to become exercisable in such calendar year will be ISOs and the Options for the amount in excess of One Hundred Thousand Dollars ($100,000) that become exercisable in that calendar year will be NQSOs. In the event that the Code or the regulations promulgated thereunder are amended after the Effective Date (as defined in Section 18 hereof) to provide for a different limit on the Fair Market Value of Shares permitted to be subject to ISOs, then such different limit will be automatically incorporated herein and will apply to any Options granted after the effective date of such amendment.

5.7 Limitations on Exercise. The Committee may specify a reasonable minimum number of Shares that may be purchased on any exercise of an Option, provided that such minimum number will not prevent Participant from exercising the Option for the full number of Shares for which it is then exercisable.

5.8 Limitations on ISOs. The aggregate Fair Market Value (determined as of the date of grant) of Shares with respect to which ISOs are exercisable for the first time by a Participant during any calendar year (under this Plan or under any other incentive stock option plan of the Company or any Parent or Subsidiary of the Company) will not exceed One Hundred Thousand Dollars ($100,000). If the Fair Market Value of Shares on the date of grant with respect to which ISOs are exercisable for the first time by a Participant during any calendar year exceeds One Hundred Thousand Dollars ($100,000), then the Options for the first One Hundred Thousand Dollars ($100,000) worth of Shares to become exercisable in such calendar year will be ISOs and the Options for the amount in excess of One Hundred Thousand Dollars ($100,000) that become exercisable in that calendar year will be NQSOs. In the event that the Code or the regulations promulgated thereunder are amended after the Effective Date (as defined in Section 18 hereof) to provide for a different limit on the Fair Market Value of Shares permitted to be subject to ISOs, then such different limit will be automatically incorporated herein and will apply to any Options granted after the effective date of such amendment.

5.9 Modification, Extension or Renewal. The Committee may modify, extend or renew outstanding Options and authorize the grant of new Options in substitution therefor, provided that any such action may not, without the written consent of a Participant, impair any of such Participant’s rights under any Option previously granted. Any outstanding ISO that is modified, extended, renewed or otherwise altered will be treated in accordance with Section 424(h) of the Code. Subject to Section 5.10 hereof, the Committee may reduce the Exercise Price of outstanding Options without the consent of Participants by a written notice to them; provided, however, that the Exercise Price may not be reduced below the minimum Exercise Price that would be permitted under Section 5.4 hereof for Options granted on the date the action is taken to reduce the Exercise Price.

5.10 No Disqualification. Notwithstanding any other provision in this Plan, no term of this Plan relating to ISOs will be interpreted, amended or altered, nor will any discretion or authority granted under this Plan be exercised, so as to disqualify this Plan under Section 422 of the Code or, without the consent of the Participant, to disqualify any Participant’s ISO under Section 422 of the Code. In no event shall the total number of Shares issued (counting each

reissuance of a Share that was previously issued and then forfeited or repurchased by the Company as a separate issuance) under the Plan upon exercise of ISOs exceed 25,000,000 Shares (adjusted in proportion to any adjustments under Section 2.2 hereof) over the term of the Plan.

6. RESTRICTED STOCK. A Restricted Stock Award is an offer by the Company to sell to an eligible person Shares that are subject to certain specified restrictions. The Committee will determine to whom an offer will be made, the number of Shares the person may purchase, the Purchase Price, the restrictions to which the Shares will be subject, and all other terms and conditions of the Restricted Stock Award, subject to the following:

6.1 Form of Restricted Stock Award. All purchases under a Restricted Stock Award made pursuant to this Plan will be evidenced by an Award Agreement (“Restricted Stock Purchase Agreement”) that will be in such form (which need not be the same for each Participant) as the Committee will from time to time approve, and will comply with and be subject to the terms and conditions of this Plan. The Restricted Stock Award will be accepted by the Participant’s execution and delivery of the Restricted Stock Purchase Agreement and full payment for the Shares to the Company within thirty (30) days from the date the Restricted Stock Purchase Agreement is delivered to the person. If such person does not execute and deliver the Restricted Stock Purchase Agreement along with full payment for the Shares to the Company within thirty (30) days, then the offer will terminate, unless otherwise determined by the Committee.

6.2 Purchase Price. The Purchase Price of Shares sold pursuant to a Restricted Stock Award will be determined by the Committee and will be at least eighty-five percent (85%) of the Fair Market Value of the Shares on the date the Restricted Stock Award is granted or at the time the purchase is consummated, except in the case of a sale to a Ten Percent Shareholder, in which case the Purchase Price will be one hundred percent (100%) of the Fair Market Value on the date the Restricted Stock Award is granted or at the time the purchase is consummated. Payment of the Purchase Price must be made in accordance with Section 7 hereof.

6.3 Restrictions. Restricted Stock Awards may be subject to the restrictions set forth in Section 11 hereof or such other restrictions not inconsistent with Section 25102(o) of the California Corporations Code.

7. PAYMENT FOR SHARE PURCHASES

7.1 Payment. Payment for Shares purchased pursuant to this Plan may be made in cash (by check) or, where expressly approved for the Participant by the Committee and where permitted by law:

(a) by cancellation of indebtedness of the Company owed to the Participant;

(b) by surrender of shares that: (i) either (A) have been owned by Participant for more than six (6) months and have been paid for within the meaning of SEC Rule 144 (and, if such shares were purchased from the Company by use of a promissory note, such note has been fully paid with
promulgated under the Exchange Act, an Option, or prior to exercise, the Shares subject to the Option, may not be pledged, hypothecated or otherwise transferred.

Committee determines that it is, will, or may no longer be relying upon the exemption from registration under the Exchange Act as set forth in Rule 12h-1(f).

representative.

the Participant or Participant's legal representative and any elections with respect to an Award may be made only by the Participant or Participant's legal representative.

which the options are to be passed to beneficiaries upon the death of the trustor (settlor), or by gift to "immediate family" as that term is defined in 17 C.F.R.

by Participant, other than by will or by the laws of descent and distribution, and, with respect to NQSOs, by instrument to an inter vivos or testamentary trust in which the Participant is the grantor.

issued to the Participant. After Shares are issued to the Participant, the Participant will have all the rights of a shareholder with respect to such Shares, including the right to vote and receive all dividends or other distributions made or paid with respect to such Shares; provided, that if such Shares are Restricted Stock, then any new, additional or different securities the Participant may become entitled to receive with respect to such Shares by virtue of a stock dividend, stock split or any other change in the corporate or capital structure of the Company will be subject to the same restrictions as the Restricted Stock. The Committee may, in its sole discretion, elect to assist the Participant in paying for Shares purchased under this Plan by authorizing a guarantee by the Company of a third-party loan to the Participant.

amount required to be withheld, determined on the date that the amount of tax to be withheld is to be determined; but in no event will the Company withhold Shares if such withholding would result in adverse accounting consequences to the Company. All elections by a Participant to have Shares withheld for this purpose will be made in accordance with the requirements established by the Committee for such elections and be in writing in a form acceptable to the Committee.

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11. **RESTRICTIONS ON SHARES.**

11.1 **Right of First Refusal.** At the discretion of the Committee, the Company may reserve to itself and/or its assignee(s) in the Award Agreement a right of first refusal to purchase all Shares that a Participant (or a subsequent transferee) may propose to transfer to a third party, unless otherwise not permitted by Section 25102(o) of the California Corporations Code, provided that such right of first refusal terminates upon the Company’s initial public offering of Common Stock pursuant to an effective registration statement filed under the Securities Act.

11.2 **Right of Repurchase.** At the discretion of the Committee, the Company may reserve to itself and/or its assignee(s) in the Award Agreement a right to repurchase Unvested Shares held by a Participant for cash and/or cancellation of purchase money indebtedness owed to the Company by the Participant following such Participant’s Termination at any time within the later of ninety (90) days after the Participant’s Termination Date and the date the Participant purchases Shares under the Plan at the Participant’s Exercise Price or Purchase Price, as the case may be, provided that to the extent Section 25102(o) of the California Corporations Code is intended to apply, unless the Participant is an officer, director or consultant of the Company or of a Parent or Subsidiary of the Company, such right of repurchase lapses at the rate of no less than twenty percent (20%) per year over five (5) years from: (a) the date of grant of the Option or (b) in the case of Restricted Stock, the date the Participant purchases the Shares.

12. **CERTIFICATES.** All certificates for Shares or other securities delivered under this Plan will be subject to such stock transfer orders, legends and other restrictions as the Committee may deem necessary or advisable, including restrictions under any applicable federal, state or foreign securities law, or any rules, regulations and other requirements of the SEC or any stock exchange or automated quotation system upon which the Shares may be listed or quoted.

13. **ESCRROW; PLEDGE OF SHARES.** To enforce any restrictions on a Participant’s Shares set forth in Section 11 hereof, the Committee may require the Participant to deposit all certificates representing Shares, together with stock powers or other instruments of transfer approved by the Committee, appropriately endorsed in blank, with the Company or an agent designated by the Company to hold in escrow until such restrictions have lapsed or terminated. The Committee may cause a legend or legends referencing such restrictions to be placed on the certificates. Any Participant who is permitted to execute a promissory note as partial or full consideration for the purchase of Shares under this Plan will be required to pledge and deposit with the Company all or part of the Shares so purchased as collateral to secure the payment of Participant’s obligation to the Company under the promissory note; provided, however, that the Committee may require or accept other or additional forms of collateral to secure the payment of such obligation and, in any event, the Company will have full recourse against the Participant under the promissory note notwithstanding any pledge of the Participant’s Shares or other collateral. In connection with any pledge of the Shares, Participant will be required to execute and deliver a written pledge agreement in such form as the Committee will from time to time approve. The Shares purchased with the promissory note may be released from the pledge on a pro rata basis as the promissory note is paid.

14. **EXCHANGE AND BUYOUT OF AWARDS.** The Committee may, at any time or from time to time, authorize the Company, with the consent of the respective Participants, to issue new Awards in exchange for the surrender and cancellation of any or all outstanding Awards. The Committee may at any time buy from a Participant an Award previously granted with payment in cash, shares of Common Stock of the Company (including Restricted Stock) or other consideration, based on such terms and conditions as the Committee and the Participant may agree.

15. **SECURITIES LAW AND OTHER REGULATORY COMPLIANCE.** Although this Plan is intended to be a written compensatory benefit plan within the meaning of Rule 701 promulgated under the Securities Act, grants may be made pursuant to this plan which do not qualify for exemption under Rule 701 or Section 25102(o) of the California Corporations Code. Any requirement of this Plan which is required in law only because of Section 25102(o) need not apply if the Committee so provides. An Award will not be effective unless such Award is in compliance with all applicable federal and state securities laws, rules and regulations of any governmental body, and the requirements of any stock exchange or automated quotation system upon which the Shares may then be listed or quoted, as they are in effect on the date of grant of the Award and also on the date of exercise or other issuance. Notwithstanding any other provision in this Plan, the Company will have no obligation to issue or deliver certificates for Shares under this Plan prior to (i) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable, and/or (ii) compliance with any exemption, completion of any registration or other qualification of such Shares under any state or federal law or ruling of any governmental body that the Company determines to be necessary or advisable. The Company will be under no obligation to register the Shares with the SEC or to effect compliance with the exemption, registration, qualification or listing requirements of any state securities laws, stock exchange or automated quotation system, and the Company will have no liability for any inability or failure to do so.

16. **NO OBLIGATION TO EMPLOY.** Nothing in this Plan or any Award granted under this Plan will confer or be deemed to confer on any Participant any right to continue in the employ of, or to continue any other relationship with, the Company or any Parent or Subsidiary of the Company or limit in any way the right of the Company or any Parent or Subsidiary of the Company to terminate Participant’s employment or other relationship at any time, with or without Cause.

17. **CORPORATE TRANSACTIONS.**

17.1 **Assumption or Replacement of Awards by Successor or Acquiring Company.** In the event of (i) a dissolution or liquidation of the Company, (ii) any reorganization, consolidation, merger or similar transaction or series of related transactions (each, a “combination transaction”) in which the Company is a constituent corporation or is a party, or as a result of such combination transaction, the voting securities of the Company that are outstanding immediately prior to the consummation of such combination transaction (other than...
any such securities that are held by an “Acquiring Shareholder”, as defined below) do not represent, or are not converted into, securities of the surviving corporation of such combination transaction (or such surviving corporation’s parent corporation if the surviving corporation is owned by the parent corporation) that, immediately after the consummation of such combination transaction, together possess at least fifty percent (50%) of the total voting power of all securities of such surviving corporation (or its parent corporation, if applicable) that are outstanding immediately after the consummation of such combination transaction, including securities of such surviving corporation (or its parent corporation, if applicable) that are held by the Acquiring Shareholder; or (b) a sale of all or substantially all of the assets of the Company, that is followed by the distribution of the proceeds to the Company’s shareholders, any or all outstanding Awards may be assumed, converted or replaced by the successor or acquiring corporation (if any), which assumption, conversion or replacement will be binding on all Participants. In the alternative, the successor or acquiring corporation may substitute equivalent Awards or provide substantially similar consideration to Participants as was provided to shareholders of the Company (after taking into account the existing provisions of the Awards). The successor or acquiring corporation may also substitute by issuing, in place of outstanding Shares of the Company held by the Participant, substantially similar shares or other property subject to repurchase restrictions and other provisions no less favorable to the Participant than those which applied to such outstanding Shares immediately prior to such transaction described in this Section 17.1. For purposes of this Section 17.1, an “Acquiring Shareholder” means a shareholder or shareholders of the Company that (i) merges or combines with the Company in such combination transaction or (ii) owns or controls a majority of another corporation that merges or combines with the Corporation in such combination transaction. In the event such successor or acquiring corporation (if any) refuses to assume, convert, replace or substitute Awards, as provided above, pursuant to a transaction described in this Section 17.1, then notwithstanding any other provision in this Plan to the contrary, such Awards will expire on such transaction at such time and on such conditions as the Board will determine.

17.2 Other Treatment of Awards. Subject to any greater rights granted to Participants under the foregoing provisions of this Section 17, in the event of the occurrence of any transaction described in Section 17.1 hereof, any outstanding Awards will be treated as provided in the applicable agreement or plan of reorganization, merger, consolidation, dissolution, liquidation or sale of assets.

17.3 Assumption of Awards by the Company. The Company, from time to time, also may substitute or assume outstanding awards granted by another company, whether in connection with an acquisition of such other company or otherwise, by either (i) granting an Award under this Plan in substitution of such other company’s award or (ii) assuming such award as if it had been granted under this Plan if the terms of such assumed award could be applied to an Award granted under this Plan. Such substitution or assumption will be permissible if the holder of the substituted or assumed award would have been eligible to be granted an Award under this Plan if the other company had applied the rules of this Plan to such grant. In the event the Company assumes an award granted by another company, the terms and conditions of such award will remain unchanged (except that the exercise price and the number and nature of shares issuable upon exercise of any such option will be adjusted appropriately pursuant to Section 424(a) of the Code). In the event the Company elects to grant a new Option rather than assuming an existing option, such new Option may be granted with a similarly adjusted Exercise Price.

18. ADOPTION AND SHAREHOLDER APPROVAL. This Plan will become effective on the date that it is adopted by the Board (the “Effective Date”). This Plan will be approved by the shareholders of the Company (excluding Shares issued pursuant to this Plan), consistent with applicable laws, within twelve (12) months before or after the Effective Date. Upon the Effective Date, the Board may grant Awards pursuant to this Plan; provided, however, that: (i) no Option may be exercised prior to initial shareholder approval of this Plan; (ii) no Option granted pursuant to an increase in the number of Shares approved by the Board shall be exercised prior to the time such increase has been approved by the shareholders of the Company; (iii) in the event that initial shareholder approval is not obtained within the time period provided herein, all Awards granted hereunder shall be canceled, any Shares issued pursuant to any Award shall be canceled and any purchase of Shares issued hereunder shall be rescinded; and (iv) Awards granted pursuant to an increase in the number of Shares approved by the Board which increase is not timely approved by shareholders shall be canceled, any Shares issued pursuant to any such Awards shall be canceled, and any purchase of Shares subject to any such Award shall be rescinded.

19. TERM OF PLAN/GOVERNING LAW. Unless earlier terminated as provided herein, this Plan will terminate ten (10) years from the Effective Date or, if earlier, the date of shareholder approval. This Plan and all agreements hereunder shall be governed by and construed in accordance with the laws of the State of California.

20. AMENDMENT OR TERMINATION OF PLAN. Subject to Section 5.9 hereof, the Board may at any time terminate or amend this Plan in any respect, including without limitation amendment of any form of Award Agreement or instrument to be executed pursuant to this Plan; provided, however, that the Board will not, without the approval of the shareholders of the Company, amend this Plan in any manner that requires such shareholder approval pursuant to Section 25102(a) of the California Corporations Code or the Code or the regulations promulgated thereunder as such provisions apply to ISO plans.

21. NONEXCLUSIVITY OF THE PLAN. Neither the adoption of this Plan by the Board, the submission of this Plan to the shareholders of the Company for approval, nor any provision of this Plan will be construed as creating any limitations on the power of the Board to adopt such additional compensation arrangements as it may deem desirable, including, without limitation, the granting of stock options and other equity awards otherwise than under this Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

22. DEFINITIONS. As used in this Plan, the following terms will have the following meanings:

“Award” means any award under this Plan, including any Option or Restricted Stock Award.

“Award Agreement” means, with respect to each Award, the signed written agreement between the Company and the Participant setting forth the terms and conditions of the Award, including the Stock Option Agreement and Restricted Stock Agreement.

“Board” means the Board of Directors of the Company.

“Cause” means Termination because of (i) any willful, material violation by the Participant of any law or regulation applicable to the business of the Company or a Parent or Subsidiary of the Company, the Participant’s conviction for, or guilty plea to, a felony or a crime involving moral turpitude, or any willful perpetration by the Participant of a common law fraud, (ii) the Participant’s commission of an act of personal dishonesty which involves personal profit in connection with the Company or any other entity having a business relationship with the Company, (iii) any material breach by the Participant of any provision of
any agreement or understanding between the Company or any Parent or Subsidiary of the Company and the Participant regarding the terms of the Participant’s service as an employee, officer, director or consultant to the Company or a Parent or Subsidiary of the Company, including without limitation, the willful and continued failure or refusal of the Participant to perform the material duties required of such Participant as an employee, officer, director or consultant of the Company or a Parent or Subsidiary of the Company, other than as a result of having a Disability, or a breach of any applicable invention assignment and confidentiality agreement or similar agreement between the Company or a Parent or Subsidiary of the Company and the Participant, (iv) Participant’s disregard of the policies of the Company or any Parent or Subsidiary of the Company so as to cause loss, damage or injury to the property, reputation or employees of the Company or a Parent or Subsidiary of the Company, or (v) any other misconduct by the Participant which is materially injurious to the financial condition or business reputation of, or is otherwise materially injurious to, the Company or a Parent or Subsidiary of the Company.


“Committee” means the committee created and appointed by the Board to administer this Plan, or if no committee is created and appointed, the Board.

“Company” means Splunk, Inc., or any successor corporation.

“Disability” means a disability, whether temporary or permanent, partial or total, as determined by the Committee.


“Exercise Price” means the price at which a holder of an Option may purchase the Shares issuable upon exercise of the Option.

“Fair Market Value” means, as of any date, the value of a share of the Company’s Common Stock determined as follows:

(a) if such Common Stock is then quoted on the Nasdaq National Market, its closing price on the Nasdaq National Market on the date of determination as reported in The Wall Street Journal;

(b) if such Common Stock is publicly traded and is then listed on a national securities exchange, its closing price on the date of determination on the principal national securities exchange on which the Common Stock is listed or admitted to trading as reported in The Wall Street Journal;

(c) if such Common Stock is publicly traded but is not quoted on the Nasdaq National Market nor listed or admitted to trading on a national securities exchange, the average of the closing bid and asked prices on the date of determination as reported by The Wall Street Journal (or, if not so reported, as otherwise reported by any newspaper or other source as the Board may determine); or

(d) if none of the foregoing is applicable, by the Committee in good faith.

“Option” means an award of an option to purchase Shares pursuant to Section 5 hereof.

“Parent” means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if each of such corporations other than the Company owns stock representing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

“Participant” means a person who receives an Award under this Plan.

“Plan” means this Splunk, Inc. 2003 Equity Incentive Plan, as amended from time to time.

“Purchase Price” means the price at which a Participant may purchase Restricted Stock.

“Restricted Stock” means Shares purchased pursuant to a Restricted Stock Award.

“Restricted Stock Award” means an award of Shares pursuant to Section 6 hereof.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Shares” means shares of the Company’s Common Stock reserved for issuance under this Plan, as adjusted pursuant to Sections 2 and 17 hereof, and any successor security.

“Subsidiary” means 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 representing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

“Termination” or “Terminated” means, for purposes of this Plan with respect to a Participant, that the Participant has for any reason ceased to provide services as an employee, officer, director or consultant to the Company or a Parent or Subsidiary of the Company. A Participant will not be deemed to have ceased to provide services in the case of (i) sick leave, (ii) military leave, or (iii) any other leave of absence approved by the Committee, provided that such leave is for a period of not more than ninety (90) days (a) unless reinstatement (or, in the case of an employee with an ISO, reemployment) upon the expiration of such leave is guaranteed by contract or statute, or (b) unless provided otherwise pursuant to formal policy adopted from
NOTICE OF GLOBAL STOCK OPTION GRANT

You (the “Participant”) are hereby granted an option (the “Option”) to purchase shares of Common Stock (the “Shares”) of Splunk Inc. (the “Company”) pursuant to the Company’s 2003 Equity Incentive Plan, at the Exercise Price Per Share (defined below) that is no less than 100% of the fair market value of the Company’s shares on the Date of Grant (defined below), as may be amended from time to time (the “Plan”), as described below.

| Participant’s Name: | |
| Number of Shares Subject to Option: | |
| Exercise Price Per Share: | US$ |
| Date of Grant: | |
| Vesting Commencement Date: | |
| Vesting Schedule: | Provided you continue to provide services to the Company or any Subsidiary or Parent of the Company, the Option will become vested as to portions of the total “Number of Shares Subject to Option” set forth above as follows: |

| Exercise Schedule: | o Same as Vesting Schedule | o Early Exercise Permitted |
| Option Expiration Date: | The date ten (10) years after the Date of Grant, with earlier expiration in the event of Termination of service as provided in Section 3 of the Global Stock Option Agreement. |
| U.S. Tax Status of Option: | o Incentive Stock Option (ISO) (To extent permitted by law) | o Nonqualified Stock Option (NQSO) |
| | (Check one). | (The Option is a NQSO if neither box is checked). |

Additional Terms: If this box is checked, the additional terms and conditions set forth on Attachment 1 hereto (which must be executed by the Company and the Participant) are applicable and are incorporated herein by reference. (No document need be attached as Attachment 1 if the box is not checked.)

By their signatures below, the Company and the Participant agree that the Option is granted under and governed by this Notice and by the provisions of the Plan and the Global Stock Option Agreement, including any applicable country-specific terms in the Addendum thereto (together, the “Agreement”), attached hereto as Exhibit A. The Plan and the Agreement are incorporated herein by reference. Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan or in the Agreement, as applicable. The Participant acknowledges receipt of a copy of the Plan and the Agreement, represents that the Participant has carefully read and is familiar with their provisions, and hereby accepts the Option subject to all of its terms and conditions. The Participant acknowledges that there may be adverse tax consequences upon exercise of the Option or disposition of the Shares and that the Participant should consult a tax adviser prior to such exercise or disposition.

| SPLUNK INC. | PARTICIPANT |
EMPLOYEE

SPLUNK INC.
2003 EQUITY INCENTIVE PLAN

GLOBAL STOCK OPTION AGREEMENT

1. GRANT OF OPTION. Splunk Inc. (the “Company”) hereby grants to the Participant an option (this “Option”) to purchase up to the total number of shares of Common Stock of the Company set forth in the Notice of Global Stock Option Grant (the “Grant Notice”) (the “Shares”) at the Exercise Price Per Share set forth in the Grant Notice (the “Exercise Price”), subject to all of the terms and conditions of this Global Stock Option Agreement, including any applicable country-specific terms in the Addendum hereto (together, the “Agreement”), and the Company’s 2003 Equity Incentive Plan, as may be amended from time to time (the “Plan”). Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan, or in the Grant Notice, as applicable. If the Participant is a U.S. taxpayer and the Option is designated as an Incentive Stock Option in the Grant Notice, the Option is intended to qualify as an “incentive stock option” (an “ISO”) within the meaning of Section 422 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”).

2. VESTING AND EXERCISE.

2.1 Vesting Period of Option. This Option will become vested during its term as to portions of the Shares in accordance with the Vesting Schedule set forth in the Grant Notice. If application of the applicable vesting fraction causes a fractional share, such share shall be rounded down to the nearest whole share for each month except for the last month in such vesting period, at the end of which last month the Option shall become exercisable for the full remainder of the Shares. Shares that are vested pursuant to the Vesting Schedule set forth in the Grant Notice are “Vested Shares.” Shares that are not vested pursuant to the Vesting Schedule set forth in the Grant Notice are “Unvested Shares.”

2.2 Exercise Period of Option. This Option will become exercisable during its term as to all Shares that are or become Vested Shares. In addition, if the Exercise Schedule contained in the Grant Notice indicates that “Early Exercise” of this Option is permitted, this Option may be exercised as to all or a portion of the Shares, including Unvested Shares, at any time prior to the Participant’s Termination Date (any such exercise that includes Unvested Shares, an “Early Exercise”). If the Participant elects to make an Early Exercise of this Option, the Company, or its assignee, shall have the option to repurchase the Participant’s Unvested Shares on the terms and conditions set forth in the Exercise Agreement (the “Repurchase Option”) if the Participant is Terminated (as defined in the Plan) for any reason, or no reason, including without limitation the Participant’s death, Disability (as defined in the Plan), voluntary resignation or termination by the Company or its Parent or Subsidiary with or without Cause (as defined in the Plan). A partial Early Exercise of this Option shall be deemed to cover first all Vested Shares and then the earliest vesting installment of Unvested Shares.

2.3 Expiration. The Option shall expire on the Option Expiration Date set forth in the Grant Notice or earlier as provided in Section 3 below or pursuant to Section 5.6 of the Plan.

3. TERMINATION.

3.1 Termination for Any Reason Except Death, Disability or Cause. If the Participant is Terminated for any reason, except death, Disability or cause, the Option, to the extent (and only to the extent) that it is vested and would have been exercisable by the Participant on the Termination Date, may be exercised by the Participant no later than three (3) months after the Termination Date, but in any event no later than the Expiration Date.

3.2 Termination Because of Death or Disability. If the Participant is Terminated because of death or Disability of the Participant (or the Participant dies within three (3) months of Termination when Termination is for any reason other than the Participant’s Disability or for Cause), the Option, to the extent that it is vested and exercisable by the Participant on the Termination Date, may be exercised by the Participant (or the Participant’s legal representative) no later than twelve (12) months after the Termination Date, but in any event no later than the Expiration Date. Any exercise beyond (i) three (3) months after the Termination Date when the Termination is due to the Participant’s death or disability, within the meaning of Section 22(e)(3) of the Code; or (ii) twelve (12) months after the Termination Date when the termination is for the Participant’s disability, within the meaning of Section 22(e)(3) of the Code, is deemed to be an NQSO.

3.3 Termination for Cause. If the Participant is terminated for cause, then the Participant’s Options shall expire on such Participant’s Termination Date and the Participant must exercise such Participant’s Options, if at all, by no later than such Termination Date, but not to an extent greater than such Options are exercisable as to Vested Shares upon the Termination Date; provided, however, that the Committee may elect waive or modify such conditions.

4. NATURE OF GRANT. In accepting the Option, the Participant acknowledges, understands and agrees that:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature, and may be amended, suspended or terminated by the Company at any time;

(b) the grant of the Option is voluntary and occasional and does not create any contractual or other right to receive future grants of options, or benefits in lieu of options, even if options have been granted repeatedly in the past;
(c) all decisions with respect to future option grants, if any, will be at the sole discretion of the Company;

(d) the Option grant and the Participant’s participation in the Plan will not be interpreted to form an employment or service contract or relationship with the Company or any Subsidiary or Parent;

(e) nothing in the Plan or this Agreement shall confer on the Participant any right to continue in the employ of, or other relationship with, the Company or any Parent or Subsidiary, or limit in any way the right of the Company or any Parent or Subsidiary to terminate the Participant’s employment or other relationship at any time, with or without Cause.

(f) the Participant is voluntarily participating in the Plan;

(g) the future value of the Shares underlying the Option is unknown, indeterminable and cannot be predicted with certainty;

(h) if the underlying Shares do not increase in value, the Option will have no value;

(i) if the Participant exercises the Option and acquires Shares, the value of such Shares may increase or decrease in value, even below the Exercise Price; and

(j) the Option and any Shares acquired under the Plan are not intended to replace any pension rights or compensation; and

(k) the Option and any Shares acquired under the Plan are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, long-service awards, pension or retirement or welfare benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Participant’s employer, whether the Company or any Subsidiary or Parent (the “Employer”);

(l) if the Participant resides outside the U.S., the following additional provisions shall apply:

(i) the Option and any Shares acquired under the Plan are extraordinary items that do not constitute compensation of any kind for services of any kind rendered to the Company or the Employer, and which are outside the scope of the Participant’s employment or service contract, if any;

(ii) in the event of the Participant’s Termination of services as described in Section 3 of the Agreement (for any reason whatsoever and whether or not in breach of employment laws in the country where the Participant resides), any right to vest in the Option will terminate and any post-Termination exercise period as described in Section 3 of the Agreement will be measured as of the date the Participant ceases to actively provide services and will not be extended by any notice period mandated under any employment law in the country where the Participant resides, even if otherwise applicable to the Participant’s employment benefits from his or her Employer (e.g., active employment would not include a period of “garden leave” or similar period); the Committee shall have the exclusive discretion to determine when the Participant is no longer providing active services for purposes of this Option grant; and

(iii) no claim or entitlement to compensation or damages shall arise from forfeiture of the Option resulting from the Participant’s Termination of services as described in Section 3 of the Agreement (for any reason whatsoever and whether or not in breach of employment laws in the country where the Participant resides), the Participant’s performance of services for the Participant’s employer, whether the Company or any Subsidiary or Parent (the “Employer”), the Participant’s executor, administrator, heir or legatee, as the case may be) must deliver to the Company an executed stock option exercise agreement (with Notice of Exercise of Stock Option) in the form attached hereto as Exhibit A, or in such other form as may be approved by the Committee from time to time (the “Exercise Agreement”), which shall set forth, inter alia, (i) the Participant’s election to exercise the Option, (ii) the number of Shares being purchased, (iii) any restrictions imposed on the Shares and (iv) any representations, warranties and agreements regarding the Participant’s investment intent and access to information as may be required by the Company to comply with applicable securities laws. If someone other than the Participant exercises the Option, then such person must submit documentation reasonably acceptable to the Company verifying that such person has the legal right to exercise the Option and such person shall be subject to all of the restrictions contained herein as if such person were the Participant.

5. **MANNER OF EXERCISE.**

5.1 **Stock Option Exercise Agreement.** To exercise this Option, the Participant (or in the case of exercise after the Participant’s death or incapacity, the Participant’s executor, administrator, heir or legatee, as the case may be) must deliver to the Company an executed stock option exercise agreement (with Notice of Exercise of Stock Option) in the form attached hereto as Exhibit A, or in such other form as may be approved by the Committee from time to time (the “Exercise Agreement”), which shall set forth, inter alia, (i) the Participant’s election to exercise the Option, (ii) the number of Shares being purchased, (iii) any restrictions imposed on the Shares and (iv) any representations, warranties and agreements regarding the Participant’s investment intent and access to information as may be required by the Company to comply with applicable securities laws. If someone other than the Participant exercises the Option, then such person must submit documentation reasonably acceptable to the Company verifying that such person has the legal right to exercise the Option and such person shall be subject to all of the restrictions contained herein as if such person were the Participant.

5.2 **Limitations on Exercise.** The Option may not be exercised unless such exercise is in compliance with all applicable federal, state, local and foreign securities laws, as they are in effect on the date of exercise. The Option may not be exercised as to fewer than one hundred (100) Shares unless it is exercised as to all Shares as to which the Option is then exercisable.

5.3 **Payment.** The Exercise Agreement shall be accompanied by full payment of the Exercise Price for the shares being purchased and any Tax-Related Items (as defined in Section 5.4 of the Agreement) in cash (by check), or where permitted by law:

(a) by cancellation of indebtedness of the Company to the Participant;

(b) by waiver of cash compensation due or accrued to the Participant from the Employer on an after-tax basis for services rendered;
5.4 **Tax Obligations.** Regardless of any action the Company or the Participant’s Employer (if different) takes with respect to any or all income tax, social insurance, payroll tax, payment on account or other tax related items related to the Participant’s participation in the Plan and legally applicable to the Participant (“Tax-Related Items”), the Participant acknowledges that the ultimate liability for all Tax-Related Items is and remains the Participant’s responsibility and may exceed the amount actually withheld by the Company or the Employer. The Participant further acknowledges that the Company and/or the Employer (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Option, including, but not limited to, the grant, vesting or exercise of the Option, the subsequent sale of Shares acquired pursuant to such exercise and the receipt of any dividends; and (ii) do not commit to and are under no obligation to structure the terms of the grant or any aspect of the Option to reduce or eliminate the Participant’s liability for Tax-Related Items or achieve any particular tax result. Further, if the Participant has become subject to tax in more than one jurisdiction between the Date of Grant and the date of any relevant taxable or tax withholding event, as applicable, the Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Prior to the relevant taxable or tax withholding event, as applicable, the Participant will pay or make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, the Participant authorizes the Company and/or the Employer, or their respective agents, at their discretion, to satisfy the obligations with regard to all Tax-Related Items by one or a combination of the following: (i) withholding from the Participant’s cash compensation paid to the Participant by the Employer; or (ii) withholding from proceeds of the sale of Shares acquired at exercise of the Option either through a voluntary sale or, provided a public market for the Company’s Shares exists, through a mandatory sale arranged by the Company (on the Participant’s behalf pursuant to this authorization).

Finally, the Participant shall pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of the Participant’s participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the Shares or the proceeds of the sale of Shares, if the Participant fails to comply with the Participant’s obligations in connection with the Tax-Related Items.

5.5 **Issuance of Shares.** Provided that the Exercise Agreement and payment are in form and substance satisfactory to counsel for the Company and the Company is not otherwise prohibited by applicable securities or exchange control laws from issuing Shares, the Company shall issue the Shares registered in the name of the Participant, the Participant’s authorized assignee, or the Participant’s legal representative, and shall deliver certificates representing the Shares with the appropriate legends affixed thereto.

6. **NOTICE OF DISQUALIFYING DISPOSITION OF ISO SHARES.** If the Option is an ISO, and if the Participant sells or otherwise disposes of any of the Shares acquired pursuant to the ISO on or before the later of (i) the date two (2) years after the Date of Grant, and (ii) the date one (1) year after transfer of such Shares to the Participant upon exercise of the Option, the Participant shall immediately notify the Company in writing of such disposition.

7. **COMPLIANCE WITH LAWS AND REGULATIONS.** The Plan and this Agreement are intended to comply with Section 25102(o) of the California Corporations Code and any regulations relating thereto. Any provision of this Agreement which is inconsistent with Section 25102(o) or any regulations relating thereto shall, without further act or amendment by the Company or the Board, be reformed to comply with the requirements of Section 25102(o) and any regulations relating thereto. The exercise of the Option and the issuance and transfer of Shares shall be subject to compliance by the Company and the Participant with all applicable requirements of U.S. federal and state securities laws and with all applicable requirements of any stock exchange on which the Company’s Common Stock may be listed at the time of such issuance or transfer. The Participant understands that the Company is under no obligation to register or qualify the Shares with the SEC, any state securities commission or any stock exchange to effect such compliance.

8. **DATA PRIVACY.** For the Participants outside the U.S., the Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of the Participant’s personal data as described in this Agreement and any other Option grant materials by and among, as applicable, the Employer, the Company and its Subsidiaries for the exclusive purpose of implementing, administering and managing the Participant’s participation in the Plan.

The Participant understands that the Company and the Employer may hold certain personal information about the Participant, including, but not limited to, the Participant’s name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any shares of stock or directorships held in the Company, details of all Options or any other entitlement to shares of stock awarded, canceled, exercised, vested, unvested or outstanding in the Participant’s favor (“Data”), for the exclusive purpose of implementing, administering and managing the Plan.

The Participant understands that Data may be transferred to stock plan service provider selected by the Company to assist with the implementation, administration and management of the Plan. The Participant understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipient’s country (e.g., the United States) may have different data privacy laws and protections than the Participant’s country. The Participant understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting the Participant’s local human resources representative. The Participant authorizes the Company and any other possible recipients which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purpose of implementing, administering and managing his or her participation in the Plan. The Participant understands that Data will be held only as long as is necessary to implement, administer and manage Participant’s participation in the Plan. The Participant understands that he or she may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her local human resources representative. The Participant understands, however, that refusing or withdrawing his or her consent
9. **NONTRANSFERABILITY OF OPTION.** The Option may not be transferred in any manner other than by will or by the laws of descent and distribution, and may be exercised during the lifetime of the Participant only by the Participant or in the event of the Participant’s incapacity, by the Participant’s legal representative. The terms of the Option shall be binding upon the executors, administrators, successors and assigns of the Participant. With respect to NQSOs granted to the Participants who reside in the U.S., the Options 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 that term is defined in 17 C.F.R. 240.16a-1(e).

10. **COMPANY’S RIGHT OF FIRST REFUSAL.** Before any Vested Shares held by the Participant or any transferee of such Vested Shares may be sold or otherwise transferred (including without limitation a transfer by gift or operation of law), the Company and/or its assignee(s) shall have an assignable right of first refusal to purchase the Vested Shares to be sold or transferred on the terms and conditions set forth in the Exercise Agreement (the “Right of First Refusal”). The Company’s Right of First Refusal will terminate when the Company’s securities become publicly traded.

11. **U.S. TAX CONSEQUENCES.** Set forth below for U.S. taxpayers is a brief summary as of the Effective Date of the Plan of some of the U.S. federal and California state tax consequences of exercise of the Option and disposition of the Shares. THIS SUMMARY IS NECESSARILY INCOMPLETE, AND THE TAX LAWS AND REGULATIONS ARE SUBJECT TO CHANGE. PARTICIPANT SHOULD CONSULT A TAX ADVISER BEFORE EXERCISING THE OPTION OR DISPOSING OF THE SHARES:

11.1 **Exercise of Incentive Stock Option.** If the Option qualifies as an ISO, there will be no regular U.S. federal or California state income tax liability upon the exercise of the Option, although the excess, if any, of the Fair Market Value of the Shares on the date of exercise over the Exercise Price will be treated as a tax preference item for federal alternative minimum tax purposes and may subject the Participant to the alternative minimum tax in the year of exercise.

11.2 **Exercise of Nonqualified Stock Option.** If the Option is a NQSO, there may be a regular U.S. federal and California state income tax liability upon the exercise of the Option. The Participant will be treated as having received compensation income (taxable at ordinary income tax rates) equal to the excess, if any, of the Fair Market Value of the Shares on the date of exercise over the Exercise Price. If the Shares are held for more than twelve (12) months after the date of purchase of the Shares pursuant to the exercise of an NQSO, any gain realized on disposition of the Shares will be treated as long term capital gain for federal and California income tax purposes.

11.3 **Disposition of Shares.** The following tax consequences may apply upon disposition of the Shares.

   (a) **Incentive Stock Options.** If the Shares are held for more than twelve (12) months after the date of purchase of the Shares pursuant to the exercise of an ISO and are disposed of more than two (2) years after the Date of Grant, any gain realized on disposition of the Shares will be treated as long term capital gain for federal and California income tax purposes. If Vested Shares purchased under an ISO are disposed of within the applicable one (1) year or two (2) year period, any gain realized on such disposition will be treated as compensation income taxable at ordinary income rates in the year of the disposition to the extent of the excess, if any, of the Fair Market Value of the Shares on the date of exercise over the Exercise Price. To the extent the Shares were exercised prior to vesting coincident with the filing of an 83(b) Election, the amount taxed because of a disqualifying disposition will be based upon the excess, if any, of the fair market value on the date of exercise over the exercise price.

   (b) **Nonqualified Stock Options.** If the Shares are held for more than twelve (12) months after the date of purchase of the Shares pursuant to the exercise of an NQSO, any gain realized on disposition of the Shares will be treated as long term capital gain.

11.4 **Section 83(b) Election for Unvested Shares Purchased by Early Exercise.** For U.S. taxpayers, with respect to Unvested Shares which are subject to the Repurchase Option, unless an election is filed by the Participant with the U.S. Internal Revenue Service (and, if necessary, the proper state taxing authorities), within 30 days of the purchase of the Unvested Shares, electing pursuant to Section 83(b) of the Code (and similar state tax provisions, if applicable) to be taxed currently on any difference between the Exercise Price of the Unvested Shares and their Fair Market Value on the date of purchase, there may be a recognition of taxable income (including, where applicable, alternative minimum taxable income) to the Participant, measured by the excess, if any, of the Fair Market Value of the Unvested Shares at the time they cease to be Unvested Shares, over the Exercise Price of the Unvested Shares.

12. **PRIVILEGES OF STOCK OWNERSHIP.** The Participant shall not have any of the rights of a shareholder with respect to any Shares until the Shares are issued to the Participant.

13. **INTERPRETATION.** Any dispute regarding the interpretation of this Agreement shall be submitted by the Participant or the Company to the Committee for review. The resolution of such a dispute by the Committee shall be final and binding on the Company and the Participant.

14. **ENTIRE AGREEMENT.** The Plan is incorporated herein by reference. This Agreement, including any applicable country-specific addendum hereto, the corresponding Notice of Global Stock Option Grant and the Plan and the exhibits thereto constitute the entire agreement of the parties and supersede all prior undertakings and agreements with respect to the subject matter hereof.

15. **NOTICES.** Any notice required to be given or delivered to the Company under the terms of this Agreement shall be in writing and addressed to the Corporate Secretary of the Company at its principal corporate offices. Any notice required to be given or delivered to the Participant shall be in writing and addressed to the Participant at the address indicated above or to such other address as such party may designate in writing from time to time to the Company. All notices shall be deemed to have been given or delivered upon: (i) at the time of personal delivery, if delivery is in person; (ii) one (1) U.S. business day after deposit with an express overnight courier for United States deliveries, or two (2) U.S. business days after such deposit for deliveries outside of the United States, with proof of delivery from the courier requested; or (iii) three (3) U.S. business days after deposit in the United States mail by certified mail (return receipt requested) for United States deliveries.
The Company reserves the right to impose other requirements on the Option and the Shares purchased upon exercise of the Option, to the extent the Company determines it is necessary or advisable under the laws of the country in which the Participant resides pertaining to the issuance or sale of Shares or to facilitate the administration of the Plan, and to require the Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

23. **NO ADVICE REGARDING GRANT.** The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding the Participant’s participation in the Plan, or the Participant’s acquisition or sale of the underlying Shares. The Participant is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.

**ADDENDUM TO THE GLOBAL STOCK OPTION AGREEMENT UNDER THE SPLUNK INC. 2003 EQUITY INCENTIVE PLAN**

**Terms and Conditions**

This Addendum includes additional terms and conditions that govern the Option granted to the Participant under the Splunk Inc. (the “Company”) 2003 Equity Incentive Plan (the “Plan”) if the Participant resides in one of the countries listed below. Capitalized terms used but not defined in this Addendum have the meanings set forth in the Plan, the Notice of Global Stock Option Grant (the “Notice”) and/or the Global Stock Option Agreement (the “Agreement”).

**Notifications**

This Addendum also includes information regarding exchange controls and certain other issues of which the Participant should be aware with respect to his or her participation in the Plan. The information is based on the securities, exchange control and other laws in effect in the respective countries as of October 2011. Such laws are often complex and change frequently. As a result, the Company strongly recommends that the Participant not rely on the information in this Addendum as the only source of information relating to the consequences of the Participant’s participation in the Plan because the information may be out of date at the time that the Option vests, the Participant exercises his or her Option, or the Participant sells the Shares purchased upon exercise of the Option under the Plan.

In addition, the information contained herein is general in nature and may not apply to the Participant’s particular situation, and the Company is not in a position to assure the Participant of a particular result.

Accordingly, the Participant is advised to seek appropriate professional advice as to how the relevant laws in the Participant’s country may apply to his or her situation.
Finally, if the Participant is a citizen or resident of a country other than the one in which he or she is currently working, transfers after the Date of Grant or is considered a resident of another country for local law purposes, the information contained herein may not be applicable to the Participant and the Company shall, in its discretion, determine to what extent the terms and conditions contained herein shall apply to the Participant.

AUSTRALIA

Terms and Conditions

Exercise. This provision supplements Section 5 of the Agreement:

The Participant may not vest in nor exercise the Option unless and until the later of (a) the time the Option would vest under the Vesting Schedule, or (b) a time when the Company’s Shares are publicly traded, quoted or listed on a recognized exchange or national securities market and are no longer subject to a lock-up restricting the Participant’s sale or disposal of the Shares (the “Liquidity Event”). Should the Option not first vest and become exercisable until the Liquidity Event occurs, then as of the date of the

Liquidity Event, the Participant shall receive vesting credit for any dates under the Vesting Schedule that preceded such event. Moreover, in no event may the Participant exercise his or her Vested Shares unless and until (i) the Fair Market Value per Share on the date of exercise equals or exceeds the Exercise Price for the Option.

Lastly, the Option Expiration Date of Option shall be a date which is no greater than seven (7) years from the Date of Grant. Accordingly, notwithstanding the Grant Notice and Section 2.3 of the Agreement, the Option may not be exercised after the expiration of seven (7) years from the Date of Grant.

CHINA

Terms and Conditions

Exercise. This provision supplements Section 5 of the Agreement:

If Participant is a national of the People’s Republic of China, the Participant may not vest in nor exercise the Option unless and until the later of (a) the time the Option would vest under the Vesting Schedule, or (b) a time when the Company’s Shares are publicly traded, quoted or listed on a recognized exchange or national securities market, are no longer subject to a lock-up restricting the Participant’s sale or disposal of the Shares and the Company has obtained approval from the State Administration of Foreign Exchange (the “SAFE Approval”). Should the Option not first vest and become exercisable until the SAFE Approval occurs, then as of the date of the SAFE approval, the Participant shall receive vesting credit for any dates under the Vesting Schedule that preceded such event. The Participant further agrees to abide by any restrictions or conditions imposed on the Option or the shares issued upon the exercise of the Option.

FRANCE

Terms and Conditions

Language Consent. By accepting the grant, the Participant confirms having read and understood the Plan and Agreement which were provided in the English language. The Participant accepts the terms of those documents accordingly.

Consentement Relatif à la Langue Utilisée. En acceptant l’attribution, le Participant confirme avoir lu et compris le Plan et le Contrat, qui ont été communiqués en langue anglaise. Le Participant accepte les termes de ces documents en connaissance de cause.

Notifications

Exchange Control Notification. The Participant may hold Shares obtained under the Plan outside of France provided that the Participant declares all foreign accounts whether open, current, or closed on his or her annual income tax return.

GERMANY

Notifications

Exchange Control Notification. Cross-border payments in excess of €12,500 must be reported monthly to the German Federal Bank on Form Z10. No report is required for payments less than €12,500.

HONG KONG

Terms and Conditions

Securities Law Compliance. To facilitate compliance with securities laws in Hong Kong, the Participant agrees not to sell the Shares issued upon exercise of the Options within six (6) months from the Date of Grant.

Notifications

Securities Law Notification. WARNING: This offer of Options and the Shares to be issued upon exercise of the Options do not constitute a public offer of securities. The offer is available only to employees of the Company or a Subsidiary or Parent of the Company or under a small offering exemption to 50 or fewer offerees in Hong Kong over a 12-month period. The contents of the Agreement, including this Addendum, and the Plan have not been reviewed by any regulatory authority in Hong Kong. Participant is advised to exercise caution in relation to the offer. If the Participant has any doubt about any of the contents of the Agreement, this Addendum, or the Plan, the Participant should obtain independent professional advice.
**Nature of Scheme.** The Company specifically intends that the Plan will not be an occupational retirement scheme for purposes of the Occupational Retirement Schemes Ordinance ("ORSO"). Notwithstanding the foregoing, if the Plan is deemed to constitute an occupational retirement scheme for the purposes of ORSO, then Participant’s grant shall be void.

**ITALY**

**Terms and Conditions**

**Manner of Exercise.** This provision supplements Section 5 of the Agreement:

Unless otherwise provided by the Committee, notwithstanding anything in Section 5 of the Plan or Sections 2 or 5 of the Agreement to the contrary, the Participants in Italy may not exercise their vested Options unless and until there is a public market for the Company’s Shares, either as a result of their registration under the U.S. Exchange Act of 1934, as amended, or quotation on a recognized national securities exchange or if a successor or acquiring company converts awards to rights over its shares and such shares are publicly traded.

Further, notwithstanding anything in the Agreement to the contrary, the Participant must exercise the Option using the same day sale method (as described in Section 7.1(e)(i) of the Plan) pursuant to which all Shares subject to the exercised Option will be sold immediately upon exercise and the proceeds of sale, less the Exercise Price, any Tax-Related Items and broker’s fees or commissions, will be remitted to the Participant in accordance with any applicable exchange control laws and regulations. The Participant acknowledges that the Company’s designated broker or transfer agent is under no obligation to arrange for the sale of the Shares at any particular price.

To the extent that regulatory requirements change, the Company reserves the right to permit exercises through any of the means set forth in the Agreement or the Plan.

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**Data Privacy.** This provision replaces Section 8 of the Agreement:

The Participant understands that the Employer, the Company and any subsidiary as a data processor of the Company may hold certain personal information about the Participant, including, but not limited to, the Participant’s name, home address and telephone number, date of birth, social insurance or other identification number, salary, nationality, job title, any Shares or directorships held in the Company or any subsidiary, details of all Options, or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in the Participant’s favor ("Data"), and that the Company and the Employer will process said data and other data lawfully received from third party for the exclusive purpose of implementing, managing and administering the Plan and complying with applicable laws, regulations and community legislation.

The Participant also understands that providing the Company with Data is mandatory for compliance with laws and is necessary for the performance of the Plan and that the Participant's refusal to provide such Data would make it impossible for the Company to perform its contractual obligations and may affect the Participant’s ability to participate in the Plan. The Controller of personal data processing is Splunk Inc., with registered offices at 250 Brannan Street, 2nd Floor, San Francisco, California 94107 U.S.A. and, pursuant to Legislative Decree no. 196/2003, its Representative in Italy for privacy purposes is [insert name of Italian entity] S.r.l., with its registered offices at [insert address of Italian entity].

The Participant understands that Data will not be publicized, but it may be accessible by the Employer as the data processor of the Company and within the Employer’s organization by its internal and external personnel in charge of processing. Furthermore, Data may be transferred to banks, other financial institutions, or brokers involved in the management and administration of the Plan. The Participant understands that Data may also be transferred to the independent registered public accounting firm engaged by the Company, and also to the legitimate addresses under applicable laws. The Participant further understands that the Company and/or any Subsidiary or Parent will transfer Data among themselves as necessary for the purpose of implementing, administering and managing the Participant's participation in the Plan, and that the Company and/or any Subsidiary or Parent may each further transfer Data to third parties assisting the Company in the implementation, administration, and management of the Plan, including any requisite transfer of Data to a broker or other third party with whom the Participant may elect to deposit any Shares acquired at exercise of the Option. Such recipients may receive, possess, use, retain, and transfer Data in electronic or other form, for the purposes of implementing, administering, and managing the Participant’s participation in the Plan. The Participant understands that these recipients may be acting as controllers, processors, or persons in charge of processing, as the case may be, according to applicable privacy laws, and that they may be located in or outside the European Economic Area, such as in Japan or the United States or elsewhere, in countries that do not provide an adequate level of data protection as intended under Italian privacy law. Should the Company exercise its discretion in suspending all necessary legal obligations connected with the management and administration of the Plan, it will delete Data as soon as it has completed all the necessary legal obligations connected with the management and administration of the Plan.

The Participant understands that Data processing related to the purposes specified above shall take place under automated or non-automated conditions, anonymously when possible, that comply with the purposes for which Data is collected and with confidentiality and security provisions, as set forth by applicable laws and regulations, with specific reference to Legislative Decree no. 196/2003.

The processing activity, including communication, the transfer of Data abroad, including outside of the European Economic Area, as herein specified and pursuant to applicable laws and regulations, does not require the Participant’s consent thereto, as the processing is necessary to performance of law and contractual obligations related to implementation, administration, and management of the Plan. The Participant understands that, pursuant to Section 7 of the Legislative Decree no. 196/2003, the Participant has the right at any moment to, including but not limited to, obtain confirmation that Data exist or not, access, verify their content, origins and accuracy, delete, update, integrate, correct, block or terminate, for legitimate reason, the Data processing. To exercise privacy rights the Participant should address the Employer.

Furthermore, the Participant is aware that Data will not be used for direct-marketing purposes. In addition, Data provided can be reviewed and questions or complaints can be addressed by contacting the Participant’s local human resources representative.
Plan Document Acknowledgement. In accepting the Option, the Participant acknowledges that he or she has received a copy of the Plan, has reviewed the Plan and the Agreement, including this Addendum, in their entirety and fully understand and accept all provisions of the Plan, the Agreement, and this Addendum.

The Participant further acknowledges that he or she has read and specifically and expressly approves the following clauses in the Agreement: Section 2: Vesting and Exercise; Section 3: Termination; Section 4: Nature of Grant; Section 5: Manner of Exercise; Section 7: Compliance with Laws and Regulations; Section 9: NonTransferability of Option; Section 10: Company’s Right of First Refusal; Section 21: Addendum; and the Data Privacy provision in this Addendum.

Notifications

Exchange Control Information. The Participant is required to report the following on his or her annual tax return: (1) any transfers of cash or Shares to or from Italy exceeding €10,000, (2) any foreign investments or investments held outside of Italy at the end of the calendar year exceeding €10,000 if such investments (e.g., vested Options, Shares, or cash) may result in income taxable in Italy (this will include reporting any Vested Shares if their intrinsic value (i.e., the difference between the fair market value of the Shares underlying the Vested Shares at the end of the year and the Exercise Price) combined with other foreign assets exceed €10,000), and (3) the amount of the transfers to and from abroad which have had an impact during the calendar year on the Participant’s foreign investments or investments held outside of Italy. Under certain circumstances, the Participant may be exempt from the requirement under (1) above if the transfer or investment is made through an authorized broker resident in Italy.

MEXICO

Terms and Conditions

Acknowledgements. This provision supplements Section 4 of the Agreement:

By accepting the Option, the Participant acknowledges that he or she has received a copy of the Plan and the Agreement, including this Addendum, which he or she has reviewed. The Participant further acknowledges that he or she accepts all the provisions of the Plan and the Agreement, including this Addendum. The Participant also acknowledges that he or she has read and specifically and expressly approves the terms and conditions set forth in the “Nature of Grant” Section of the Agreement, which clearly provide as follows:

(1) The Participant’s participation in the Plan does not constitute an acquired right;

(2) The Plan and the Participant’s participation in it are offered by the Company on a wholly discretionary basis;

(3) The Participant’s participation in the Plan is voluntary; and

(4) The Company and its Subsidiaries are not responsible for any decrease in the value of any Shares acquired upon exercise of the Option.

Labor Law Acknowledgement and Policy Statement. By accepting the Option, the Participant acknowledges that Splunk Inc., with registered offices at 250 Brannan Street, 2nd Floor, San Francisco, California 94107 U.S.A., is solely responsible for the administration of the Plan. The Participant further acknowledges that his or her participation in the Plan, the grant of the Option and any acquisition of Shares under the Plan do not constitute an employment relationship between the Participant and the Company because the Participant is participating in the Plan on a wholly commercial basis. Based on the foregoing, the Participant expressly acknowledges that the Plan and the benefits that he or she may derive from participation in the Plan do not establish any rights between the Participant and the Employer, and do not form part of the employment conditions and/or benefits provided by the Company or any Parent or Subsidiary, and any modification of the Plan or its termination shall not constitute a change or impairment of the terms and conditions of the Participant’s employment.

The Participant further understands that his or her participation in the Plan is the result of a unilateral and discretionary decision of the Company and, therefore, the Company reserves the absolute right to amend and/or discontinue the Participant’s participation in the Plan at any time, without any liability to the Participant.

Finally, the Participant hereby declares that he or she does not reserve to him or herself any action or right to bring any claim against the Company for any compensation or damages regarding any provision of the Plan or the benefits derived under the Plan, and that he or she therefore grants a full and broad release to the Company, its Subsidiaries, affiliates, branches, representation offices, shareholders, officers, agents and legal representatives, with respect to any claim that may arise.

Términos y Condiciones

Reconocimientos. Esta disposición suplementa la Sección 4 del Contrato:

Al aceptar la Opción, el Partícipe reconoce que ha recibido una copia del Plan y del Contrato, incluyendo este Anexo, que ha sido revisado por el Partícipe. El Partícipe reconoce, además, que acepta todas las disposiciones del Plan y del Contrato, incluyendo este Anexo. El Partícipe también reconoce que ha leído la Sección del Contrato intitulada “Reconocimientos” y específica y expresamente aprueba los términos y condiciones establecidos en dicha Sección, que claramente establece lo siguiente:

(1) La participación del Partícipe en el Plan no constituye un derecho adquirido;

(2) El Plan y la participación del Partícipe en el Plan se ofrecen por la Compañía de manera totalmente discrecional;

(3) La participación del Partícipe en el Plan es voluntaria; y

(4) La Compañía y sus Subsidiarias no son responsables por cualquier disminución en el valor de las Acciones adquiridas al ejercer la Opción.
the form of such joint election (the “Joint Election”). The Participant agrees to execute a joint election with the Company, Class 1 National Insurance contributions (the “Employer NICs”) that may be payable by the Company, the Employer, a Parent or a Subsidiary in connection with the Option and any event giving rise to Tax-Related Items. Without prejudice to the foregoing, the Participant agrees to execute a joint election with the Company, the form of such joint election (the “Joint Election”) having been approved formally by Her Majesty’s Revenue and Customs (“HMRC”), and any other required

THE NETHERLANDS

Notifications

Securities Law Information. The Participant should be aware of the Dutch insider-trading rules, which may impact the sale of Shares issued upon exercise of the Option. In particular, the Participant may be prohibited from effectuating certain transactions if the Participant has inside information about the Company.

Under Article 5:56 of the Dutch Financial Supervision Act, anyone who has “insider information” related to an issuing company is prohibited from effectuating a transaction in securities in or from the Netherlands. “Insider information” is defined as knowledge of specific information concerning the issuing company to which the securities relate or the trade in securities issued by such company, which has not been made public and which, if published, would reasonably be expected to affect the share price, regardless of the development of the price. The insider could be any employee of a Subsidiary or Parent in the Netherlands who has inside information as described herein.

Given the broad scope of the definition of inside information, certain employees working for the Company or for any Subsidiary or Parent in the Netherlands may have inside information and, thus, would be prohibited from effectuating a transaction in securities in the Netherlands at a time when the Participant has such inside information.

If the Participant is uncertain whether the insider-trading rules apply to the Participant, he or she should consult the Participant’s personal legal advisor.

SINGAPORE

Notifications

Securities Law Information. The Option is being granted to Participant pursuant to the “Qualifying Person” exemption under section 273(1)(f) of the Singapore Securities and Futures Act (Chapter 289, 2006 Ed.) (“SFA”). The Plan has not been lodged or registered as a prospectus with the Monetary Authority of Singapore. The Participant should note that such Option grant is subject to section 257 of the SFA and the Participant will not be able to make any subsequent sale in Singapore, or any offer of such subsequent sale of the Shares underlying the Option unless such sale or offer in Singapore is made pursuant to the exemptions under Part XIII Division (1) Subdivision (4) (other than section 280) of the SFA (Chapter 289, 2006 Ed.).

Director Notification Obligation. If the Participant is a director, associate director or shadow director of a Singaporean Subsidiary or Parent, the Participant is subject to certain notification requirements under the Singapore Companies Act. Among these requirements is an obligation to notify the Singaporean Subsidiary or Parent in writing when the Participant receives an interest (e.g., Option, Shares) in the Company or a Subsidiary or Parent. In addition, the Participant must notify the Singaporean Subsidiary or Parent when he or she sells any Shares (including when the Participant sells the Shares acquired under the Plan). These notifications must be made within two (2) days of acquiring or disposing of any interest in the Company or any Subsidiary or Parent. In addition, a notification must be made of the Participant’s interests in the Company or any Subsidiary or Parent within two (2) days of becoming a director.

SWEDEN

There are no country-specific provisions.

UNITED KINGDOM

Terms and Conditions

Section 431 Election. As a condition of participation in the Plan and the exercise of the Option, the Participant agrees that, jointly with the Employer, he or she shall enter into the joint election within Section 431 of the U.K. Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”) in respect of computing any tax charge on the acquisition of “Restricted Securities” (as defined in Sections 423 and 424 of ITEPA 2003), and that the Participant will not revoke such election at any time. This election will be to treat the Shares acquired pursuant to the exercise of the Option as if such Shares were not Restricted Securities (for U.K. tax purposes only). The Participant must enter into the form of election, which will be provided by the Company, concurrent with the execution of the Option Agreement.

Joint Election for Transfer of Liability for Employer National Insurance Contributions. As a condition of participation in the Plan and the exercise of the Option at a time when the Company’s Shares are considered readily convertible assets under U.K. law, the Participant agrees to accept any liability for secondary Class 1 National Insurance contributions (the “Employer NICs”) that may be payable by the Company, the Employer, a Parent or a Subsidiary in connection with the Option and any event giving rise to Tax-Related Items. Without prejudice to the foregoing, the Participant agrees to execute a joint election with the Company, the form of such joint election (the “Joint Election”) having been approved formally by Her Majesty’s Revenue and Customs (“HMRC”), and any other required
further agrees that the Company, the Employer, a Parent or a Subsidiary may collect the Employer NICs from the Participant by any of the means set forth in Section 5.4 of the Agreement.

If the Participant does not enter into a Joint Election prior to the exercise of the Option, he or she will not be entitled to exercise the Option unless and until he or she enters into a Joint Election, and no Shares will be issued to the Participant under the Plan, without any liability to the Company, the Employer, a Parent or a Subsidiary.

Responsibility for Taxes. This provision supplements Section 5.4 of the Agreement and applies if the Company’s Shares are considered readily convertible assets under U.K. law at the time of exercise:

If payment or withholding of tax is not made within 90 days of the event giving rise to the Tax-Related Items (the “Due Date”) or such other period specified in Section 222(1)(c) of the ITEPA 2003, the amount of any uncollected tax will constitute a loan owed by the Participant to the Employer, effective on the Due Date. The Participant agrees that the loan will bear interest at the then-current Official Rate of Her Majesty’s Revenue and Customs (“HMRC”), it will be immediately due and repayable, and the Company or the Employer may recover it at any time thereafter by any of the means referred to in Section 5.4 of the Agreement. Notwithstanding the foregoing, if the Participant is a director or executive officer of the Company (within the meaning of Section 13(k) of the U.S. Securities Exchange Act of 1934, as amended), the Participant will not be eligible for such a loan to cover the taxes due. In the event that the Participant is a director or executive officer and tax is not collected from or paid by the Participant by the Due Date, the amount of any uncollected tax will constitute a benefit to the Participant on which additional income tax and National Insurance contributions will be payable. The Participant will be responsible for reporting and paying any income tax and National Insurance contributions due on this additional benefit directly to HMRC under the self-assessment regime.

In addition, the Participant agrees that the Company and/or the Employer may calculate the Tax-Related Items to be withheld and accounted for by reference to the maximum applicable rates, without prejudice to any right the Participant may have to recover any overpayment from the relevant tax authorities.

CONSULTANT

SPLUNK INC.

NOTICE OF GLOBAL STOCK OPTION GRANT

You (the “Participant”) are hereby granted an option (the “Option”) to purchase shares of Common Stock (the “Shares”) of Splunk Inc. (the “Company”) pursuant to the Company’s 2003 Equity Incentive Plan, at the Exercise Price Per Share (defined below) that is no less than 100% of the fair market value of the Company’s shares on the Date of Grant (defined below), as may be amended from time to time (the “Plan”), as described below.

Participant’s Name: ____________________________

Number of Shares Subject to Option: ____________________________

Exercise Price Per Share: US$

Date of Grant: ____________________________

Vesting Commencement Date: ____________________________

Vesting Schedule: Provided you continue to provide services to the Company or any Subsidiary or Parent of the Company, the Option will become vested as to portions of the total “Number of Shares Subject to Option” set forth above as follows:

[INSERT VESTING SCHEDULE]

Exercise Schedule: o Same as Vesting Schedule o Early Exercise Permitted

Option Expiration Date: The date ten (10) years after the Date of Grant, with earlier expiration in the event of Termination of service as provided in Section 3 of the Global Stock Option Agreement.

U.S. Tax Status of Option: Nonqualified Stock Option (NQSO)

Additional Terms: o If this box is checked, the additional terms and conditions set forth on Attachment 1 hereto (which must be executed by the Company and the Participant) are applicable and are incorporated herein by reference. (No document need be attached as Attachment 1 if the box is not checked.)

By their signatures below, the Company and the Participant agree that the Option is granted under and governed by this Notice and by the provisions of the Plan and the Global Stock Option Agreement, including any applicable country-specific terms in the Addendum thereto (together, the “Agreement”), attached hereto as Exhibit A. The Plan and the Agreement are incorporated herein by reference. Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan or in the Agreement, as applicable. The Participant acknowledges receipt of a copy of the Plan and the Agreement, represents that the Participant has carefully read and is familiar with their provisions, and hereby accepts the Option subject to all of its terms and conditions. The Participant acknowledges that
there may be adverse tax consequences upon exercise of the Option or disposition of the Shares and that the Participant should consult a tax adviser prior to such exercise or disposition.

SPLUNK INC.

PARTICIPANT

By: ________________________________

Signature

Its: ________________________________

2

CONSULTANT

SPLUNK INC.

2003 EQUITY INCENTIVE PLAN

GLOBAL STOCK OPTION AGREEMENT

1. **GRANT OF OPTION.** Splunk Inc. (the “Company”) hereby grants to the Participant an option (this “Option”) to purchase up to the total number of shares of Common Stock of the Company set forth in the Notice of Global Stock Option Grant (the “Grant Notice”) (the “Shares”) at the Exercise Price Per Share set forth in the Grant Notice (the “Exercise Price”), subject to all of the terms and conditions of this Global Stock Option Agreement, including any applicable country-specific terms in the Addendum hereto (together, the “Agreement”), and the Company’s 2003 Equity Incentive Plan, as may be amended from time to time (the “Plan”). Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan, as may be amended from time to time (the “Plan”), or in the Grant Notice, as applicable.

2. **VESTING AND EXERCISE.**

2.1 **Vesting Period of Option.** This Option will become vested during its term as to portions of the Shares in accordance with the Vesting Schedule set forth in the Grant Notice. If application of the applicable vesting fraction causes a fractional share, such share shall be rounded down to the nearest whole share for each month except for the last month in such vesting period, at the end of which last month the Option shall become exercisable for the full remainder of the Shares. Shares that are vested pursuant to the Vesting Schedule set forth in the Grant Notice are “Vested Shares.” Shares that are not vested pursuant to the Vesting Schedule set forth in the Grant Notice are “Unvested Shares.”

2.2 **Exercise Period of Option.** This Option will become exercisable during its term as to all Shares that are or become Vested Shares. In addition, if the Exercise Schedule contained in the Grant Notice indicates that “Early Exercise” of this Option is permitted, this Option may be exercised as to all or a portion of the Shares, including Unvested Shares, at any time prior to the Participant’s Termination Date (any such exercise that includes Unvested Shares, an “Early Exercise”). If the Participant elects to make an Early Exercise of this Option, the Company, or its assignee, shall have the option to repurchase the Participant’s Unvested Shares on the terms and conditions set forth in the Exercise Agreement (the “Repurchase Option”) if the Participant is Terminated (as defined in the Plan) for any reason, or no reason, including without limitation the Participant’s death, Disability (as defined in the Plan), voluntary resignation or termination by the Company or its Parent or Subsidiary with or without Cause (as defined in the Plan). A partial Early Exercise of this Option shall be deemed to cover first all Vested Shares and then the earliest vesting installment of Unvested Shares.

2.3 **Expiration.** The Option shall expire on the Option Expiration Date set forth in the Grant Notice or earlier as provided in Section 3 below or pursuant to Section 5.6 of the Plan.

3. **TERMINATION.**

3.1 **Termination for Any Reason Except Death, Disability or Cause.** If the Participant is Terminated for any reason, except death, Disability or for Cause, the Participant, to the extent (and only to the extent) that it is vested and would have been exercisable by the Participant on the Termination Date, may be exercised by the Participant no later than three (3) months after the Termination Date, but in any event no later than the Expiration Date.

3.2 **Termination Because of Death or Disability.** If the Participant is Terminated because of death or Disability of the Participant (or the Participant dies within three (3) months of Termination when Termination is for any reason other than the Participant’s Disability or for Cause), the Option, to the extent that it is vested and exercisable by the Participant on the Termination Date, may be exercised by the Participant (or the Participant’s legal representative) no later than twelve (12) months after the Termination Date, but in any event no later than the Expiration Date.

3.3 **Termination for Cause.** If the Participant is terminated for Cause, then the Participant’s Options shall expire on such Participant’s Termination Date and the Participant must exercise such Participant’s Options, if at all, by no later than such Termination Date, but not to an extent greater than such Options are exercisable as to Vested Shares upon the Termination Date; provided, however, that the Committee may elect waive or modify such conditions.

4. **NATURE OF GRANT.** In accepting the Option, the Participant acknowledges, understands and agrees that:

(a) the Plan is established voluntarily by the Company, it is discretionary in nature, and may be amended, suspended or terminated by the Company at any time;

(b) the grant of the Option is voluntary and occasional and does not create any contractual or other right to receive future grants of options, or benefits in lieu of options, even if options have been granted repeatedly in the past;
or their respective agents, at their discretion, to satisfy the obligations with regard to all Tax-Related Items by one or a combination of the following:

Company and/or any Subsidiary or Parent to satisfy all Tax-Related Items. In this regard, the Participant authorizes the Company and/or any Subsidiary or Parent, (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Option, including, but

to any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by

the Option resulting from Termination of the Participant’s services by the Company or any Subsidiary or Parent (for any reason whatsoever and whether or not in

breach of any employment law in the country where the Participant resides, and whether

or not later found to be invalid) and in consideration of the grant of the Option to which the Participant is otherwise not entitled, the Participant irrevocably agrees

ever to institute any claim against the Company or any Subsidiary or Parent, waives his or her ability, if any, to bring any such claim, and releases the Company

and any Subsidiary or Parent from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by

participating in the Plan, the Participant shall be deemed irrevocably to have agreed not to pursue such claim and agrees to execute any and all documents

necessary to request dismissal or withdrawal of such claims.

5. **MANNER OF EXERCISE.**

5.1 **Stock Option Exercise Agreement.** To exercise this Option, the Participant (or in the case of exercise after the Participant’s death or

incapacity, the Participant’s executor, administrator, heir or legatee, as the case may be) must deliver to the Company an executed stock option exercise agreement

(with Notice of Exercise of Global Stock Option) in the form attached hereto as Exhibit A, or in such other form as may be approved by the Committee from time
to time (the “Exercise Agreement”), which shall set forth, *inter alia*, (i) the Participant’s election to exercise the Option, (ii) the number of Shares being purchased,

(iii) any restrictions imposed on the Shares and (iv) any representations, warranties and agreements regarding the Participant’s investment intent and access to

information as may be required by the Company to comply with applicable securities laws. If someone other than the Participant exercises the Option, then such

person must submit documentation reasonably acceptable to the Company verifying that such person has the legal right to exercise the Option and such person

shall be subject to all of the restrictions contained herein as if such person were the Participant.

5.2 **Limitations on Exercise.** The Option may not be exercised unless such exercise is in compliance with all applicable federal, state,

local or foreign securities laws, as they are in effect on the date of exercise. The Option may not be exercised as to fewer than one hundred (100) Shares unless it

is exercised as to all Shares as to which the Option is then exercisable.

5.3 **Payment.** The Exercise Agreement shall be accompanied by full payment of the Exercise Price for the shares being purchased and any

Tax-Related Items (as defined in Section 5.4 of the Agreement) in cash (by check), or where permitted by law:

(a) by cancellation of indebtedness of the Company to the Participant;

(b) by waiver of cash compensation due or accrued to the Participant for services rendered;

(c) any other form of consideration approved by the Committee; or

(d) by any combination of the foregoing.

5.4 **Tax Obligations.** Regardless of any action the Company or any Subsidiary or Parent takes with respect to any or all income tax, social

insurance, payroll tax, payment on account or other tax related items related to the Participant’s participation in the Plan and legally applicable to the Participant

(“Tax-Related Items”), the Participant acknowledges that the ultimate liability for all Tax-Related Items is and remains the Participant’s responsibility and may

exceed the amount actually withheld by the Company or any Subsidiary or Parent. The Participant further acknowledges that the Company and/or any Subsidiary or

Parent (i) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Option, including, but

not limited to, the grant, vesting or exercise of the Option, the subsequent sale of Shares acquired pursuant to such exercise and the receipt of any dividends; and

(ii) do not commit to and are under no obligation to

structure the terms of the grant or any aspect of the Option to reduce or eliminate the Participant’s liability for Tax-Related Items or achieve any particular tax

result. Further, if the Participant has become subject to tax in more than one jurisdiction between the Date of Grant and the date of any relevant taxable or tax

withholding event, as applicable, the Participant acknowledges that the Company and/or any Subsidiary or Parent may be required to withhold or account for Tax-

Related Items in more than one jurisdiction.

Prior to the relevant taxable or tax withholding event, as applicable, the Participant will pay or make adequate arrangements satisfactory to the

Company and/or any Subsidiary or Parent to satisfy all Tax-Related Items. In this regard, the Participant authorizes the Company and/or any Subsidiary or Parent,
or their respective agents, at their discretion, to satisfy the obligations with regard to all Tax-Related Items by one or a combination of the following:
Finally, the Participant shall pay to the Company or any Subsidiary or Parent any amount of Tax-Related Items that the Company or any Subsidiary or Parent may be required to withhold or account for as a result of the Participant’s participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to issue or deliver the Shares or the proceeds of the sale of Shares, if the Participant fails to comply with the Participant’s obligations in connection with the Tax-Related Items.

5.5 Issuance of Shares. Provided that the Exercise Agreement and payment are in form and substance satisfactory to counsel for the Company and the Company is not otherwise prohibited by applicable securities or exchange control laws from issuing Shares, the Company shall issue the Shares registered in the name of the Participant, the Participant’s authorized assignee, or the Participant’s legal representative, and shall deliver certificates representing the Shares with the appropriate legends affixed thereto.

6. COMPLIANCE WITH LAWS AND REGULATIONS. The Plan and this Agreement are intended to comply with Section 25102(o) of the California Corporations Code and any regulations relating thereto. Any provision of this Agreement which is inconsistent with Section 25102(o) or any regulations relating thereto shall, without further act or amendment by the Company or the Board, be reformed to comply with the requirements of Section 25102(o) and any regulations relating thereto. The exercise of the Option and the issuance and transfer of Shares shall be subject to compliance by the Company and the Participant with all applicable requirements of U.S. federal and state securities laws and with all applicable requirements of any stock exchange on which the Company’s Common Stock may be listed at the time of such issuance or transfer. The Participant understands that the Company is under no obligation to register or qualify the Shares with the SEC, any state securities commission or any stock exchange to effect such compliance.

7. DATA PRIVACY. For the Participants outside the U.S., the Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of the Participant’s personal data as described in this Agreement and any other Option grant materials by and among, as applicable, any Subsidiary or Parent, the Company and its Subsidiaries for the exclusive purpose of implementing, administering and managing the Participant’s participation in the Plan.

The Participant understands that the Company and any Subsidiary or Parent may hold certain personal information about the Participant, including, but not limited to, the Participant’s name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any shares of stock or directorships held in the Company, details of all Options or any other entitlement to shares of stock awarded, canceled, exercised, vested, unvested or outstanding in the Participant’s favor (“Data”), for the exclusive purpose of implementing, administering and managing the Plan.

The Participant understands that Data may be transferred to stock plan service provider selected by the Company to assist with the implementation, administration and management of the Plan. The Participant understands that the recipients of the Data may be located in the United States or elsewhere, and that the recipient’s country (e.g., the United States) may have different data privacy laws and protections than the Participant’s country. The Participant understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting the Participant’s local human resources representative. The Participant authorizes the Company and any other possible recipients which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purpose of implementing, administering and managing his or her participation in the Plan. The Participant understands that Data will be held only as long as is necessary to implement, administer and manage Participant’s participation in the Plan. The Participant understands that he or she may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her contact at the Company or its Subsidiary. The Participant understands, however, that refusing or withdrawing his or her consent may affect the Participant’s ability to participate in the Plan. For more information on the consequences of the Participant’s refusal to consent or withdrawal of consent, the Participant understands that he or she may contact his or her contact at the Company or its Subsidiary.

8. NONTRANSFERABILITY OF OPTION. The Option may not be transferred in any manner other than by will or by the laws of descent and distribution, and may be exercised during the lifetime of the Participant only by the Participant or in the event of the Participant’s incapacity, by the Participant’s legal representative. The terms of the Option shall be binding upon the executors, administrators, successors and assigns of the Participant. With respect to NQSOs granted to the Participants who reside in the U.S., the Options may be transferred by instrument to an inter vivos or testamentary trust in which the Participant has a beneficial interest.

9. COMPANY’S RIGHT OF FIRST REFUSAL. Before any Vested Shares held by the Participant or any transferee of such Vested Shares may be sold or otherwise transferred (including without limitation a transfer by gift or operation of law), the Company and/or its assignee(s) shall have an assignable right of first refusal to purchase the Vested Shares to be sold or transferred on the terms and conditions set forth in the Exercise Agreement (the “Right of First Refusal”). The Company’s Right of First Refusal will terminate when the Company’s securities become publicly traded.

10. U.S. TAX CONSEQUENCES. Set forth below for U.S. taxpayers is a brief summary as of the Effective Date of the Plan of some of the U.S. federal and California state tax consequences of exercise of the Option and disposition of the Shares. THIS SUMMARY IS NECESSARILY INCOMPLETE, AND THE TAX LAWS AND REGULATIONS ARE SUBJECT TO CHANGE. PARTICIPANT SHOULD CONSULT A TAX ADVISER BEFORE EXERCISING THE OPTION OR DISPOSING OF THE SHARES.

10.1 Exercise of Nonqualified Stock Options. There may be a regular U.S. federal and California state income tax liability upon the exercise of the Option. The Participant will be treated as having received compensation income (taxable at ordinary income tax rates) equal to the excess, if any, of the Fair Market Value of the Shares on the date of exercise over the Exercise Price. If the Participant is a current or former employee of the Company, the Company may be required to withhold from the
Participant’s compensation or collect from the Participant and pay to the applicable taxing authorities an amount equal to a percentage of this compensation income at the time of exercise.

10.2 Disposition of Shares. If the Shares are held for more than twelve (12) months after the date of purchase of the Shares pursuant to the exercise of an NQSO, any gain realized on disposition of the Shares will be treated as long term capital gain.

10.3 Section 83(b) Election for Unvested Shares Purchased by Early Exercise. For U.S. taxpayers, with respect to Unvested Shares which are subject to the Repurchase Option, unless an election is filed by the Participant with the U.S. Internal Revenue Service (and, if necessary, the proper state taxing authorities), within 30 days of the purchase of the Unvested Shares, electing pursuant to Section 83(b) of the Code (and similar state tax provisions, if applicable) to be taxed currently on any difference between the Exercise Price of the Unvested Shares and their Fair Market Value on the date of purchase, there may be a recognition of taxable income (including, where applicable, alternative minimum taxable income) to the Participant, measured by the excess, if any, of the Fair Market Value of the Unvested Shares at the time they cease to be Unvested Shares, over the Exercise Price of the Unvested Shares.

11. PRIVILEGES OF STOCK OWNERSHIP. The Participant shall not have any of the rights of a shareholder with respect to any Shares until the Shares are issued to the Participant.

12. INTERPRETATION. Any dispute regarding the interpretation of this Agreement shall be submitted by the Participant or the Company to the Committee for review. The resolution of such a dispute by the Committee shall be final and binding on the Company and the Participant.

13. ENTIRE AGREEMENT. The Plan is incorporated herein by reference. This Agreement, including any applicable country-specific addendum hereto, the corresponding Notice of Stock Option Grant and the Plan and the exhibits thereto constitute the entire agreement of the parties and supersede all prior undertakings and agreements with respect to the subject matter hereof.

14. NOTICES. Any notice required to be given or delivered to the Company under the terms of this Agreement shall be in writing and addressed to the Corporate Secretary of the Company at its principal corporate offices. Any notice required to be given or delivered to the Participant shall be in writing and addressed to the Participant at the address indicated above or to such other address as such party may designate in writing from time to time to the Company. All notices shall be deemed to have been given or delivered upon: (i) at the time of personal delivery, if delivery is in person; (ii) one (1) U.S. business day after deposit with an express overnight courier for United States deliveries, or two (2) U.S. business days after such deposit for deliveries outside of the United States, with proof of delivery from the courier requested; or (iii) three (3) U.S. business days after deposit in the United States mail by certified mail (return receipt requested) for United States deliveries.

15. SUCCESSORS AND ASSIGNS. The Company may assign any of its rights under this Agreement, including its rights to purchase Shares under the Right of First Refusal. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth herein, this Agreement shall be binding upon the Participant and the Participant’s heirs, executors, administrators, legal representatives, successors and assigns.

16. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California as such laws are applied to agreements between California residents entered into and to be performed entirely within California. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, then such provision will be enforced to the maximum extent possible and the other provisions will remain fully effective and enforceable.

For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this grant or the Agreement, the parties hereby submit to and consent to the exclusive jurisdiction of the State of California and agree that such litigation shall be conducted only in the courts of San Francisco County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this grant is made and/or to be performed.

17. ACCEPTANCE. The Participant hereby acknowledges receipt of a copy of the Plan and this Agreement. The Participant has read and understands the terms and provisions thereof, and accepts the Option subject to all the terms and conditions of the Plan and this Agreement. The Participant acknowledges that there may be adverse tax consequences upon vesting and exercise of the Option or disposition of the Shares and that the Participant should consult a tax adviser prior to such vesting, exercise or disposition.

18. ELECTRONIC DELIVERY. The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.

19. LANGUAGE. If the Participant has received this Agreement, or any other document related to the Option and/or the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

20. ADDENDUM. The Option shall be subject to any special provisions set forth in the Addendum for the Participant’s country of residence, if any. If the Participant relocates to one of the countries included in the Addendum during the life of the Option, the special provisions for such country shall apply to the Participant, to the extent the Company determines that the application of such provisions is necessary or advisable under the laws of the country in which the Participant resides pertaining to the issuance or sale of Shares or to facilitate the administration of the Plan. The Addendum constitutes part of this Agreement.

21. IMPOSITION OF OTHER REQUIREMENTS. The Company reserves the right to impose other requirements on the Option and the Shares purchased upon exercise of the Option, to the extent the Company determines it is necessary or advisable under the laws of the country in which the Participant resides pertaining to the issuance or sale of Shares or to facilitate the administration of the Plan, and to require the Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

22. NO ADVICE REGARDING GRANT. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding the Participant’s participation in the Plan, or the Participant’s acquisition or sale of the underlying Shares. The Participant is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.
ADDENDUM TO THE GLOBAL STOCK OPTION AGREEMENT UNDER THE SPLUNK INC. 2003 EQUITY INCENTIVE PLAN

Terms and Conditions

This Addendum includes additional terms and conditions that govern the Option granted to the Participant under the Splunk Inc. (the “Company”) 2003 Equity Incentive Plan (the “Plan”) if the Participant resides in one of the countries listed below. Capitalized terms used but not defined in this Addendum have the meanings set forth in the Plan, the Notice of Global Stock Option Grant (the “Notice”) and/or the Global Stock Option Agreement (the “Agreement”).

Notifications

This Addendum also includes information regarding exchange controls and certain other issues of which the Participant should be aware with respect to his or her participation in the Plan. The information is based on the securities, exchange control and other laws in effect in the respective countries as of October 2011. Such laws are often complex and change frequently. As a result, the Company strongly recommends that the Participant not rely on the information in this Addendum as the only source of information relating to the consequences of the Participant’s participation in the Plan because the information may be out of date at the time that the Option vests, the Participant exercises his or her Option, or the Participant sells the Shares purchased upon exercise of the Option under the Plan.

In addition, the information contained herein is general in nature and may not apply to the Participant’s particular situation, and the Company is not in a position to assure the Participant of a particular result. Accordingly, the Participant is advised to seek appropriate professional advice as to how the relevant laws in the Participant’s country may apply to his or her situation.

Finally, if the Participant is a citizen or resident of a country other than the one in which he or she is currently working, transfers after the Date of Grant or is considered a resident of another country for local law purposes, the information contained herein may not be applicable to the Participant and the Company shall, in its discretion, determine to what extent the terms and conditions contained herein shall apply to the Participant.

AUSTRALIA

Terms and Conditions

Exercise. This provision supplements Section 5 of the Agreement:

The Participant may not vest in nor exercise the Option unless and until the later of (a) the time the Option would vest under the Vesting Schedule, or (b) a time when the Company’s Shares are publicly traded, quoted or listed on a recognized exchange or national securities market and are no longer subject to a lock-up restricting the Participant’s sale or disposal of the Shares (the “Liquidity Event”). Should the Option not first vest and become exercisable until the Liquidity Event occurs, then as of the date of the

Liquidity Event, the Participant shall receive vesting credit for any dates under the Vesting Schedule that preceded such event. Moreover, in no event may the Participant exercise his or her Vested Shares unless and until (i) the Fair Market Value per Share on the date of exercise equals or exceeds the Exercise Price for the Option.

Lastly, the Option Expiration Date of Option shall be a date which is no greater than seven (7) years from the Date of Grant. Accordingly, notwithstanding the Grant Notice and Section 2.3 of the Agreement, the Option may not be exercised after the expiration of seven (7) years from the Date of Grant.

CHINA

Terms and Conditions

Exercise. This provision supplements Section 5 of the Agreement:

If Participant is a national of the People’s Republic of China, the Participant may not vest in nor exercise the Option unless and until the later of (a) the time the Option would vest under the Vesting Schedule, or (b) a time when the Company’s Shares are publicly traded, quoted or listed on a recognized exchange or national securities market, are no longer subject to a lock-up restricting the Participant’s sale or disposal of the Shares and the Company has obtained approval from the State Administration of Foreign Exchange (the “SAFE Approval”). Should the Option not first vest and become exercisable until the SAFE Approval occurs, then as of the date of the SAFE approval, the Participant shall receive vesting credit for any dates under the Vesting Schedule that preceded such event. The Participant further agrees to abide by any restrictions or conditions imposed on the Option or the shares issued upon the exercise of the Option.

FRANCE

Terms and Conditions

Language Consent. By accepting the grant, the Participant confirms having read and understood the Plan and Agreement which were provided in the English language. The Participant accepts the terms of those documents accordingly.

Consentement Relatif à la Langue Utilisée. En acceptant l’attribution, le Participant confirme avoir lu et compris le Plan et le Contrat, qui ont été communiqués en langue anglaise. Le Participant accepte les termes de ces documents en connaissance de cause.
Notifications

Exchange Control Notification. The Participant may hold Shares obtained under the Plan outside of France provided that the Participant declares all foreign accounts whether open, current, or closed on his or her annual income tax return.

GERMANY

Notifications

Exchange Control Notification. Cross-border payments in excess of €12,500 must be reported monthly to the German Federal Bank on Form Z10. No report is required for payments less than €12,500.

HONG KONG

Terms and Conditions

Securities Law Compliance. To facilitate compliance with securities laws in Hong Kong, the Participant agrees not to sell the Shares issued upon exercise of the Options within six (6) months from the Date of Grant.

Notifications

Securities Law Notification. WARNING: This offer of Options and the Shares to be issued upon exercise of the Options do not constitute a public offer of securities. The offer is available only to employees of the Company or a Subsidiary or Parent of the Company or under a small offering exemption to 50 or fewer offerees in Hong Kong over a 12-month period. The contents of the Agreement, including this Addendum, and the Plan have not been reviewed by any regulatory authority in Hong Kong. Participant is advised to exercise caution in relation to the offer. If the Participant has any doubt about any of the contents of the Agreement, this Addendum, or the Plan, the Participant should obtain independent professional advice.

Nature of Scheme. The Company specifically intends that the Plan will not be an occupational retirement scheme for purposes of the Occupational Retirement Schemes Ordinance ("ORSO"). Notwithstanding the foregoing, if the Plan is deemed to constitute an occupational retirement scheme for the purposes of ORSO, then Participant’s grant shall be void.

ITALY

Terms and Conditions

Exercise. This provision supplements Section 5 of the Agreement:

Unless otherwise provided by the Committee, notwithstanding anything in Section 5 of the Plan or Sections 2 or 5 of the Agreement to the contrary, the Participants in Italy may not exercise his or her vested Options unless and until there is a public market for the Company’s Shares, either as a result of their registration under the U.S. Exchange Act of 1934, as amended, or quotation on a recognized national securities exchange or if a successor or acquiring company converts awards to rights over its shares and such shares are publicly traded.

Further, notwithstanding anything in the Agreement to the contrary, the Participant must exercise the Option using the same day sale method (as described in Section 7.1(e)(i) of the Plan) pursuant to which all Shares subject to the exercised Option will be sold immediately upon exercise and the proceeds of sale, less the Exercise Price, any Tax-Related Items and broker’s fees or commissions, will be remitted to the Participant in accordance with any applicable exchange control laws and regulations. The Participant acknowledges that the Company’s designated broker or transfer agent is under no obligation to arrange for the sale of the Shares at any particular price. To the extent that regulatory requirements change, the Company reserves the right to permit exercises through any of the means set forth in the Agreement or the Plan.

Data Privacy. This provision replaces Section 7 of the Agreement:

The Participant understands that any Subsidiary or Parent, the Company and any subsidiary as a data processor of the Company may hold certain personal information about the Participant, including, but not limited to, the Participant’s name, home address and telephone number, date of birth, social insurance or other identification number, salary, nationality, job title, any Shares or directorships held in the Company or any subsidiary, details of all Options, or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in the Participant’s favor (“Data”), and that the Company and any Subsidiary or Parent will process said data and other data lawfully received from third party for the exclusive purpose of implementing, managing and administering the Plan and complying with applicable laws, regulations and community legislation.

The Participant also understands that providing the Company with Data is mandatory for compliance with laws and is necessary for the performance of the Plan and that the Participant’s refusal to provide such Data would make it impossible for the Company to perform its contractual obligations and may affect the Participant’s ability to participate in the Plan. The Controller of personal data processing is Splunk Inc., with registered offices at 250 Brannan Street, 2nd Floor, San Francisco, California 94107 U.S.A. and, pursuant to Legislative Decree no. 196/2003, its Representative in Italy for privacy purposes is [insert name of Italian entity] S.r.l., with its registered offices at [insert address of Italian entity].

The Participant understands that Data will not be publicized, but it may be accessible by any Subsidiary or Parent as the data processor of the Company and within any Subsidiary or Parent’s organization by its internal and external personnel in charge of processing. Furthermore, Data may be transferred to banks, other financial institutions, or brokers involved in the management and administration of the Plan. The Participant understands that Data may also be transferred to the independent registered public accounting firm engaged by the Company, and also to the legitimate addresses under applicable laws. The Company reserves the right to permit exercises through any of the means set forth in the Agreement or the Plan.
The Participant further understands that the Company and/or any Subsidiary or Parent will transfer Data among themselves as necessary for the purpose of implementing, administering and managing the Participant's participation in the Plan, and that the Company and/or any Subsidiary or Parent may each further transfer Data to third parties assisting the Company in the implementation, administration, and management of the Plan, including any requisite transfer of Data to a broker or other third party with whom the Participant may elect to deposit any Shares acquired at exercise of the Option. Such recipients may receive, possess, use, retain, and transfer Data in electronic or other form, for the purposes of implementing, administering, and managing the Participant's participation in the Plan. The Participant understands that these recipients may be acting as controllers, processors, or persons in charge of processing, as the case may be, according to applicable privacy laws, and that they may be located in or outside the European Economic Area, such as in Japan or the United States or elsewhere, in countries that do not provide an adequate level of data protection as intended under Italian privacy law. Should the Company exercise its discretion in suspending all necessary legal obligations connected with the management and administration of the Plan, it will delete Data as soon as it has completed all the necessary legal obligations connected with the management and administration of the Plan.

The Participant understands that Data processing related to the purposes specified above shall take place under automated or non-automated conditions, anonymously when possible, that comply with the purposes for which Data is collected and with confidentiality and security provisions, as set forth by applicable laws and regulations, with specific reference to Legislative Decree no. 196/2003.

The processing activity, including communication, the transfer of Data abroad, including outside of the European Economic Area, as herein specified and pursuant to applicable laws and regulations, does not require the Participant's consent thereto, as the processing is necessary to performance of law and contractual obligations related to implementation, administration, and management of the Plan. The Participant understands that, pursuant to Section 7 of the Legislative Decree no. 196/2003, the Participant has the right at any moment to, including but not limited to, obtain confirmation that Data exist or not, access, verify their content, origin and accuracy, delete, update, integrate, correct, block or terminate, for legitimate reason, the Data processing. To exercise privacy rights the Participant should address any Subsidiary or Parent.

Furthermore, the Participant is aware that Data will not be used for direct-marketing purposes. In addition, Data provided can be reviewed and questions or complaints can be addressed by contacting the Participant's local human resources representative.

Plan Document Acknowledgement. In accepting the Option, the Participant acknowledges that he or she has received a copy of the Plan, has reviewed the Plan and the Agreement, including this Addendum, in their entirety and fully understand and accept all provisions of the Plan, the Agreement, and this Addendum. The Participant further acknowledges that he or she has read and specifically and expressly approves the following clauses in the Agreement: Section 2: Vesting and Exercise; Section 3: Termination; Section 4 Nature of Grant; Section 5: Manner of Exercise; Section 6: Compliance with Laws and Regulations; Section 8: NonTransferability of Option; Section 9: Company’s Right of First Refusal; Section 20: Addendum; and the Data Privacy provision in this Addendum.

Notifications

Exchange Control Information. The Participant is required to report the following on his or her annual tax return: (1) any transfers of cash or Shares to or from Italy exceeding €10,000, (2) any foreign investments or investments held outside of Italy at the end of the calendar year exceeding €10,000 if such investments (e.g., Options, Shares, or cash) may result in income taxable in Italy (this will include reporting any Vested Shares if their intrinsic value (i.e., the difference between the fair market value of the Shares underlying the Vested Shares at the end of the year and the Exercise Price) combined with other foreign assets exceed €10,000), and (3) the amount of the transfers to and from abroad which have had an impact during the calendar year on the Participant’s foreign investments or investments held outside of Italy. Under certain circumstances, the Participant may be exempt from the requirement under (1) above if the transfer or investment is made through an authorized broker resident in Italy.

MEXICO

Terms and Conditions

Acknowledgements. This provision supplements Section 4 of the Agreement:

By accepting the Option, the Participant acknowledges that he or she has received a copy of the Plan and the Agreement, including this Addendum, which he or she has reviewed. The Participant further acknowledges that he or she accepts all the provisions of the Plan and the Agreement, including this Addendum. The Participant also acknowledges that he or she has read and specifically and expressly approves the terms and conditions set forth in the “Nature of Grant” Section of the Agreement, which clearly provide as follows:

(1) The Participant’s participation in the Plan does not constitute an acquired right;

(2) The Plan and the Participant’s participation in it are offered by the Company on a wholly discretionary basis;

(3) The Participant’s participation in the Plan is voluntary; and

(4) The Company and its Subsidiaries are not responsible for any decrease in the value of any Shares acquired upon exercise of the Option.

Service Acknowledgement and Policy Statement. By accepting the Option, the Participant acknowledges that Splunk Inc., with registered offices at 250 Brannan Street, 2nd Floor, San Francisco, California 94107 U.S.A, is solely responsible for the administration of the Plan. The Participant further acknowledges that his or her participation in the Plan, the grant of the Option and any acquisition of Shares under the Plan do not constitute a service contract and does not guarantee the Participant the right to continue his or her service with the Company or one of its Subsidiaries because Participant is participating in the Plan on a wholly commercial basis. Based on the foregoing, the Participant expressly acknowledges that the Plan and the benefits that he or she may derive from participation in the Plan do not establish any rights between Participant and the Company, and do not form part of any service contract between the Participant and the Company or any Parent or Subsidiary, and any modification of the Plan or its termination shall not constitute a change or impairment of the terms and conditions of the Participant’s service contract.
The Participant further understands that his or her participation in the Plan is the result of a unilateral and discretionary decision of the Company and, therefore, the Company reserves the absolute right to amend and/or discontinue the Participant’s participation in the Plan at any time, without any liability to the Participant.

Finally, the Participant hereby declares that he or she does not reserve to him or herself any action or right to bring any claim against the Company for any compensation or damages regarding any provision of the Plan or the benefits derived under the Plan, and that he or she therefore grants a full and broad release to the Company, its Subsidiaries, affiliates, branches, representation offices, shareholders, officers, agents and legal representatives, with respect to any claim that may arise.

**Términos y Condiciones**

**Reconocimientos.** Esta disposición suplementa la Sección 4 del Contrato:

Al aceptar la Opción, el Partícipe reconoce que ha recibido una copia del Plan y del Contrato, incluyendo este Anexo, que ha sido revisado por el Partícipe. El Partícipe reconoce, además, que acepta todas las disposiciones del Plan y del Contrato, incluyendo este Anexo. El Partícipe también reconoce que ha leído la Sección del Contrato intitulada “Reconocimientos” y específica y expresamente aprueba los términos y condiciones establecidos en dicha Sección, que claramente establece lo siguiente:

(1) La participación del Partícipe en el Plan no constituye un derecho adquirido;

(2) El Plan y la participación del Partícipe en el Plan se ofrecen por la Compañía de manera totalmente discrecional;

(3) La participación del Partícipe en el Plan es voluntaria; y

(4) La Compañía y sus Subsidiarias no son responsables por cualquier disminución en el valor de las Acciones adquiridas al ejercer la Opción.

**Reconocimiento de Servicio y Declaración de Política.** Al aceptar la Opción, el Partícipe reconoce que Splunk Inc., con oficinas registradas en 250 Brannan Street, 2nd Floor, San Francisco, California 94107, EE.UU., es únicamente responsable por la administración del Plan. Además, el Partícipe reconoce que su participación en el Plan, el otorgamiento de la Opción y cualquier adquisición de Acciones de conformidad con el Plan no constituyen un contrato de servicios y no garantizan el derecho del Partícipe de continuar prestando sus servicios a la Compañía, ya que el Partícipe está participando en el Plan en sobre una base exclusivamente comercial. Con base en lo anterior, el Partícipe expresamente reconoce que el Plan y los beneficios que le derivan de la participación en el Plan no establecen derecho alguno entre el Partícipe y la Compañía y no forman parte de ningún contrato de servicios celebrado entre el Partícipe y la Compañía o cualquier Matriz o Subsidiaria de la Compañía, y cualquier modificación del Plan o su terminación no constituirá un cambio o deterioro de los términos y condiciones del contrato de servicios del Partícipe.

Además, el Partícipe entiende que su participación en el Plan es resultado de una decisión unilateral y discrecional de la Compañía y, por lo tanto, la Compañía se reserva el derecho absoluto de modificar y/o discontinuar la participación del Partícipe en el Plan en cualquier momento, sin responsabilidad alguna para con el Partícipe.

Finalmente, el Partícipe en este acto manifiesta que no se reserva ninguna acción o derecho para interponer una demanda o reclamación en contra de la Compañía por cualquier compensación o daño o perjuicio en relación con cualquier disposición del Plan o los beneficios derivados del Plan y, en consecuencia, otorga un amplio y total finiquito a la Compañía, sus Subsidiarias, afiliadas, sucursales, oficinas de representación, accionistas, directores, funcionarios, agentes y representantes con respecto a cualquier demanda o reclamación que pudiera surgir.

**THE NETHERLANDS**

**Notifications**

**Securities Law Information.** The Participant should be aware of the Dutch insider-trading rules, which may impact the sale of Shares issued upon exercise of the Option. In particular, the Participant may be prohibited from effectuating certain transactions if the Participant has inside information about the Company.

Under Article 5:56 of the Dutch Financial Supervision Act, anyone who has “inside information” related to an issuing company is prohibited from effectuating a transaction in securities in or from the Netherlands. “Inside information” is defined as knowledge of specific information concerning the issuing company to which the securities relate or the trade in securities issued by such company, which has not been made public and which, if published, would reasonably be expected to affect the share price, regardless of the development of the price. The insider could be any employee of a Subsidiary or Parent in the Netherlands who has inside information as described herein.

Given the broad scope of the definition of inside information, certain employees working for the Company or for any Subsidiary or Parent in the Netherlands may have inside information and, thus, would be prohibited from effectuating a transaction in securities in the Netherlands at a time when the Participant has such inside information.

If the Participant is uncertain whether the insider-trading rules apply to the Participant, he or she should consult the Participant’s personal legal advisor.

**SINGAPORE**

**Notifications**

**Securities Law Information.** The Option is being granted to Participant pursuant to the “Qualifying Person” exemption under section 273(1)(f) of the Singapore Securities and Futures Act (Chapter 289, 2006 Ed.) (“SFA”). The Plan has not been lodged or registered as a prospectus with the Monetary Authority of Singapore. The Participant should note that such Option grant is subject to section 257 of the SFA and the Participant will not be able to make any subsequent sale...
in Singapore, or any offer of such subsequent sale of the Shares underlying the Option unless such sale or offer in Singapore is made pursuant to the exemptions under Part XIII Division (1) Subdivision (4) (other than section 280) of the SFA (Chapter 289, 2006 Ed.).

**Director Notification Obligation.** If the Participant is a director, associate director or shadow director of a Singaporean Subsidiary or Parent, the Participant is subject to certain notification requirements under the Singapore Companies Act. Among these requirements is an obligation to notify the Singaporean Subsidiary or Parent in writing when the Participant receives an interest (e.g., Option, Shares) in the Company or a Subsidiary or Parent. In addition, the Participant must notify the Singaporean Subsidiary or Parent when he or she sells any Shares (including when the Participant sells the Shares acquired under the Plan). These notifications must be made within two (2) days of acquiring or disposing of any interest in the Company or any Subsidiary or Parent. In addition, a notification must be made of the Participant’s interests in the Company or any Subsidiary or Parent within two (2) days of becoming a director.

**SWEDEN**

There are no country-specific provisions.

**UNITED KINGDOM**

**Terms and Conditions**

**Section 431 Election.** As a condition of participation in the Plan and the exercise of the Option, the Participant agrees that, jointly with any Subsidiary or Parent, he or she shall enter into the joint election within Section 431 of the U.K. Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”) in respect of computing any tax charge on the acquisition of “Restricted Securities” (as defined in Sections 423 and 424 of ITEPA 2003), and that the Participant will not revoke such election at any time. This election will be to treat the Shares acquired pursuant to the exercise of the Option as if such Shares were not Restricted Securities (for U.K. tax purposes only). The Participant must enter into the form of election, which will be provided by the Company, concurrent with the execution of the Option Agreement.

**Joint Election for Transfer of Liability for Employer National Insurance Contributions.** As a condition of participation in the Plan and the exercise of the Option at a time when the Company’s Shares are considered readily convertible assets under U.K. law, the Participant agrees to accept any liability for secondary Class 1 National Insurance contributions (the “Employer NICs”) that may be payable by the Company, a Parent or a Subsidiary in connection with the Option and any event giving rise to Tax-Related Items. Without prejudice to the foregoing, the Participant agrees to execute a joint election with the Company, the form of such joint election (the “Joint Election”) having been approved formally by Her Majesty’s Revenue and Customs (“HMRC”), and any other required consent or election. The Participant further agrees to execute such other joint elections as may be required between the Participant and any successor to the Company, a Parent or a Subsidiary. The Participant further agrees that the Company, a Parent or a Subsidiary may collect the Employer NICs from the Participant by any of the means set forth in Section 5.4 of the Agreement.

If the Participant does not enter into a Joint Election prior to the exercise of the Option, he or she will not be entitled to exercise the Option unless and until he or she enters into a Joint Election, and no Shares will be issued to the Participant under the Plan, without any liability to the Company, a Parent or a Subsidiary.

**Responsibility for Taxes.** This provision supplements Section 5.4 of the Agreement and applies if the Company’s Shares are considered readily convertible assets under U.K. law at the time of exercise:

If payment or withholding of tax is not made within 90 days of the event giving rise to the Tax-Related Items (the “Due Date”) or such other period specified in Section 222(1)(c) of the ITEPA 2003, the amount of any uncollected tax will constitute a loan owed by the Participant to any Subsidiary or Parent, effective on the Due Date. The Participant agrees that the loan will bear interest at the then-current Official Rate of Her Majesty’s Revenue and Customs (“HMRC”), and any other required consent or election. The Participant further agrees to execute such other joint elections as may be required between the Participant and any successor to the Company, a Parent or a Subsidiary in connection with the Option and any event giving rise to Tax-Related Items. Without prejudice to the foregoing, the Participant agrees to execute a joint election with the Company, the form of such joint election (the “Joint Election”) having been approved formally by Her Majesty’s Revenue and Customs (“HMRC”), and any other required consent or election. The Participant further agrees to execute such other joint elections as may be required between the Participant and any successor to the Company, a Parent or a Subsidiary. In addition, the Participant agrees that the Company and/or any Subsidiary or Parent may calculate the Tax-Related Items to be withheld and accounted for by reference to the maximum applicable rates, without prejudice to any right the Participant may have to recover any overpayment from the relevant tax authorities.
OFFICE LEASE
Between
BRANNAN PROPCO, LLC
(Landlord)
and
SPLUNK, INC.
(Tenant)

TABLE OF CONTENTS

ARTICLE I DEFINITIONS 1
1.1 Building and Common Areas 1
1.2 Premises 1
1.3 Rentable Area of the Premises 1
1.4 Lease Term 1
1.5 Commencement Dates 1
1.6 Expiration Date 2
1.7 Base Rent 2
1.8 Tenant's Percentage Share 2
1.9 Base Year 2
1.10 Security Deposit 3
1.11 Tenant’s Permitted Use 3
1.12 Business Hours 3
1.13 Landlord’s Address For Notices 3
1.14 Tenant's Address For Notices 3
1.15 Broker(s) 3
1.16 Parking Spaces 3
1.17 Allowance 3

ARTICLE II PREMISES 4
2.1 Lease of Premises 4
2.2 Acceptance of Premises 4

ARTICLE III TERM; RIGHT OF FIRST OFFER 5
3.1 Term 5
3.2 Right of First Offer 5

ARTICLE IV RENTAL 6
4.1 Definitions 6
4.2 Base Rent 9
4.3 Adjustment Procedure; Estimates 9
4.4 Review of Landlord’s Statement 10
4.5 Payment 10
4.6 Late Charge; Interest 11
4.7 Additional Rent 11

ARTICLE V SECURITY DEPOSIT 11

ARTICLE VI USE OF PREMISES 12
6.1 Tenant's Permitted Use 12
6.2 Compliance With Laws and Other Requirements 13
6.3 Hazardous Materials 13
<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>VII</td>
<td>Utilities, Services and Signage</td>
<td>15</td>
</tr>
<tr>
<td>7.1</td>
<td>Building Services</td>
<td>15</td>
</tr>
<tr>
<td>7.2</td>
<td>Interruption of Services</td>
<td>16</td>
</tr>
<tr>
<td>7.3</td>
<td>Signage</td>
<td>17</td>
</tr>
<tr>
<td>VIII</td>
<td>Maintenance and Repairs</td>
<td>17</td>
</tr>
<tr>
<td>8.1</td>
<td>Landlord’s Obligations</td>
<td>17</td>
</tr>
<tr>
<td>8.2</td>
<td>Tenant’s Obligations</td>
<td>18</td>
</tr>
<tr>
<td>8.3</td>
<td>Landlord’s Rights</td>
<td>18</td>
</tr>
<tr>
<td>IX</td>
<td>Alterations, Additions and Improvements</td>
<td>18</td>
</tr>
<tr>
<td>9.1</td>
<td>Landlord’s Consent; Conditions</td>
<td>18</td>
</tr>
<tr>
<td>9.2</td>
<td>Performance of Alterations Work</td>
<td>19</td>
</tr>
<tr>
<td>9.3</td>
<td>Liens</td>
<td>19</td>
</tr>
<tr>
<td>9.4</td>
<td>Lease Termination</td>
<td>19</td>
</tr>
<tr>
<td>X</td>
<td>Indemnification and Insurance</td>
<td>20</td>
</tr>
<tr>
<td>10.1</td>
<td>Indemnification</td>
<td>20</td>
</tr>
<tr>
<td>10.2</td>
<td>Property Insurance</td>
<td>21</td>
</tr>
<tr>
<td>10.3</td>
<td>Landlord’s Insurance</td>
<td>21</td>
</tr>
<tr>
<td>10.4</td>
<td>Liability Insurance</td>
<td>22</td>
</tr>
<tr>
<td>10.5</td>
<td>Workers’ Compensation Insurance</td>
<td>22</td>
</tr>
<tr>
<td>10.6</td>
<td>Policy Requirements</td>
<td>22</td>
</tr>
<tr>
<td>10.7</td>
<td>Waiver of Subrogation</td>
<td>22</td>
</tr>
<tr>
<td>10.8</td>
<td>Failure to Insure</td>
<td>24</td>
</tr>
<tr>
<td>10.9</td>
<td>Exemption of Landlord from Liability</td>
<td>24</td>
</tr>
<tr>
<td>XI</td>
<td>Damage or Destruction</td>
<td>24</td>
</tr>
<tr>
<td>11.1</td>
<td>Total Destruction</td>
<td>24</td>
</tr>
<tr>
<td>11.2</td>
<td>Partial Destruction of Premises</td>
<td>24</td>
</tr>
<tr>
<td>11.3</td>
<td>Exceptions to Landlord's Obligations</td>
<td>25</td>
</tr>
<tr>
<td>11.4</td>
<td>Waiver</td>
<td>25</td>
</tr>
<tr>
<td>XII</td>
<td>Condemnation</td>
<td>25</td>
</tr>
<tr>
<td>12.1</td>
<td>Taking</td>
<td>25</td>
</tr>
<tr>
<td>12.2</td>
<td>Award</td>
<td>25</td>
</tr>
<tr>
<td>12.3</td>
<td>Temporary Taking</td>
<td>25</td>
</tr>
<tr>
<td>XIII</td>
<td>Omitted</td>
<td>26</td>
</tr>
<tr>
<td>XIV</td>
<td>Assignment and Subletting</td>
<td>26</td>
</tr>
<tr>
<td>14.1</td>
<td>Restriction</td>
<td>26</td>
</tr>
<tr>
<td>14.2</td>
<td>Notice to Landlord</td>
<td>27</td>
</tr>
<tr>
<td>14.3</td>
<td>Landlord’s Recapture Rights</td>
<td>27</td>
</tr>
<tr>
<td>14.4</td>
<td>Landlord’s Consent; Standards</td>
<td>27</td>
</tr>
<tr>
<td>14.5</td>
<td>Additional Rent</td>
<td>27</td>
</tr>
<tr>
<td>14.6</td>
<td>Landlord’s Costs</td>
<td>28</td>
</tr>
<tr>
<td>14.7</td>
<td>Continuing Liability of Tenant</td>
<td>28</td>
</tr>
<tr>
<td>14.8</td>
<td>Non-Waiver</td>
<td>28</td>
</tr>
<tr>
<td>XV</td>
<td>Default and Remedies</td>
<td>28</td>
</tr>
<tr>
<td>15.1</td>
<td>Events of Default By Tenant</td>
<td>28</td>
</tr>
<tr>
<td>15.2</td>
<td>Remedies</td>
<td>29</td>
</tr>
<tr>
<td>15.3</td>
<td>Landlord’s Right To Continue Lease Upon Tenant Default</td>
<td>29</td>
</tr>
<tr>
<td>15.4</td>
<td>Right of Landlord to Perform</td>
<td>30</td>
</tr>
<tr>
<td>15.5</td>
<td>Non-Waiver</td>
<td>30</td>
</tr>
<tr>
<td>15.6</td>
<td>Cumulative Remedies</td>
<td>30</td>
</tr>
<tr>
<td>15.7</td>
<td>Default by Landlord</td>
<td>31</td>
</tr>
</tbody>
</table>
ARTICLE XVI ATTORNEYS’ FEES; COSTS OF SUIT

16.1 Attorneys’ Fees
16.2 Indemnification

ARTICLE XVII SUBORDINATION AND ATTORNMENT

17.1 Subordination
17.2 Attornment
17.3 Mortgagee Protection

ARTICLE XVIII QUIET ENJOYMENT

ARTICLE XIX RULES AND REGULATIONS

ARTICLE XX ESTOPPEL CERTIFICATES

ARTICLE XXI ENTRY BY LANDLORD

ARTICLE XXII LANDLORD’S LEASE UNDERTAKINGS — EXCULPATION FROM PERSONAL LIABILITY; TRANSFER OF LANDLORD’S INTEREST

22.1 Landlord’s Lease Undertakings
22.2 Transfer of Landlord’s Interest

TABLE OF CONTENTS (cont.)

ARTICLE XXIII HOLDOVER TENANCY

ARTICLE XXIV NOTICES

ARTICLE XXV BROKERS

ARTICLE XXVI COMMUNICATIONS AND COMPUTER LINES

26.1 Generally
26.2 Interruption
26.3 Removal
26.4 Abandonment
26.5 New Providers

ARTICLE XXVII MISCELLANEOUS

27.1 Entire Agreement
27.2 Amendments
27.3 Successors
27.4 Force Majeure
27.5 Survival of Obligations
27.6 Light and Air
27.7 Governing Law
27.8 Severability
27.9 Captions
27.10 Interpretation
27.11 Independent Covenants
27.12 Number and Gender
27.13 Time is of the Essence
27.14 Joint and Several Liability
27.15 Exhibits
27.16 Offer to Lease
27.17 Choice of Laws; Waiver of Jury Trial
27.18 Electrical Service to the Premises
27.19 Rights Reserved by Landlord
27.20 No Recordation
27.21 No Merger
27.22 Tax Credits
27.23 Financial Reports
27.24 Presumption
27.25 Confidentiality
27.26 Parking
27.27 Signing Authority
OFFICE LEASE

THIS OFFICE LEASE ("Lease"), dated as of March 6, 2008 ("Lease Date") is made and entered into by and between BRANNAN PROPICO, LLC, a Delaware limited liability company ("Landlord"), and SPLUNK, INC., a Delaware corporation ("Tenant") upon the following terms and conditions:

ARTICLE I
DEFINITIONS

Unless the context otherwise specifies or requires, the following terms shall have the meanings specified herein;

1.1 Building and Common Areas.
   (A) The term "Building" shall mean that certain office building located at 250 Brannan Street, San Francisco, California, together with any related land, improvements, parking garage, common areas, driveways, sidewalks, courtyards and landscaping.
   (B) During the Term, Tenant and its employees shall have the non-exclusive right to use the courtyard along with other tenants of the Building.

1.2 Premises. The term "Premises" shall mean the entire 2nd floor in the Building. The Premises are more particularly shown on the drawing attached hereto as Exhibit A and incorporated herein by reference. As used herein, "Premises" shall not include any separate storage area in the Building.

1.3 Rentable Area of the Premises. The term "Rentable Area of the Premises" shall mean 34,167 square feet. Landlord and Tenant have stipulated these measurements as the Rentable Area of the Premises. Tenant acknowledges that the Rentable Area of the Premises includes the usable area, without deduction for columns or projections, multiplied by a load factor to reflect a share of certain areas, which may include lobbies, corridors, mechanical, utility, janitorial, boiler and service rooms and closets, restrooms and other public, common and service areas of the Building.

1.4 Lease Term. The term "Lease Term" shall mean the period between the Commencement Date and the Expiration Date (as such terms are hereinafter defined), unless sooner terminated as otherwise provided in this Lease.

1.5 Commencement Dates.
   (A) The term "Commencement Date" shall mean the earlier of (i) the date upon which Tenant first occupies the Premises for the conduct of business or (ii) subject to Tenant Delay, the date upon which "Substantial Completion" of the Work occurs in accordance with the Work Letter Agreement attached as Exhibit B which is estimated to be April 1, 2008.
   (B) Within fifteen (15) days after the Commencement Date, Tenant will execute and deliver a Commencement Date Certificate in the form attached hereto as Exhibit D.

1.6 Expiration Date. The term "Expiration Date" shall mean (i) if the Commencement Date is the first day of a month, the date that is sixty-two (62) months from the date preceding the Commencement Date; or (ii) if the Commencement Date is not the first day of a month, the date which is sixty-two (62) months from the last day of the month in which Commencement Date occurs.

1.7 Base Rent. The term "Base Rent" shall mean:

<table>
<thead>
<tr>
<th>Period</th>
<th>Annual</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Months 1-2</td>
<td>$1,298,346.00</td>
<td>$108,195.50</td>
</tr>
<tr>
<td>Months 3 to 12</td>
<td>$1,332,513.00</td>
<td>$111,042.75</td>
</tr>
<tr>
<td>Months 13 to 24</td>
<td>$1,366,680.00</td>
<td>$113,890.00</td>
</tr>
<tr>
<td>Months 25 to 36</td>
<td>$1,400,847.00</td>
<td>$116,737.25</td>
</tr>
<tr>
<td>Months 36 to 48</td>
<td>$1,435,014.00</td>
<td>$119,584.50</td>
</tr>
</tbody>
</table>

Base Rent for the third month of the Term after the Commencement Date shall be paid on the Lease Date.

(A) Tenant shall pay Direct Reimbursement Expenses for each month of the Term commencing on the Commencement Date.
All rental payments shall be made payable to Brannan PropCo LLC, and should be sent to Post Office Box 975040, Dallas, Texas 75397-5040, or to such other person or at such other place as Landlord may from time to time designate in writing.

Alternatively, payments may be wired as follows:

<table>
<thead>
<tr>
<th>Bank:</th>
<th>JPMorgan Chase Bank, New York, NY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank ABA:</td>
<td>0210 0002 1</td>
</tr>
<tr>
<td>Credit Account:</td>
<td>Brannan PropCo, LLC</td>
</tr>
<tr>
<td></td>
<td>252 Clayton Street, Denver, CO 80206</td>
</tr>
<tr>
<td>Account number:</td>
<td>193512967</td>
</tr>
<tr>
<td>Reference:</td>
<td>(Please include reference for payment cash application)</td>
</tr>
<tr>
<td>Bank Contact:</td>
<td>David Rowe 303-244-3006</td>
</tr>
</tbody>
</table>

1.8 **Tenant’s Percentage Share**. The term “Tenant’s Percentage Share” shall mean 37.8%. Landlord may reasonably redetermine Tenant’s Percentage Share from time to time to reflect reconfigurations, additions or modifications to the Building.

1.9 **Base Year**. 2008.

1.10 **Security Deposit**. The term “Security Deposit” shall mean an amount equal to $1,255,056.00. The Security Deposit shall be paid upon the execution of this Lease by Tenant by cash or through a Letter of Credit (as defined in Article V).

If the Commencement Date is not April 1, 2008, then and in such event the Letter of Credit shall be amended to provide that the final expiration date of the Letter of Credit shall be the date that is sixty (60) days after the Expiration Date of the Lease.

Provided that an Event of Default has not occurred with respect to Tenant at any time prior to the end of each applicable reduction date (“Reduction Date”), on the first day of the fifteenth (15th) month following the Commencement Date and on the annual anniversary of each ensuing Reduction Date, the Security Deposit shall be reduced by twenty percent (20%) of the then remaining balance of the Security Deposit; provided however, that in no event shall the Security Deposit be reduced below $300,000.

1.11 **Tenant’s Permitted Use**. The term “Tenant’s Permitted Use” shall mean general office use, software research and development, and administrative and other uses customarily part of general office uses and for no other use or purpose whatsoever.

1.12 **Business Hours**. The term “Business Hours” shall mean the hours of 7:00 A.M. to 6:00 P.M., Monday through Friday (federal and state holidays excepted).

1.13 **Landlord’s Address For Notices**. The term “Landlord’s Address for Notices” shall mean Brannan PropCo, LLC, 252 Clayton, Denver, CO 80206, Attn: Asset Manager.

1.14 **Tenant’s Address For Notices**. The term “Tenant’s Address for Notices” shall mean (i) prior to the Commencement Date: 118 King Street, Fifth Floor, San Francisco, California 94107, Attention: Chief Executive Officer, and (ii) after the Commencement Date: At the Premises, Attention: Chief Executive Officer.

1.15 **Broker(s)**. The term “Broker” shall mean Colliers International which represents Landlord and Cornish & Carey Commercial which represents Tenant.

1.16 **Parking Spaces**. Tenant will be permitted to use the following parking spaces during the Lease Term in accordance with Section 27.26:

<table>
<thead>
<tr>
<th>Type of Space</th>
<th>Number of Such Spaces</th>
<th>Monthly Charge per Space</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parking Garage Unreserved</td>
<td>34</td>
<td>Prevailing market rent in effect from time to time during the Term which as of the Lease Date is $260.00 per space per month</td>
</tr>
</tbody>
</table>

1.17 **Allowance**. $1,247,935.00

Tenant shall have the right to utilize any portion of the Allowance for tenant improvements on any portion of the Premises and (ii) to utilize the Allowance for a period up to twelve (12) months from the Commencement Date (the “Build Out Period”). Tenant shall have no right to any credit or payment for any portion of the Allowance which is not used by Tenant during the Build Out Period.

**ARTICLE II**

**PREMISES**
2.1 Lease of Premises. Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, upon all of the terms, covenants and conditions contained in this Lease.

2.2 Acceptance of Premises.

(A) Except as expressly set forth herein (including, without limitation, the Work Letter and the schedules thereto), Tenant acknowledges that Landlord has not made any representation or warranty with respect to the condition of the Premises or the Building or with respect to the suitability or fitness of either for the conduct of Tenant's Permitted Use or for any other purpose.

(B) Except for the Landlord’s Work described in Schedules 1 and 2 of the Work Letter which Landlord has agreed to perform in accordance with the terms of the Work Letter or as otherwise expressly set forth in this Lease (including without limitation the Work Letter and Schedules 1 and 2 thereto), Tenant agrees to accept the Premises in its “as is” physical condition without any agreements, representations, understandings or obligations on the part of Landlord to perform any alterations, repairs or improvements.

(C) Landlord shall repair within a commercially reasonable time period, at its sole cost, all items set forth in the punch list described in Section 5 of the Work Letter. In addition and notwithstanding anything to the contrary herein, Landlord will repair at its sole cost any defects in the Base Building Work and any latent defects in the Work (which is not Base Building Work) of which it is notified in writing within one year after the Commencement Date.

(D) Provided that the same is not a Tenant Delay (as defined in the Work Letter), Tenant shall have the right to enter into the Premises after the Lease Date for the purpose of installing furniture, fixtures and equipment and installing tenant improvements or other special leasehold improvements, including telephone/data cabling and millwork, which entry shall be subject to all the terms and provisions of this Lease and Section 8 of the Work Letter and the Lease shall be binding upon Landlord and Tenant for the Term and enforceable in accordance with its terms, except that Tenant’s obligation to pay Rent shall not commence until the Commencement Date.

(E) Tenant shall not be charged for freight elevators, security, access to loading docks, utilities, or temporary HVAC prior to the Commencement Date.

(F) Tenant hereby waives Sections 1941 and 1942 of the Civil Code of California or any successor provision of law.

ARTICLE III
TERM; RIGHT OF FIRST OFFER

3.1 Term. The Lease Term shall be for the period described in Section 1.4 of this Lease, commencing on the Commencement Date described in Section 1.5 of this Lease, and, except as expressly set forth herein, Landlord shall not be liable for any damage caused to Tenant, nor shall the Lease be void or voidable if Landlord is unable to deliver the Premises to Tenant on any date certain so long as Landlord is using commercially reasonable efforts to so deliver the Premises.

3.2 Right of First Offer.

(A) Landlord shall provide Tenant with a notice in the event that during the Term, Available Premises (as hereinafter defined) becomes available (the “Right of First Offer”) and Landlord shall not grant any superior Right of First Offer to expand within the building to any other tenant after the Lease Date. The Right of First Offer is subject to any existing rights of first offer granted to other tenants in the Building which are in existence as of the Lease Date (“Superior Right”).

(B) As used in this Section, Available Premises shall mean space in the Building (other than the Premises) which becomes available for leasing to third parties after the Lease Date. Space shall not be deemed Available Space if (i) an existing tenant (other than Tenant) renews or extends its term with respect to space in the Building that such tenant already occupies or (ii) such space is leased pursuant to a Superior Right.

(C) For a period of ten (10) days after receipt of Landlord’s notice, Landlord and Tenant shall negotiate in good faith concerning the leasing of such space but neither party shall be obligated to enter into a lease of such space unless the parties mutually agree on the terms and conditions of such lease and Landlord may negotiate with other prospective tenants during such period.

(D) Such lease shall be upon market terms, taking into account, among other criteria, the then creditworthiness of Tenant and Tenant acknowledges that the term for such space may be different from the Term for the Premises and that the rent and tenant improvement package for such space may be different than the rent and tenant improvement package for the Premises. This Right of First Offer shall continue to exist during the Term for other Available Premises and for Available Premises for which a lease has expired or terminated.

(E) Notwithstanding anything to the contrary contained, herein, all rights of Tenant pursuant to this Section 3.2 shall automatically terminate without notice and shall be of no further force and effect with respect to the then Available Premises, whether or not Tenant has timely exercised the option granted herein, if (i) an Event of Default exists at the time of exercise of the option or at the time of commencement of the term for the Available Premises or (ii) Tenant has assigned this Lease other than to a Permitted Transferee (as defined in Section 14.1) or (iii) Tenant or a Permitted Transferee is not in occupancy of at least 70% of the Premises as it may then exist at the time a Right of First Offer notice is given to Tenant or at the time the term for such Available Premises commences.

(F) If Tenant is entitled to and properly exercises its Right of First Offer, Landlord shall prepare a reasonable amendment to reflect changes in the Base Rent, Term, Tenant Improvement Allowance and other appropriate terms. Tenant shall execute and return the amendment to Landlord within ten (10) days after Tenant’s receipt of same.

ARTICLE IV
4.1 Definitions. As used herein,

(A) “Property Taxes” shall mean the aggregate amount of all real estate taxes, assessments (whether they be general or special), sewer rents and charges, transit taxes, taxes based upon the receipt of rent and any other federal, state or local governmental charge, general, special, ordinary or extraordinary (but not including income or franchise taxes, capital stock, inheritance, estate, gift, or any other taxes imposed upon or measured by Landlord’s gross income or profits, unless the same shall be imposed in lieu of real estate taxes or other ad valorem taxes), which Landlord shall pay or become obligated to pay in connection with the Building, or any part thereof. Property Taxes shall also include all fees and costs, including attorneys’ fees, appraisals and consultants’ fees, reasonably incurred by Landlord in seeking to obtain a reassessment, reduction of, or a limit on the increase in, any Property Taxes, regardless of whether any reduction or limitation is obtained. Property Taxes for any calendar year shall be Property Taxes which are assessed or become a lien during such year but in no event shall be an amount in excess of the amount which would be payable if such tax or assessment were paid in installments over the longest permitted term without a penalty or fee. Property Taxes shall include any tax, assessment, levy, imposition or charge imposed upon Landlord and measured by or based in whole or in part upon the Building or the rents or other income from the Building, to the extent that such taxes are in lieu of real property taxes. Notwithstanding the foregoing, if a reassessment of the Building or ad valorem property tax purposes, including any reassessment pursuant to California Constitution Article 13A and Sections 60 through 67 of the California Revenue & Taxation Code, occurs, then Tenant shall be obligated to pay Tenant’s Percentage Share of any such additional Property Taxes resulting from any such reassessment with respect to the Building. Property Taxes shall also include any personal property taxes imposed upon the furniture, fixtures, machinery, equipment, apparatus, systems and appurtenances of Landlord used at the Building.

(B) “Operating Expenses” shall mean all costs, fees, disbursements and expenses paid or incurred by or on behalf of Landlord in the operation, maintenance, insurance, management and repair of the Building, excluding Property Taxes and Direct Reimbursement Expenses (as each is hereinafter defined) including without limitation:

(i) Premiums for property, casualty, liability, rent interruption, earthquake or other types of insurance carried by Landlord and commercially reasonable deductibles in connection with any insured casualty; provided, however that Tenant’s Percentage Share of deductibles for earthquake, fire or flood insured casualty shall not exceed $100,000.00 for any occurrence. Notwithstanding the foregoing, if earthquake, terrorism or flood insurance is not carried in the Base Year and is then obtained by Landlord in a subsequent year, the Base Year Operating Expenses shall be grossed up to reflect the reasonable cost of such earthquake, terrorism or flood insurance as if it had been included in the Base Year.

(ii) Salaries, wages and other amounts paid or payable for personnel including the building manager, superintendent, operation and maintenance staff, and other employees of Landlord involved in the maintenance and operation of the Building, including contributions and premiums towards fringe benefits, unemployment, disability and worker’s compensation insurance, pension plan contributions and similar premiums and contributions and the total charges of any independent contractors or property managers engaged in the operation, repair, care, maintenance and cleaning of any portion of the Building.

(iii) Building and common area cleaning expenses, including without limitation janitorial services, window cleaning, and garbage and refuse removal, excluding Direct Reimbursement Expenses.

(iv) Landscaping expenses, including without limitation irrigating, trimming, mowing, fertilizing, seeding, and replacing plants.

(v) Heating, ventilating, air conditioning and steam/utilities expenses, including fuel, gas, electricity, water, sewer, telephone, and other services to the common areas of the Building (excluding Direct Reimbursement Expenses).

(vi) Subject to the provisions of Section 4.1(B)(xii) below, the cost of maintaining, operating, repairing and replacing components of equipment or machinery, including without limitation heating, refrigeration, ventilation, electrical, plumbing, mechanical, elevator, escalator, sprinklers, fire/life safety, security, access control and energy management systems, including service contracts, maintenance contracts, supplies and parts.

(vii) Other items of ordinary course repair or maintenance of elements of the Building.

(viii) The costs of policing, security and supervision of the Building.

(ix) Fair market rental and other costs with respect to the management office located at the Building.

(x) The cost of the rental of any machinery or equipment and the cost of supplies used in the maintenance and operation of the Building.

(xi) Audit fees and the cost of accounting services incurred in the preparation of statements referred to in this Lease and financial statements, and in the computation of the rents and charges payable by tenants of the Building.

(xii) Capital expenditures or improvements (collectively, “Capital Improvements”) (a) made primarily to reduce Operating Expenses, or to comply with any laws or other governmental requirements enacted (or with respect to the ADA only, as interpreted or enforced) after the date of this Lease, or (b) for replacements (as opposed to additions or new improvements) of nonstructural items located in the common areas of the property required to keep such areas in good condition; provided, all such permitted capital expenditures in excess of $50,000.00 (together with reasonable financing charges) shall be amortized for purposes of this Lease over the shorter of (i) their useful lives, as reasonably determined by

Landlord, or (ii) the period during which the reasonably estimated savings in Operating Expenses equals the expenditures. Capital expenditures of $50,000.00 or less may be expensed by Landlord in the year in which such expenditure occurs.

(xiii) Reasonable legal fees and expenses.
in Operating Expenses but the obtaining a type of insurance that did not exist during the Base Year would be subject to equitable adjustment unless it replaced a type of insurance that did exist in the Base Year.

4.2 Base Rent. During the Lease Term, Tenant shall pay to Landlord as rental for the Premises the Base Rent described in Section 1.7 above, subject to the following adjustments (herein called the “Rent Adjustments”): During each applicable calendar year, or portion thereof, during the Lease Term, the Base Rent payable by Tenant to Landlord, as adjusted pursuant to Section 1.7 above, shall be increased by (collectively, the “Property Tax and Operating Expense and Direct Reimbursement Payments Adjustment”): (i) Tenant’s Percentage Share of the increase in Operating Expenses incurred by Landlord during each year during the Term of this Lease over the Base Year Operating Expenses, (ii) Tenant’s Percentage Share of the increase in Property Taxes incurred by Landlord during each year during the Term of this Lease over the Base Year Property Taxes, and (iii) during each year of the Term, Direct Reimbursement Payments to the extent reimbursable to Landlord and not paid directly to the utility provider or service vendor (collectively, “Rent Adjustments”). A decrease in Property Taxes or Operating Expenses below the Base Year Operating Expenses or Base Year Property Taxes shall not decrease the amount of the Base Rent due hereunder or give rise to a credit in favor of Tenant.

4.3 Adjustment Procedure; Estimates. The Property Tax and Operating Expense and Direct Reimbursement Payments Adjustment specified in Section 4.2 shall be determined and paid as follows:

(A) During each calendar year, or portion thereof, during the Lease Term, Landlord shall give Tenant written notice of Base Year Operating Expenses and Base Year Property Taxes and its estimate of any increased amounts payable under Section 4.2 for that calendar year for Operating Expenses, Property Taxes and/or Direct Reimbursement Expenses, respectively as the case may be. On or before the first day of each calendar month during the calendar year, Tenant shall pay to Landlord one-twelfth (1/12th) of such estimated amounts; provided, however, that, not more often than quarterly and subject to Section 4.2, Landlord may, by written notice to Tenant, revise its estimate for such year, and subsequent payments by Tenant for such year shall be based upon such revised estimate.

(B) Within one hundred twenty (120) days after the close of each calendar year or as soon thereafter as is practicable, Landlord shall use commercially reasonable efforts to deliver to Tenant a statement of that year’s Property Taxes, Operating Expenses, and Direct Reimbursement Expenses, and the actual Tax and Operating Expense and Direct Reimbursement Payments Adjustment to be made pursuant to Section 4.2 for such calendar year, as reasonably determined by Landlord (the “Landlord’s Statement”) and such Landlord’s Statement shall be binding upon Tenant, except as provided in Section 4.4 below. The Landlord’s Statement shall provide a reasonable description of the components of the Base Year Operating Expenses and Property Taxes and current year Operating Expenses and Property Taxes by expense categories and set forth the methodology by which any adjustments under Section 4.1(D) were made. If the amount of the actual Property Tax and Operating Expense and Direct Payments Adjustment is more than the estimated payments for such calendar year made by Tenant, Landlord shall pay the deficiency to Landlord within thirty (30) days following receipt of Landlord’s Statement. If the amount of the actual Property Tax and Operating Expense and Direct Reimbursement Payments Adjustment is less than the estimated payments for such calendar year made by Tenant, any excess shall be paid to Tenant within thirty (30) days. No delay in providing the statement described in this subparagraph (B) shall act as a waiver of Landlord’s right to payment under Section 4.2 above.

(C) If this Lease shall terminate on a day other than the end of a calendar year, the amount of the Property Tax and Operating Expense and Direct Reimbursement Payments Adjustment to be paid pursuant to Section 4.2 that is applicable to the calendar year in which such termination occurs shall be prorated on the basis of the number of days from January 1 of the calendar year to the termination date bears to 365. The termination of this Lease shall not affect the obligations of Landlord and Tenant pursuant to Section 4.3 to be performed after such termination.
4.4 **Review of Landlord’s Statement.** Provided that (a) an Event of Default is not then pending and (b) Tenant strictly complies with the provisions of this Section 4.4, Tenant shall have the right, once each calendar year, to reasonably review relevant supporting data for any portion of a Landlord's Statement, in accordance with the following procedure:

(A) Tenant shall, within thirty (30) days after any such Landlord’s Statement is delivered, deliver a written notice to Landlord notifying Landlord of its election to inspect Landlord’s books and records relating to the Landlord's Statement, and Tenant shall simultaneously pay to Landlord all amounts due from Tenant to Landlord as specified in the Landlord’s Statement. In no event shall Tenant be entitled to withhold, deduct, or offset any monetary obligation of Tenant to Landlord under the Lease (including, without limitation, Tenant’s obligation to make all payments of Base Rent and all payments of Tenant’s Tax and Operating Expense and Direct Reimbursement Payments Adjustment) pending the completion of and regardless of the results of any review of records under this Section 4.4. The right of Tenant under this Section 4.4 may only be exercised once per year for any Landlord’s Statement, and if Tenant fails to meet any of the above conditions as a prerequisite to the exercise of such right, the right of Tenant under this Section 4.4 for a particular Landlord’s Statement shall be deemed waived. Should the final determination reveal a discrepancy in favor of the Tenant in excess of 5% of the total amount set forth in the Landlord’s Statement for that year’s Property Taxes, Operating Expenses, and Direct Reimbursement Expenses, Landlord shall pay any reasonable third party fees associated with such review.

(B) Tenant acknowledges that Landlord maintains its records for the Building at Landlord’s manager’s corporate offices and Tenant agrees that any review of records under this Section 4.4 shall be at the sole expense of Tenant and shall be conducted by an independent firm of national or regional certified public accountants on a non-contingency basis. Tenant acknowledges and agrees that any records reviewed under this Section 4.4 constitute confidential information of Landlord, which shall not be disclosed to anyone other than Tenant, the accountants performing the review and Tenant’s lawyers and real estate advisors. Tenant shall require each person or entity who is not an employee of Tenant to execute an agreement obligating such person or entity to comply with the nondisclosure requirements of this Section and shall use commercially reasonable efforts to monitor the compliance with such agreement.

4.5 **Payment.** Concurrently with the execution hereof, Tenant shall pay Landlord Base Rent for the third calendar month of the Lease Term after the Commencement Date. Thereafter the Base Rent described in Section 1.7, as adjusted in accordance with Section 4.2, shall be payable in advance on the first day of each calendar month. If the Commencement Date is other than the first day of a calendar month, the prepaid Base Rent for such partial month shall be prorated in the proportion that the number of days in this lease is in effect during such partial month bears to the total number of days in the calendar month. All Rent, and all other amounts payable to Landlord by Tenant pursuant to the provisions of this Lease, shall be paid to Landlord, without notice, demand, abatement, deduction or offset, in lawful money of the United States at Landlord’s office in the Building or to such other person or at such other place as Landlord may designate from time to time by written notice given to Tenant. No payment by Tenant or receipt by Landlord of a lesser amount than the correct Rent due hereunder shall be deemed to be other than a payment on account; nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction; and Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance or pursue any other remedy in this Lease or at law or in equity provided.

4.6 **Late Charge; Interest.** Tenant acknowledges that the late payment of Base Rent or any other amounts payable by Tenant to Landlord hereunder (all of which shall constitute additional rental to the same extent as Base Rent) will cause Landlord to incur administrative costs and other damages, the exact amount of which would be impracticable or extremely difficult to ascertain. Landlord and Tenant agree that if Landlord does not receive any such payment on or before five (5) days after the date the payment is due, Tenant shall pay to Landlord, as additional rent, (a) a late charge equal to five percent (5%) of the overdue amount or $200.00 whichever is greater to cover such additional administrative costs; and (b) interest on the delinquent amounts at the lesser of the maximum rate permitted by law if any or twelve percent (12%) per annum from the date due to the date paid. Notwithstanding the foregoing, for any non-regularly recurring payments under this Lease (i.e., not payments of Monthly Base Rent or other payments made on a monthly basis), Tenant shall be provided written notice and five (5) days to cure such non-regularly recurring payment one (1) time each calendar year prior to the occurrence of an Event of Default.

4.7 **Additional Rent.** For purposes of this Lease, all amounts payable by Tenant to Landlord pursuant to this Lease, whether or not denominated as such, shall constitute additional rental hereunder. Such additional rental, together with the Base Rent and Rent Adjustments, shall sometimes be referred to in this Lease as “Rent”.

**ARTICLE V**

**SECURITY DEPOSIT**

(A) Upon the execution of this Lease, Tenant shall deposit with Landlord the Security Deposit described in Section 1.9 above in cash or through a Letter of Credit (as hereinafter defined).

(B) For purposes of this Lease, “Letter of Credit” shall mean an unconditional, irrevocable sight draft letter of credit, drawable in the San Francisco Bay Area, issued by a national bank reasonably satisfactory to Landlord, naming Landlord as beneficiary and otherwise in form and substance satisfactory to Landlord. The Letter of Credit shall be for a one (1) year term and shall provide: (i) that Landlord may make partial and multiple draws thereunder; (ii) that if Tenant fails to pay rent or other charges due under the Lease, or otherwise defaults, after applicable notice and cure periods, if any, with respect to any provision of the Lease, or if Landlord is otherwise permitted under the terms of the Lease to draw upon the Letter of Credit, Landlord may at its sole option draw upon the Letter of Credit and the bank will honor a sight draft of Landlord; (iii) that the bank shall honor such draw without inquiry and the bank shall not have the authority, ability, right or discretion to inquire as to the basis for such statement; (iv) that in the event of Landlord’s assignment or other transfer of its interest in the Lease, the Letter of Credit shall be freely transferable by Landlord, one or more times, without charge and without recourse to the Landlord or the assignee or transferee of such interest; (v) that the Letter of Credit is governed by the Uniform Customs and Practice for Documentary Credits (1993 revisions), International Chamber of Commerce Publication No. 500;
(C) If Landlord draws upon the Letter of Credit in accordance with the terms of this Lease, Tenant shall within ten (10) business days after Landlord’s draw deposit with Landlord a cash sum in an amount which when added to the amount available to be drawn under the Letter of Credit equals the amount of the Letter of Credit then required to be maintained by Tenant hereunder. Tenant’s failure to do so shall be a material breach of this Lease and entitle Landlord to draw down the entire Letter of Credit.

(D) The Security Deposit is made by Tenant to secure the faithful performance of all the terms, covenants and conditions of this Lease to be performed by Tenant. If Tenant shall default with respect to any covenant or provision hereof beyond applicable notice and cure periods, if any, Landlord may use, apply or retain all or any portion of the Security Deposit to cure such default or to compensate Landlord for any loss or damage which Landlord may suffer thereby pursuant to Section 1951.2 of the California Civil Code. If Landlord so uses or applies all or any portion of the Security Deposit, Tenant shall immediately upon written demand deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the full amount then required to be maintained by Tenant hereunder. Landlord shall not be required to keep the Security Deposit separate from its general accounts and Tenant shall not be entitled to interest on the Security Deposit. Within thirty (30) days after the expiration or earlier termination of the Lease Term, the Security Deposit or any balance thereof shall be returned to Tenant (or, at Landlord’s option, to Tenant’s assignee), provided that subsequent to the expiration of this Lease, Landlord may retain from said Security Deposit all amounts necessary to compensate Landlord for any and all defaults by Tenant under the Lease, including post termination damages. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code and all other provisions of law, now or hereafter in effect, which provide that Landlord may claim from a Security Deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums specified in this Article V above and/or those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the acts or omissions of Tenant or any officer, employee, agent, contractor or invitee of Tenant.

ARTICLE VI

USE OF PREMISES

6.1 Tenant’s Permitted Use. Tenant shall have access to the Building and the Premises seven (7) days a week, twenty-four (24) hours a day. Tenant shall use the Premises only for Tenant’s Permitted Use as set forth in Section 1.11 above and shall not use or permit the Premises to be used for any other use or purpose whatever, without Landlord’s prior written consent. Tenant shall, at its sole cost and expense, obtain all governmental licenses and permits required to allow Tenant to conduct Tenant’s Permitted Use. Landlord disclaims any warranty that the Premises are suitable for Tenant’s use, and Tenant acknowledges that it has had a full opportunity to make its own determination in this regard.

6.2 Compliance With Laws and Other Requirements.

(A) Tenant shall cause the Premises to comply in all material respects with all laws, ordinances, regulations and directives of any governmental authority having jurisdiction including, without limitation, any certificate of occupancy and any law, ordinance, regulation, covenant, condition or restriction affecting the Building or the Premises which in the future may become applicable to the Premises.

(B) Tenant shall not use the Premises, or permit the Premises to be used, in any manner which: (i) violates any Applicable Law; (ii) causes or is reasonably likely to cause damage to the Building or the Premises; (iii) violates a requirement or condition of any fire and extended insurance policy covering the Building and/or the Premises, or increases the cost of such policy; (iv) constitutes or is reasonably likely to constitute a nuisance, annoyance or inconvenience to other tenants or occupants of the Building or its equipment, facilities or systems; (v) interferes with, or is reasonably likely to interfere with, the transmission or reception of microwave, television, radio, telephone or other communication signals by antennae or other facilities located in the Building; or (vi) violates the Rules and Regulations described in Article XIX.

(C) Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot area which such floor was designed to carry and which may be allowed by law. Landlord reserves the right to prescribe the weight and position of all heavy equipment and similar items, and to prescribe the reinforcing necessary, if any, which in the opinion of Landlord may be required under the circumstances, such reinforcing to be at Tenant’s prepaid expense.

(D) The parties acknowledge that safety and security devices, services and programs provided by Landlord, if any, while intended to deter crime and ensure safety, may not in given instances prevent theft or other criminal acts, or ensure safety of persons or property. The risk that any safety or security device, service or program may not be effective, or may malfunction, or be circumvented by a criminal, is assumed by Tenant with respect to Tenant’s property and interests, and Tenant shall obtain insurance coverage to the extent Tenant desires protection against such criminal acts and other losses, as further described in this Lease. Tenant agrees to cooperate in any reasonable safety or security program developed by Landlord or required by Law.

(E) Landlord shall be responsible, at its cost and expense and not as an Operating Expense, for all code compliance work to the common areas of the Building, if any, including but not limited to the path of travel, common area bathrooms fixtures, drinking fountains and required seismic upgrades.

6.3 Hazardous Materials.

(A) No Hazardous Materials, as defined herein, shall be Handled, as also defined herein, upon, about, above or beneath the Premises or any portion of the Building by or on behalf of Tenant, its subtenants or its assignees, or their respective contractors, clients, officers, managers, members, partners, directors, employees, agents, or invitees without Landlord’s prior written consent. Any Hazardous Materials brought into the Building, or discharged in, about, above or beneath the Building by Tenant or such other persons described above shall be known as “Tenant’s Hazardous Materials.” Notwithstanding the foregoing, normal quantities of Tenant’s Hazardous Materials customarily used in the conduct of general administrative and executive office activities (e.g., copier fluids and cleaning supplies) may be Handled at the Premises without Landlord’s prior written consent. Tenant’s Hazardous Materials shall be Handled at all times in compliance with the manufacturer’s instructions therefore and all applicable Environmental Laws, as defined herein.
(B) Tenant shall, at its sole cost and expense, promptly take all actions required by any Regulatory Authority, as defined herein, which requirements or necessity arises from the Handling of Tenant’s Hazardous Materials upon, about, above or beneath the Premises or any portion of the Building. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Premises or any portion of the Building, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. Except as otherwise agreed to by Landlord based upon advise of its environmental consultants, Tenant shall take all actions necessary to restore the Premises or any portion of the Building to the condition existing prior to the introduction of Tenant’s Hazardous Materials, notwithstanding any less stringent standards or remediation allowable under applicable Environmental Laws. Tenant shall nevertheless obtain Landlord’s written approval prior to undertaking any actions required by this Section 6.3(B), which approval shall not be unreasonably withheld so long as such actions would not potentially have a material adverse long-term or short-term effect on the Premises or any portion of the Building.

(C) Tenant agrees to execute affidavits, representations, and the like from time to time at Landlord’s request describing the Hazardous Materials used at the Premises by Tenant.

(D) Landlord represents to its knowledge that (i) no Hazardous Materials is present on or about the Building in violation of Environmental Laws and (ii) there is no action pending before any Regulatory Authority regarding the presence of Hazardous Materials in the Building.

(E) Landlord has disclosed to Tenant and Tenant has acknowledged that a small amount of non-friable encapsulated asbestos is located in the stairway leading to the penthouse and that such encapsulated asbestos will not be removed by Landlord.

(F) In no event shall Tenant be liable for the removal or remediation of any Hazardous Materials or for any costs or expenses incurred by Landlord in connection with such removal or remediation except to the extent the removal or remediation of such Hazardous Materials is the responsibility of Tenant pursuant to this Section 6.3. Except as expressly set forth herein with respect to Tenant’s obligations, Landlord shall pay or cause others to pay for the removal or remediation of any Hazardous Materials in the Building or the Premises which are in violation of Environmental Laws. If and to the extent that such event is covered by Landlord’s rent interruption insurance, Tenant shall be entitled to abatement of Rent during any period of time when the Premises, or any portion thereof, cannot be used or occupied in the ordinary course of Tenant’s business due to the presence of Hazardous Materials that are not Tenant’s Hazardous Materials in, about, above or under the Building.

(G) Definitions

(i) “Environmental Laws” means and includes all now and hereafter existing statutes, laws, ordinances, codes, regulations, rules, rulings, orders, decrees, directives, policies and requirements by any Regulatory Authority regulating, relating to, or imposing liability or standards of conduct concerning public health and safety or the environment.

(ii) “Hazardous Materials” means: any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term “Hazardous Material” includes, without limitation, any material or substance which is (i) defined as “Hazardous Waste,” “Extremely Hazardous Waste,” or “Restricted Hazardous Waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “Hazardous Substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “Hazardous Material,” “Hazardous Substance,” or “Hazardous Waste” under Section 22501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a “Hazardous Substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum, (vi) asbestos, (vii) designated as a “Hazardous Substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317), (viii) defined as a “Hazardous Waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903), or (ix) defined as a “Hazardous Substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601).

(iii) “Handle,” “handled,” “Handling,” or “handling” shall mean any installation, handling, generation, storage, treatment, use, disposal, discharge, release, manufacture, refinement, presence, migration, emission, abatement, removal, transportation, or any other activity of any type in connection with or involving Hazardous Materials.

(iv) “Regulatory Authority” shall mean any federal, state or local governmental agency, commission, board or political subdivision.

ARTICLE VII

UTILITIES; SERVICES AND SIGNAGE

7.1 Building Services. Landlord agrees to furnish or cause to be furnished to the Premises the following utilities and services, subject to the conditions and standards set forth herein, the cost of which shall either be Operating Expenses or a Direct Reimbursement Expenses in accordance with the terms of this Lease:

(A) Non-attended automatic elevator service (if the Building has such equipment serving the Premises), in common with Landlord and other tenants and occupants and their agents and invitees, 24 hours a day, 7 days a week.

(B) During Business Hours, such air conditioning, heating and ventilation as, in Landlord’s reasonable judgment, are required for the comfortable use and occupancy of the Premises with typical heat and occupancy loads for the Permitted Use; provided, however, that if Tenant shall require heating, ventilation or air conditioning in excess of that which Landlord shall be required to provide hereunder, Landlord may provide such additional heating, ventilation or air conditioning at such rates and upon such additional conditions as shall be determined by Landlord from time to time. Tenant shall be able to control the provision of HVAC services within the Premises after Business Hours. Tenant will be responsible for paying Landlord’s then hourly charge for supplying such services (as reasonably determined by Landlord from time to time) as additional Rent. The hourly cost for HVAC supplied after Building Hours as of the Lease Date is $75.00 per hour.
required under this Lease or constitute or be construed as a constructive or other eviction of Tenant; provided however, that to the extent Landlord receives insurance proceeds under any service or business interruption policy, then Tenant shall have abatement of any associated Operating Expenses. Further, in the event any governmental authority or public utility promulgates or revises any law, ordinance, rule or regulation, or issues mandatory controls or voluntary controls relating to the use or conservation of energy, water, gas, light or electricity, the reduction of automobile or other emissions, or the provision of any other utility or service, Landlord may take any reasonably appropriate action to comply with such law, ordinance, rule, regulation, mandatory control or voluntary guideline and Tenant’s obligations hereunder shall not be affected by any such action of Landlord. Notwithstanding anything to the contrary contained herein, Tenant hereby waives the provisions of Section 1932(1) of the California Civil Code or any other applicable existing or future law, ordinance or governmental regulation permitting the termination of this Lease due to such failure or interruption. Notwithstanding the foregoing or any other provision of this Lease to the contrary, in the event that any utility, communication or other building service is interrupted for more than five (5) consecutive business days, or for more than ten (10) business days in a single month whether or not consecutive, as a result of Landlord’s or its agents, contractors or employees active negligence or Landlord’s breach of Landlord’s obligations under this Lease (as distinct from a failure of such utility or service which is area wide, a Force Majeure event or which occurred and was not caused by Landlord’s or its agents’, tenants’ or any other person or persons’ active negligence or breach of Landlord’s obligations hereunder), then in such event, Tenant shall receive an abatement of Rent until such service(s) are restored; provided however that if and to the extent such failure is covered by rent interruption insurance, Landlord shall process such claim and shall provide Tenant with the benefit of any such payments from the date received.

7.3 **Signage.** Landlord, at its sole cost and expense, will provide (a) the initial Building standard identification of Tenant on the main floor lobby directory, including a logo of appropriate size; and (b) the initial Building standard identification signage at the entry to the Premises. Any subsequent changes to the suite identification or directory signage (including any update of any computer directory) will be at Tenant’s sole cost. Tenant may, at its sole cost and expense, install additional signage at the entrance to its Premises and in the elevator lobbies of its Premises provided, however that all such additional signage shall be subject to the Landlord’s prior written approval as to the location, size, lettering, materials, color, lighting and content of the sign, which approval may be given or withheld in the sole but reasonable discretion of Landlord.

**ARTICLE VIII**

**MAINTENANCE AND REPAIRS**

8.1 **Landlord’s Obligations.** Except as provided in Sections 8.2 and 8.3 below, Landlord shall maintain the Building in reasonable order and repair throughout the Lease Term, and except as expressly provided herein, Landlord shall not be liable for any failure to make any repairs or to perform any maintenance. Except as provided herein, there shall be no abatement of Rent, nor shall there be any liability of Landlord, by reason of any injury or inconvenience to, or interference with, Tenant’s business or operations arising from the making of, or failure to make, any maintenance or repairs in or to any portion of the Building provided, however, that Landlord shall not impair Tenant’s operations more than reasonably necessary. Notwithstanding anything to the contrary herein, Landlord shall perform and construct, and Tenant shall have no responsibility to perform or construct, any repair, maintenance or improvements (a) necessitated by the acts or omissions of any other occupant of the Building, (b) for which Landlord has received reimbursement from others, (c) to the structural portions of the Premises, (d) to the heating, ventilating, air conditioning, electrical, water, sewer, and plumbing systems serving the Premises and the Building, (e) to any portion of the Building outside of the demising walls of the Premises, or (f) any Capital Improvements. Notwithstanding the foregoing, Tenant shall pay for its share of the repairs described in (c), (d), (e) and/or (f) above if and to the extent (x) such costs are properly included in Operating Expenses or (y) such expenditures are required as a result of Tenant’s negligence or willful
8.2 **Tenant’s Obligations.** During the Lease Term, and except as otherwise expressly provided in this Lease, Tenant shall, at its sole cost and expense, maintain the Premises in the condition received (including, without limitation, the carpet, wall covering, doors, plumbing and other fixtures, equipment, alterations and improvements, whether installed by Landlord or Tenant). Further, except to the extent of Landlord’s waiver in Section 10.6, Tenant shall be responsible for, and upon demand by Landlord shall promptly reimburse Landlord for, any damage to any portion of the Building or the Premises caused by (a) Tenant’s activities in the Building or the Premises; (b) the performance or existence of any alterations, additions or improvements made by Tenant in or to the Premises; (c) the installation, use, operation or movement of Tenant’s property in or about the Building or the Premises; or (d) any act or omission by Tenant or its officers, managers, members, partners, employees, agents, contractors or invitees.

8.3 **Landlord’s Rights.** Landlord and its contractors shall have the right, at all reasonable times and with 24-hour notice to Tenant to enter the Premises, other than in the case of any emergency in which case no notice shall be required, to enter upon the Premises to make any repairs to the Premises or the Buildings reasonably required or deemed reasonably necessary by Landlord and to erect such equipment, including scaffolding, as is reasonably necessary to effect such repairs. Any entry by Landlord and Landlord’s agents hereunder shall not impair Tenant’s operations more than reasonably necessary, and shall comply with Tenant’s reasonable security measures.

**ARTICLE IX
ALTERATIONS, ADDITIONS AND IMPROVEMENTS**

9.1 **Landlord’s Consent; Conditions.** Tenant shall not make or permit to be made any alterations, additions, or improvements in or to the Premises ("Alterations") without the prior written consent of Landlord, which consent, with respect to nonstructural alterations, shall not be unreasonably withheld. Notwithstanding the foregoing, the term "Alterations" shall not include the Landlord’s Work. Landlord may impose as a condition to making any Alterations such requirements as Landlord in its reasonable discretion deems necessary or desirable including without limitation: Tenant’s submission to Landlord, for Landlord’s prior written approval, of all plans and specifications relating to the Alterations; Landlord’s prior written approval of the time or times when the Alterations are to be performed; Landlord’s prior written approval of the contractors and subcontractors performing work in connection with the Alterations; Tenant’s receipt of all necessary permits and approvals from all governmental authorities having jurisdiction over the Premises prior to the construction of the Alterations; and Tenant’s payment to Landlord of all costs and expenses incurred by Landlord because of Tenant’s Alterations, including, but not limited to, costs incurred in reviewing the plans and specifications for, and the progress of, the Alterations and a construction management fee of 3% of the "hard costs" of the Alteration. Tenant is required to provide Landlord written notice of whether the Alterations include the handling of any Hazardous Materials and whether these materials are of a customary and typical nature for industry practices. Upon completion of the Alterations, Tenant shall provide Landlord with copies of as-built plans. Neither the approval by Landlord of plans and specifications relating to any Alterations nor Landlord’s supervision or monitoring of any Alterations shall constitute any warranty by Landlord to Tenant of the adequacy of the design for Tenant’s intended use or the proper performance of the Alterations. Notwithstanding anything to the contrary herein, Tenant may construct non-structural Alterations in the Premises without Landlord’s prior approval but upon prior written notice to Landlord, if the costs of any projects do not exceed Twenty-Five Thousand Dollars ($25,000) and Tenant shall, at the request of Landlord remove such Alterations at the end of the Term.

9.2 **Performance of Alterations Work.** All work relating to the Alterations shall be performed in compliance with the plans and specifications approved by Landlord, all applicable laws, ordinances, rules, regulations and directives of all governmental authorities having jurisdiction and the requirements of all carriers of insurance on the Premises and the Building, the Board of Underwriters, Fire Rating Bureaus, or similar organization, including, without limitation, the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq., as it may be amended from time to time, and any governmental regulations with respect thereto and Title 24 of the California Administrative Code. All work shall be performed in a diligent, first class manner and so as not to unreasonably interfere with any other tenants or occupants of the Building. All costs incurred by Landlord relating to the Alterations shall be payable to Landlord by Tenant as additional rent upon demand. No asbestos-containing materials shall be used or incorporated in the Alterations. No lead-containing surfacing material, solder, or other construction materials or fixtures where the presence of lead might create a condition of exposure not in compliance with Environmental Laws shall be incorporated in the Alterations.

9.3 **Liens.** Tenant shall pay when due all costs for work performed and materials supplied to the Premises. Tenant shall keep Landlord, the Premises and the Building free from all liens, stop notices and violation notices relating to the Alterations or any other work performed for, materials furnished to or obligations incurred by or for Tenant and Tenant shall protect, indemnify, hold harmless and defend Landlord, the Premises and the Building of and from any and all loss, cost, damage, liability and expense, including attorneys’ fees, arising out of or related to any such liens or notices. Further, Tenant shall give Landlord not less than seven (7) business days prior written notice before commencing any Alterations in or about the Premises to permit Landlord to post appropriate notices of non-responsibility. During the progress of such work, Tenant shall, upon Landlord’s request, furnish Landlord with lien waivers covering all work theretofore performed. Tenant shall satisfy or otherwise discharge all liens, stop notices or other claims or encumbrances within ten (10) days after Landlord notifies Tenant in writing that any such lien, stop notice, claim or encumbrance has been filed. If Tenant fails to pay and remove such lien, claim or encumbrance within such ten (10) days, Landlord, at its election, may pay and satisfy the same and in such event the sums so paid by Landlord, with interest from the date of payment at the rate set forth in Section 4.6 hereof for amounts owed Landlord by Tenant shall be deemed to be additional rent due and payable by Tenant within ten (10) days following without notice or demand.

9.4 **Lease Termination.** Except as provided in this Section 9.4, upon expiration or earlier termination of this Lease Tenant shall surrender the Premises to Landlord in the same condition as existed on the completion of the Work, subject to reasonable wear and tear, casualty, condemnation, Hazardous Materials (other than those released or emitted by Tenant), and alterations or other interior improvements which it is permitted to surrender at the termination of this Lease. In no event shall Tenant be required to remove Landlord’s Work (as defined in the Work Letter). All Alterations shall become a part of the Premises and shall become the property of Landlord upon the expiration or earlier termination of this Lease, unless Landlord shall, by written notice given to Tenant at the time Landlord consents to such Alterations, require Tenant to remove some or all of Tenant’s Alterations, in which event Tenant shall promptly remove the designated Alterations at the end of the Lease Term and shall promptly repair any resulting damage, all at Tenant’s sole expense. All business and trade fixtures, machinery and equipment, furniture, movable partitions and items of personal property owned by Tenant or installed by Tenant at its expense in the Premises shall be and remain the property of Tenant; upon the expiration or earlier termination of this Lease, Tenant shall, at its sole expense, remove all such items and repair

18

19
remediation relating to the Handling of Tenant’s Hazardous Materials, whether or not required by Environmental Laws. To the extent that Landlord is held strictly liable by a court or other governmental agency of competent jurisdiction under any Environmental Laws as a result of Tenant’s use of Hazardous Materials, Tenant’s obligation to Landlord and the other indemnities under the foregoing indemnification shall likewise be without regard to fault on Tenant’s part with respect to the violation of any Environmental Law which results in liability to the indemnitee. Tenant’s obligations and liabilities pursuant to this Section 10.1 shall survive the expiration or earlier termination of this Lease.

(B) Except to the extent of Tenant’s waivers in Section 10.7, Landlord agrees to protect, indemnify, hold harmless and defend Tenant from and against any and all loss, cost, damage, liability or expense, including reasonable attorneys’ fees, with respect to any claim of damage or injury to persons or property in or about the Building, caused by the active negligence, gross negligence or willful misconduct of Landlord or its agents, contractors or employees, violation of law or default of its obligations hereunder, after applicable notice and cure periods.

(C) Notwithstanding anything to the contrary contained herein, nothing shall be interpreted or used to in any way affect, limit, reduce or abrogate any insurance coverage provided by any insurers to either Tenant or Landlord.

(D) Notwithstanding anything to the contrary contained in this Lease, nothing herein shall be construed to infer or imply that Tenant is a partner, joint venturer, agent, employee, or otherwise acting by or at the direction of Landlord.

10.2 Property Insurance.

(A) At all times during the Lease Term, Tenant shall procure and maintain, at its sole expense, “all-risk” property insurance, for damage or other loss caused by fire or other casualty or cause including, but not limited to, vandalism and malicious mischief, theft, sprinkler leakage, bursting of pipes and explosion, in an amount not less than one hundred percent (100%) of the replacement cost covering (a) all Alterations made by or for Tenant in the Premises (excluding Landlord’s Work); and (b) Tenant’s trade fixtures, equipment and other personal property from time to time situated in the Premises. The proceeds of such insurance shall be used for the repair or replacement of the property so insured, except that if not so applied or if this Lease is terminated following a casualty, the proceeds applicable to the leasehold improvements shall be paid to Landlord and the proceeds applicable to Tenant's personal property shall be paid to Tenant.

(B) At all times during the Lease Term, Tenant shall procure and maintain rental value insurance covering a period of one year which shall also cover all real estate taxes and insurance costs for said period attributable to all perils insured against in Section 10.2(A).

10.3 Landlord’s Insurance. Landlord agrees to purchase and keep in full force and effect during the Term hereof, including any extensions or renewals thereof, insurance under policies issued by insurers of recognized responsibility, qualified to do business in the State of California on the Building in amounts not less than the then full replacement cost (without depreciation) of the Building (above foundations and including the Landlord’s Work), insuring against fire and such other risks as may be included in standard forms of “All Risk” (also known as causes of loss - special form) coverage insurance reasonably available from time to time. The policy of “All-Risk” property insurance shall provide that the policy shall not be invalidated should the insured waive in writing prior to a loss, any or all rights of recovery against any other party for losses covered by the policy.

10.4 Liability Insurance.
(A) At all times during the Lease Term, Tenant shall procure and maintain, at its sole expense, commercial general liability insurance applying to the use and occupancy of the Premises and the business operated by Tenant in the Premises. Such insurance shall have a minimum combined single limit of liability of at least Two Million Dollars ($2,000,000) per occurrence and a general aggregate limit of at least Two Million Dollars ($2,000,000). All such policies shall be written to apply to all bodily injury, property damage, personal injury losses and shall be endorsed to include Landlord and its agents, beneficiaries, partners, employees, and any Mortgagee of Landlord or any ground lessor as additional insureds. Such liability insurance shall be written as primary policies, not excess or contributing with or secondary to any other insurance as may be available to the additional insureds.

(B) Landlord shall, at all times during the Lease Term, procure and maintain commercial general liability insurance for the Building in which the Premises are located. Such insurance shall have minimum combined single limit of liability of at least One Million Dollars ($1,000,000) per occurrence, and a general aggregate limit of at least Two Million Dollars ($2,000,000).

10.5 Workers’ Compensation Insurance. At all times during the Lease Term, Tenant shall procure and maintain Workers’ Compensation Insurance in accordance with the laws of the State of California, and Employer’s Liability insurance with a limit not less than One Million Dollars ($1,000,000) Bodily Injury Each Accident; One Million Dollars ($1,000,000) Bodily Injury By Disease Each Person; and One Million Dollars ($1,000,000) Bodily Injury to Disease Policy Limit.

10.6 Policy Requirements. All insurance required to be maintained by Tenant shall be issued by insurance companies authorized to do insurance business in the State of California and rated not less than AVIII in Best’s Insurance Guide. A certificate of insurance (or, at Landlord’s option, copies of the applicable policies) evidencing the insurance required under this Article X shall be delivered to Landlord prior to the Commencement Date or the date Tenant enters the Premises for the purpose of installing personal property, and the certificate and/or policy for Tenant’s commercial general liability insurance will name Landlord and the other parties required under Section 10.3(A) as additional insureds. No such policy shall be subject to cancellation or reduction without thirty (30) days prior written notice to Landlord and to any Mortgagee designated by Landlord to Tenant. Tenant shall furnish Landlord with a replacement certificate with respect to any insurance not less than thirty (30) days prior to the expiration of the current policy. Tenant shall have the right to provide the insurance required by this Article X pursuant to blanket policies, but only if such blanket policies expressly provide coverage to the Premises and Landlord as required by this Lease.

10.7 Waiver of Subrogation.

(A) Landlord agrees that so long as the same is permitted under the laws of the State of California, it will include in its “All Risk” policies appropriate clauses pursuant to which the insurance companies (i) waive all right of subrogation against Tenant and its employees, agents and visitors with respect to losses payable under such policies (including claims for damage to foundations whether insured or not)

and/or (ii) agree that such policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policies. If Landlord is unable to obtain in such policy or policies either of the clauses described in the preceding sentence, Landlord shall, if legally possible and without necessitating a change in insurance carriers, have Tenant named in such policy or policies as an additional insured. If Tenant shall be named as an additional insured in accordance with the foregoing, Tenant agrees to endorse promptly to the order of Landlord, without recourse, any check, draft, or order for the payment of money representing the proceeds of any such policy or representing any other payment growing out of or connected with said policies, and Tenant does hereby irrevocably waive any and all rights in and to such proceeds and payments.

(B) Tenant agrees to include so long as the same is permitted under the laws of the State of California, it will include in its “All Risk” insurance policy or policies required under this Lease appropriate clauses pursuant to which the insurance company or companies (i) waive the right of subrogation against Landlord, its employees, agents or visitors with respect to losses payable under such policy or policies and/or (ii) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies. If Tenant is unable to obtain in such policy or policies either of the clauses described in the preceding sentence, Tenant shall, if legally possible and without necessitating a change in insurance carriers, have Landlord named in such policy or policies as an additional insured. If Landlord shall be named as an additional insured in accordance with the foregoing, Landlord agrees to endorse promptly to the order of Tenant, without recourse, any check, draft, or order for the payment of money representing the proceeds of any such policy or representing any other payment growing out of or connected with said policies, and Landlord does hereby irrevocably waive any and all rights in and to such proceeds and payments.

(C) Landlord hereby waives any and all right of recovery which it might otherwise have against Tenant, its servants, agents and employees, for loss or damage occurring to the Real Property and the fixtures, appurtenances and equipment therein, to the extent the same arises from a risk or peril that is required to be insured against under a property insurance policy or policies Landlord is required to maintain pursuant to this Lease, notwithstanding that such loss or damage may result from the negligence or fault of Tenant, its servants, agents or employees. Tenant hereby waives any and all right of recovery which it might otherwise have against Landlord, its servants, and employees, for loss or damage occurring to any item which Tenant is required to insure hereunder to the extent the same arises from a risk or peril that is required to be insured against under a property insurance policy or policies Tenant is required to maintain pursuant to this Lease, notwithstanding that such loss or damage may result from the negligence or fault of Landlord, its servants, agents or employees.

(D) The waivers in this Section 10.7 shall apply whether or not the parties are able to obtain such waivers in their respective insurance policies. Landlord and Tenant hereby agree to advise the other promptly if the clauses to be included in their respective insurance policies pursuant to subparagraphs (A) and (B) above cannot be obtained on the terms hereinafter provided and thereafter to furnish the other with a certificate of insurance or copy of such policies showing the naming of the other as an additional insured, as aforesaid. Landlord and Tenant hereby agree to notify the other promptly of any cancellation or change of the terms of any such policy that would affect such clauses or naming. All such policies which name both Landlord and Tenant as additional insureds shall, to the extent obtainable, contain agreements by the insurers to the effect that no act or omission of any additional insured will invalidate the policy as to the other additional insureds.

10.8 Failure to Insure. If Tenant fails to maintain any insurance which Tenant is required to maintain pursuant to this Article X, Tenant shall be liable to Landlord for any loss or cost resulting from such failure to maintain, Tenant may not self-insure against any risks required to be covered by insurance without Landlord’s prior written consent.
10.9 Exemption of Landlord from Liability. Landlord shall not be liable for injury to Tenant’s business, or loss of income therefrom, or, except in connection with damage or injury resulting from the gross negligence or willful misconduct of Landlord, or its authorized agents, for damage that may be sustained by the person, goods, wares, merchandise or property of Tenant, its employees, invitees, customers, agents, or contractors, or any other person in, on or about the Premises directly or indirectly caused by or resulting from fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, light fixtures, or mechanical or electrical systems or from intrabuilding network cable, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable to Tenant for any damages arising from any act or neglect of any other tenant of the Building. Tenant acknowledges that Landlord’s election to provide mechanical surveillance or to post security personnel in the Building is solely within Landlord’s discretion; Landlord shall have no liability in connection with the decision whether or not to provide such services and Tenant hereby waives all claims based thereon. Landlord shall not be liable for losses due to theft, vandalism or like causes.

ARTICLE XI

DAMAGE OR DESTRUCTION

11.1 Total Destruction. Except as provided in Section 11.3 below, this Lease shall automatically terminate if the Building is totally destroyed.

11.2 Partial Destruction of Premises. If the Premises are damaged by any casualty and in Landlord’s opinion, the Premises (exclusive of any Alterations made to the Premises by Tenant) can be restored to its preexisting condition within two hundred seventy (270) days after the date of the damage or destruction, Landlord shall, upon written notice from Tenant to Landlord of such damage, except as provided in Section 11.3, promptly and with due diligence repair any damage to the Premises (exclusive of any Alterations to the Premises made by Tenant, which shall be promptly repaired by Tenant at its sole expense) and, until such repairs are completed, the Rent shall be abated from the date of damage or destruction in the same proportion that the rentable area of the portion of the Premises which is unusable by Tenant in the conduct of its business bears to the total rentable area of the Premises. The cost of such repair shall be paid by Landlord or allocated as an Operating Expense as and to the extent provided in this Lease. If such repairs cannot, in Landlord’s opinion, be made within said two hundred seventy (270) day period after the damage or destruction, Landlord may, at its option, exercisable by written notice given to Tenant within thirty (30) days after the date of the damage or destruction, elect to make the repairs within a reasonable time after the damage or destruction, in which event this Lease shall remain in full force and effect but the Rent shall be abated as provided in the preceding sentence; if Landlord does not so elect to make the repairs, then either Landlord or Tenant shall have the right, by written notice given to the other within sixty (60) days after the date of the damage or destruction, to terminate this Lease as of the date of the damage or destruction.

11.3 Exceptions to Landlord’s Obligations. Notwithstanding anything to the contrary contained in this Article XI, Landlord shall have no obligation to repair the Premises if either: (a) there is an uninsured casualty or partially insured casualty and the Building in which the Premises are located is so damaged as to require repairs to the Building exceeding ten (10%) of the full insurable value of the Building; or (b) Landlord elects to demolish the Building in which the Premises are located; or (c) the damage or destruction occurs less than one (1) year prior to the Expiration Date and Tenant does not elect to exercise its Renewal Option at that time. Further, Tenant’s Rent shall not be abated if Tenant, or any officers, managers, members, partners, employees, agents or invitees, or any assignee or subtenant of Tenant, is, in whole or in part, responsible for the damage or destruction. Notwithstanding the foregoing, no lender or mortgagee shall have any obligation to restore any damage except to the extent of insurance proceeds actually received by it.

11.4 Waiver. The provisions contained in this Lease shall supersede any contrary laws (whether statutory, common law or otherwise) now or hereafter in effect relating to damage, destruction, self-help or termination. With respect to any damage which Landlord is obligated to repair or elects to repair, Tenant, as a material inducement to Landlord entering into this Lease, irrevocably waives and releases its rights under the provisions of Sections 1932 and 1933 of the California Civil Code.

ARTICLE XII

CONDEMNATION

12.1 Taking. If the entire Premises or so much of the Premises as to render the balance unusable by Tenant shall be taken by condemnation, sale in lieu of condemnation or in any other manner for any public or quasi-public purpose (collectively “Condemnation”), and if Landlord, at its option, is unable or unwilling to provide substitute premises containing at least as much rentable area as described in Section 1.2 above, then this Lease shall terminate on the date that title or possession to the Premises is taken by the condemning authority, whichever is earlier. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure.

12.2 Award. In the event of any Condemnation, the entire award for such taking shall belong to Landlord. Tenant shall have no claim against Landlord or the award for the value of any unexpired term of this Lease or otherwise. Tenant shall be entitled to independently pursue a separate award in a separate proceeding for Tenant’s relocation costs directly associated with the taking and for the taking of personal property or trade fixtures, provided such separate award does not diminish Landlord’s award.

12.3 Temporary Taking. No temporary taking of the Premises shall terminate this Lease or entitle Tenant to any abatement of the Rent payable to Landlord under this Lease; provided, further, that any award for such temporary taking shall belong to Tenant to the extent that the award applies to any time period during the Lease Term and to Landlord to the extent that the award applies to any time period outside the Lease Term.

ARTICLE XIII

OMITTED

ARTICLE XIV

ASSIGNMENT AND SUBLetterING
14.1 Restriction.

(A) Without the prior written consent of Landlord, Tenant shall not, either voluntarily or by operation of law, assign, encumber, or otherwise transfer this Lease or any interest herein, or sublet the Premises or any part thereof, or permit the Premises to be occupied by anyone other than Tenant or Tenant’s employees (any such assignment, encumbrance, subletting, occupation or transfer is hereinafter referred to as a "Transfer"), subject, however, to the terms and conditions of this Article XIV, which terms and conditions Tenant and Landlord agree are reasonable. An assignment, subletting or other action in violation of the foregoing shall be void and, at Landlord’s option, shall constitute a material breach of this Lease.

(B) So long as Tenant is not entering into a transaction described herein for the purpose of avoiding or otherwise circumventing the remaining terms of this Article, Tenant may, subject to Section 14.2, assign its entire interest under this Lease or sublease all or a portion of the Premises, without the consent of Landlord and without complying with the provisions of Section 14.3 and 14.5 below (each, a “Permitted Transfer”), to (i) an Affiliate (as hereinafter defined), or (ii) a successor to Tenant by purchase or other acquisition of Tenant’s capital stock or substantially all of Tenant’s assets, merger, consolidation or reorganization, provided that all of the following conditions are satisfied: (i) there is no pending Event of Default under this Lease with respect to Tenant; (ii) Tenant shall give Landlord written notice at least five (5) days prior to the effective date of the proposed transfer together with the information required hereunder and such entity shall expressly assume Tenant’s obligations hereunder; and (iii) with respect to a purchase, merger, consolidation or reorganization which results in Tenant ceasing to exist as a separate legal entity, Tenant's successor shall have a net worth equal to Tenant's net worth at the date immediately prior to such transfer.

For purposes of this provision, the term “Affiliate” shall mean any corporation or other entity controlling, controlled by, or under common control with (directly or indirectly) Tenant, including, without limitation, any parent corporation controlling Tenant or any subsidiary that Tenant controls. The term “control,” as used herein, shall mean the power to direct or cause the direction of the management and policies of the controlled entity through the ownership of more than fifty percent (50%) of the voting securities in such controlled entity.

(C) Notwithstanding anything contained in this Article XIV to the contrary, Tenant expressly covenants and agrees not to enter into any lease, sublease, license, concession or other agreement for use, occupancy or utilization of the Premises which provides for rental or other payment for such use, occupancy or utilization based in whole or in part on the net income or profits derived by any person from the property leased, used, occupied or utilized (other than an amount based on a fixed percentage or percentages of receipts or sales), and that any such purported lease, sublease, license, concession or other agreement shall be absolutely void and ineffective as a conveyance of any right or interest in the possession, use, occupancy or utilization of any part of the Premises.

14.2 Notice to Landlord. If Tenant desires to assign this Lease or any interest herein, or to sublet all or any part of the Premises, then at least thirty (30) days but not more than one hundred eighty (180) days prior to the effective date of the proposed assignment or subletting, Tenant shall submit to Landlord in connection with Tenant’s request for Landlord’s consent:

(A) A statement containing (i) the name and address of the proposed assignee or subtenant; (ii) such financial information with respect to the proposed assignee or subtenant as Landlord shall reasonably require; (iii) the type of use proposed for the Premises; and (iv) all of the principal terms of the proposed assignment or subletting; and

(B) Four (4) originals of the assignment or sublease on a form approved by Landlord and four (4) originals of the Landlord’s Consent to Sublease or Assignment and Assumption of Lease and Consent.

14.3 Landlord’s Recapture Rights. At any time within twenty (20) days after Landlord’s receipt of all (but not less than all) of the information and documents described in Section 14.2 above, Landlord may, at its option by written notice to Tenant, elect to: (a) sublease the Premises or the portion thereof proposed to be sublet by Tenant upon the same terms as those offered to the proposed subtenant if the proposed sublease is for more than 51% of the Premises or for substantially all of the remaining Term; (b) take an assignment of the Lease upon the same terms as those offered to the proposed assignee; or (c) terminate the Lease in its entirety or as to the portion of the Premises proposed to be assigned or sublet if the proposed sublease is for more than 51% of the Premises or for substantially all of the remaining Term, with a proportionate adjustment in the Rent payable hereunder if the Lease is terminated as to less than all of the Premises. If Landlord does not exercise any of the options described in the preceding sentence, then, during the above-described twenty (20) day period, Landlord shall either consent or deny its consent to the proposed assignment or subletting.

14.4 Landlord’s Consent; Standards. Landlord’s consent to a proposed assignment or subletting shall not be unreasonably withheld, and without limiting the foregoing, Landlord’s consent shall be deemed reasonably withheld if, in Landlord’s good faith judgment: (i) the proposed assignee or subtenant may not have the financial strength to perform its obligations under this Lease or any proposed sublease; (ii) the business and operations of the proposed assignee or subtenant are not of comparable quality or image to the business and operations being conducted by other tenants in the Building; (iii) the proposed assignee or subtenant intends to use any part of the Premises for a purpose not permitted under this Lease; (iv) the proposed assignee or subtenant, or any person who directly or indirectly controls, is controlled by, or is under common control with the proposed assignee or subtenant occupies space in the Building; (v) the proposed assignee or subtenant is disreputable; (vi) the use of the Premises or the Building by the proposed assignee or subtenant would, in Landlord’s reasonable judgment, impact the Building in a negative manner including but not limited to significantly increasing the pedestrian traffic in and out of the Building or requiring any alterations to the Building to comply with applicable laws; (vii) the transferee is a government (or agency or instrumentality thereof); or (viii) an Event of Default is pending at the time Tenant requests consent to the proposed Transfer.

14.5 Additional Rent. If Landlord consents to any such assignment or subletting, fifty percent (50%) of the amount by which all sums or other economic consideration received by Tenant attributable to such assignment or subletting, whether denominated as rental or otherwise, exceeds, in the aggregate, the total sum which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to less than all of the Premises under a sublease) less Assignment and Subletting Costs (as hereinafter defined) shall be paid to Landlord promptly after receipt as additional Rent under the Lease without affecting or reducing any other obligation of Tenant hereunder. “Assignment or Subletting Costs” shall mean (x) any reasonable brokerage commissions paid by Tenant in connection with the subletting or assignment, and (y) the cost of any Alterations made by Tenant to the space which is the subject of the assignment or sublet to prepare the same for the assignee’s or subtenant’s occupancy and (z) reasonable attorneys fees incurred by Tenant in connection with such assignment or subletting.

14.6 Landlord’s Costs. If Tenant shall Transfer this Lease or any or all of the Premises or shall request the consent of Landlord to any Transfer, Tenant shall pay to Landlord as additional rent Landlord’s reasonable costs related thereto, including Landlord’s reasonable attorneys’ fees and an administration
fee to Landlord of Seven Hundred Fifty Dollars ($750.00).

14.7 Continuing Liability of Tenant. Notwithstanding any Transfer, Tenant shall remain as fully and primarily liable for the payment of Rent and for the performance of all other obligations of Tenant contained in this Lease to the same extent as if the Transfer had not occurred; provided, however, that any act or omission of any transferee, other than Landlord, that violates the terms of this Lease shall be deemed a violation of this Lease by Tenant.

14.8 Non-Waiver. The consent by Landlord to any Transfer shall not relieve Tenant, or any person claiming through or by Tenant, of the obligation to obtain the consent of Landlord, pursuant to this Article XIV, to any further Transfer. In the event of an assignment or subletting, Landlord may collect rent from the assignee or the subtenant without waiving any rights hereunder and collection of the rent from a person other than Tenant shall not be deemed a waiver of any of Landlord’s rights under this Article XIV, an acceptance of assignee or subtenant as Tenant, or a release of Tenant from the performance of Tenant’s obligations under this Lease. If an Event of Default occurs with respect to Tenant, Landlord is irrevocably authorized to direct any transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant’s obligations under this Lease) until such default is cured.

ARTICLE XV
DEFAULT AND REMEDIES

15.1 Events of Default By Tenant. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant (“an Event of Default”).

(A) The failure by Tenant to pay Base Rent or make any other payment required to be made by Tenant hereunder as and when due; provided, however that Tenant shall have one five (5) day grace period in every calendar year in which to pay such Base Rent prior to the occurrence of an Event of Default.

(B) The failure by Tenant to observe or perform any other provision of this Lease to be observed or performed by Tenant, other than those described in Sections 15.1(A) and 15.1(B) above, if such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that it cannot be cured within the thirty (30) day period, no default shall exist if Tenant commences the curing of the default within the thirty (30) day period and thereafter diligently prosecutes the same to completion and completes the same within sixty (60) days.

(C) The making by Tenant of any general assignment for the benefit of creditors, the filing by or against Tenant of a petition under any federal or state bankruptcy or insolvency laws (unless, in the case of a petition filed against Tenant the same is dismissed within sixty (60) days after filing); the appointment of a trustee or receiver to take possession of substantially all of Tenant’s assets at the Premises or Tenant’s interest in this Lease or the Premises, when possession is not restored to Tenant within sixty (60) days; or the attachment, execution or other seizure of substantially all of Tenant’s assets located at the Premises or Tenant’s interest in this Lease or the Premises, when such seizure is not discharged within sixty (60) days.

(D) Any material misrepresentation herein, or material misrepresentation or omission in any financial statements or other materials provided by Tenant or any Guarantor to Landlord.

Time is of the essence with respect to Tenant’s compliance with this Section 15.1.

15.2 Remedies. Upon the occurrence of any Event of Default by Tenant as provided in Section 15.1, Landlord may exercise all of its remedies as may be permitted by law, including but not limited to the remedy provided by Section 1951.4 of the California Civil Code, and including without limitation, terminating this Lease, reentering the Premises and removing all persons and property therefrom in accordance with applicable law, which property may be stored by Landlord at a warehouse or elsewhere at the risk, expense and for the account of Tenant. If Landlord elects to terminate this Lease, Landlord shall be entitled to recover from Tenant the aggregate of all amounts permitted by law, including but not limited to (i) the worth at the time of award of the amount of any unpaid rent which had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (iv) any other amount necessary to compensate Landlord for all of the detriment proximately caused by Tenant’s failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, reasonable expenses of remodeling the Premises or any portion thereof for a new tenant; and (v) at Landlord’s election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law. The term “rent” as used in this Section 15.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in items (i) and (ii), above, the “worth at the time of award” shall be computed by allowing interest at the rate set forth in Section 15.4 below, but in no case greater than the maximum amount of such interest permitted by law. As used in item (iii), above, the “worth at the time of award” shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

15.3 Landlord’s Right To Continue Lease Upon Tenant Default. Landlord shall have the remedy described in Section 1951.4 of the California Civil Code (that is, Landlord may continue this Lease in effect after Tenant’s breach and abandonment and recover Rent as it becomes due, because Tenant has the right to

sublet or assign, subject only to reasonable limitations). Even though Tenant has breached this Lease and abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant’s right to possession, and Landlord may enforce all its rights and remedies as Rent becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the premises or the appointment of a receiver upon initiative of Landlord to protect Landlord’s interest under this Lease shall not constitute a termination of Tenant’s right to possession, and this Lease will not be deemed terminated unless and until Landlord delivers notice to Tenant expressly stating Landlord’s intention to terminate this Lease.
15.4 Right of Landlord to Perform. Except as expressly provided in this Lease to the contrary, all covenants and agreements to be performed by Tenant under this Lease shall be performed by Tenant at Tenant’s sole cost and expense. If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder in each case subject to applicable notice and cure periods, if any, Landlord may, but shall not be obligated to, make any payment or perform any such other act on Tenant’s part to be made or performed, without waiving or releasing Tenant of its obligations under this Lease. Any sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the lesser of the maximum rate permitted by law if any or twelve percent (12%) per annum from the date of such payment, shall be payable to Landlord as additional rent on demand and Landlord shall have the same rights and remedies in the event of nonpayment as in the case of default by Tenant in the payment of Rent.

15.5 Non-Waiver. Nothing in this Article shall be deemed to affect Landlord’s rights to indemnification for liability or liabilities arising prior to termination of this Lease or Tenant’s right to possession of the Premises for personal injury or property damages under the indemnification clause or clauses contained in this Lease. No acceptance by Landlord of a lesser sum than the Rent then due shall be deemed to be other than on account of the earliest installment of such sum, and shall not be deemed to be a waiver of any preceding breach by Tenant of any agreement, condition, or provision of this Lease, other than the failure of Tenant to pay the particular rent so accepted; regardless of Landlord’s knowledge of such preceding breach at the time of acceptance of such rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance of such installment or pursue any other remedy in the Lease provided. The delivery of keys to any employee of Landlord or to Landlord’s agent or any employee thereof shall not operate as a termination of this Lease or a surrender of the Premises. The waiver by Landlord of any agreement, condition or provision contained in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Lease; nor will any custom or practice that may grow up between the parties in the administration of the terms of this Lease be construed to waive or to lessen the right of Landlord to insist upon the performance by Tenant in strict accordance with the terms of this Lease.

15.6 Cumulative Remedies. The specific remedies to which Landlord may resort under the terms of the Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach by Tenant of any provisions of the Lease. In addition to the other remedies provided in the Lease, including the right to terminate this Lease or to terminate Tenant’s right of possession of the Premises and reenter and repossess the Premises and remove all persons and property from the Premises without terminating this Lease as provided in Section 15.2, Landlord shall be entitled to a restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of the Lease or to a decree compelling specific performance of any such covenants, conditions or provisions. Exercise of any of the remedies described in this Article XV will not prevent the concurrent or subsequent exercise of any other remedy provided for in this Lease or otherwise available to Landlord at law or in equity.

15.7 Default by Landlord. Landlord’s failure to perform or observe any of its obligations under this Lease shall constitute a default by Landlord under this Lease only if such failure shall continue for a period of thirty (30) days (or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure) after Landlord receives written notice from Tenant specifying the default. The notice shall give in reasonable detail the nature and extent of the failure and shall identify the Lease provision(s) containing the obligation(s). If Landlord shall default in the performance of any of its obligations under this Lease (after notice and opportunity to cure as provided herein), Tenant may pursue any remedies available to it under the law and this Lease, except that in no event shall Landlord be liable for punitive damages, lost profits, business interruption, speculative, consequential or other such damages.

ARTICLE XVI

ATTORNEYS’ FEES; COSTS OF SUIT

16.1 Attorneys’ Fees. If either Landlord or Tenant shall commence any action or other proceeding against the other arising out of, or relating to, this Lease or the Premises, the prevailing party shall be entitled to recover from the losing party, in addition to any other relief, its actual attorneys’ fees irrespective of whether or not the action or other proceeding is prosecuted to judgment and irrespective of any court schedule of reasonable attorneys’ fees. In addition, Tenant shall reimburse Landlord, upon demand, for all reasonable attorneys’ fees incurred in collecting Rent or otherwise seeking enforcement against Tenant, its sublessees and assigns, of Tenant’s obligations under this Lease.

16.2 Indemnification. Should Landlord be made a party to any litigation instituted by Tenant against a party other than Landlord, or by a third party against Tenant, except as expressly provided in Section 10.1(B) or otherwise in this Lease, Tenant shall indemnify, hold harmless and defend Landlord from any and all loss, cost, liability, damage or expense incurred by Landlord, including attorneys’ fees, in connection with the litigation.

ARTICLE XVII

SUBORDINATION AND ATTORNMENT

17.1 Subordination. This Lease, and the rights of Tenant hereunder, are and shall be subject and subordinate to the interests of (i) all present and future ground leases and master leases of all or any part of the Building; (ii) present and future mortgages and deeds of trust encumbering all or any part of the Building; (iii) all past and future advances made under any such mortgages or deeds of trust; and (iv) all renewals, modifications, replacements and extensions of any such ground leases, master leases, mortgages and deeds of trust; provided, however, that any lessor under any such ground lease or master lease or any mortgagee or beneficiary under any such mortgage or deed of trust (any such lessor, mortgagee or beneficiary is hereinafter referred to as a “Mortgagor”) shall have the right to elect, by written notice given to Tenant, to have this Lease made superior in whole or in part to any such ground lease, master lease, mortgage or deed of trust (or subject and subordinate to such ground lease, master lease, mortgage or deed of trust but superior to any junior mortgage or junior deed of trust). Upon demand, Tenant shall execute, acknowledge and deliver any instruments reasonably requested by Landlord or any such Mortgagor to effect the purposes of this Section 17.1. Such instruments may contain, among other things, provisions to the effect that such Mortgagor (hereafter, for the purposes of this Article XVII, a “Successor Landlord”) shall (a) not be liable for any act or omission of Landlord or its predecessors, if any, prior to the date of such Successor Landlord’s succession to Landlord’s interest under this Lease (provided that such Successor Landlord shall cure any existing defaults of which it is provided notice after such foreclosure); (b) not be subject to any offsets or defenses which Tenant might have been able to assert against Landlord or its predecessors, if any, prior to the date of such Successor Landlord’s succession to Landlord’s interest under this Lease; (c) not be liable for the return of any

30
Security Deposit under the Lease unless the same shall have actually been deposited with such Successor Landlord; (d) be entitled to receive notice of any Landlord default under this Lease plus a reasonable opportunity to cure such default prior to Tenant having any right or ability to terminate this Lease as a result of such Landlord default; (e) not be bound by any amendment or modification of the Lease or any cancellation or surrender of the same made without Successor Landlord’s prior written consent; and (g) not be bound by any obligation under the Lease to perform any work or to make any improvements to the demised Premises. Any obligations of any Successor Landlord under its respective lease shall be non-recourse as to any assets of such Successor Landlord other than its interest in the Premises and improvements. Notwithstanding the foregoing, (x) Landlord shall obtain a Subordination, Non-Disturbance and Attornment Agreement in substantially the form attached hereto as Exhibit E from any Mortgagee on the Property as of the Commencement Date and (y) Landlord shall use commercially reasonable efforts to obtain a Subordination, Non-Disturbance and Attornment Agreement from any future Mortgagors on the Property on such lender’s then standard form of Subordination, Non-Disturbance and Attornment Agreement but such receipt of such an agreement shall not be a condition of the subordination of this Lease by Tenant to such mortgage.

17.2 **Attornment.** If the interests of Landlord under the Lease shall be transferred to any superior Mortgagee or other person taking title to the Building by reason of the termination of any superior lease or the foreclosure of any superior mortgage or deed of trust or any other purchaser or transferee of such interests of Landlord, Tenant shall be bound to such Successor Landlord under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Successor Landlord were the Landlord under the Lease, and Tenant shall attorn to and recognize as Tenant’s landlord under this Lease such Successor Landlord, as its landlord, said attornment to be effective and self-operative without the execution of any further instruments upon Successor Landlord’s succeeding to the interest of Landlord under the Lease. Tenant shall, upon demand, execute any documents reasonably requested by any such person to evidence the attornment described in this Section 17.2.

17.3 **Mortgagee Protection.** Tenant agrees to give any Mortgagee, by registered or certified mail, a copy of any notice of default served upon Landlord by Tenant, provided that prior to such notice Tenant has been notified in writing (by way of service on Tenant of a copy of Assignment of Rents and Leases, or otherwise) of the address of such Mortgagee (hereafter the “Notified Party”). Tenant further agrees that if Landlord shall have failed to cure such default within thirty (30) days after such notice to Landlord (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if Landlord has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure or correct such default), then the Notified Party shall have an additional thirty (30) days within which to cure or correct such default (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if the Notified Party has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure or correct such default). Until the time allowed, as aforesaid, for the Notified Party to cure such default has expired without cure, Tenant shall have no right to, and shall not, terminate this Lease on account of Landlord’s default.

**ARTICLE XVIII**

**QUIET ENJOYMENT**

Provided that Tenant performs all of its obligations hereunder within applicable notice and cure periods, if any, Tenant shall have and peaceably enjoy the Premises during the Lease Term free of claims by or through Landlord, subject to all of the terms and conditions contained in this Lease.

**ARTICLE XIX**

**RULES AND REGULATIONS**

The Rules and Regulations attached hereto as Exhibit C are hereby incorporated by reference herein and made a part hereof. Tenant shall abide by, and faithfully observe and comply with the Rules and Regulations and any reasonable and nondiscriminatory amendments, modifications and/or additions thereto as may hereafter be adopted and published by written notice to tenants by Landlord for the safety, care, security, good order and/or cleanliness of the Premises and/or the Building. Landlord shall not be liable to Tenant for any violation of such rules and regulations by any other tenant or occupant of the Building. Tenant shall not be required to comply with any new rule or regulation unless the same does not materially increase the obligations or materially decrease the rights of Tenant under this Lease.

**ARTICLE XX**

**ESTOPPEL CERTIFICATES**

Tenant agrees at any time and from time to time upon not less than fifteen (15) days’ prior written notice from Landlord to execute, acknowledge and deliver to Landlord a statement in writing addressed and certifying to Landlord, to any current or prospective Mortgagee or any assignee thereof, to any prospective purchaser of the land, improvements or both comprising the Building, and to any other party designated by Landlord, that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); that Tenant has accepted possession of the Premises, which are acceptable in all respects, and that any improvements required by the terms of this Lease to be made by Landlord have been completed to the satisfaction of Tenant; that Tenant is in full occupancy of the Premises; that no rent has been paid more than thirty (30) days in advance; that the first month’s Base Rent has been paid; that Tenant is entitled to no free rent or other concessions except as stated in this Lease; that Tenant has not been notified of any previous assignment of Landlord’s or any predecessor landlord’s interest under this Lease; the dates to which Base Rent, additional rental and other charges have been paid; that Tenant, as of the date of such certificate, has no charge, lien or claim of setoff under this Lease or otherwise against Base Rent, additional rental or other charges due or to become due under this Lease; that to Tenant’s best knowledge, Landlord is not in default in performance of any covenant, agreement or condition contained in this Lease; or any other matter relating to this Lease or the Premises or, if so, specifying each such default. If there is a Guaranty under this Lease, said Guarantor shall confirm the validity of the Guaranty by joining in the execution of the Estoppel Certificate or other documents so requested by Landlord or Mortgagee. In addition, in the event that such certificate is being given to any Mortgagee, such statement may contain any other
provisions customarily required by such Mortgagor including, without limitation, an agreement on the part of Tenant to furnish to such Mortgagor, written notice of any Landlord default and a reasonable opportunity for such Mortgagor to cure such default prior to Tenant being able to terminate this Lease. Any such statement delivered pursuant to this Section may be relied upon by Landlord or any Mortgagor, or prospective purchaser to whom it is addressed and such statement, if required by its addressee, may so specifically state.

ARTICLE XXI

ENTRY BY LANDLORD

Landlord may enter the Premises at all reasonable times to: inspect the same; exhibit the same to prospective purchasers, Mortgagors or tenants; determine whether Tenant is complying with all of its obligations under this Lease; supply janitorial and other services to be provided by Landlord to Tenant under this Lease; post notices of non-responsibility; and make repairs or improvements in or to the Building or the Premises; provided, however, that all such work shall be done as promptly as reasonably possible and so as to cause as little interference to Tenant as reasonably possible. Tenant hereby waives any claim for damages for any injury or inconvenience to, or interference with, Tenant’s business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry. Landlord shall at all times have and retain a key with which to unlock all of the doors in, on or about the Premises (excluding Tenant’s vaults, safes and similar areas designated by Tenant in writing in advance), and Landlord shall have the right to use any and all means by which Landlord may deem proper to open such doors to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any such means, or otherwise, shall not under any circumstances be deemed or construed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from any part of the Premises. Such entry by Landlord shall not act as a termination of Tenant’s duties under this Lease. If Landlord shall be required to obtain entry by means other than a key provided by Tenant, the cost of such entry shall be payable by Tenant to Landlord as additional rent. Any entry by Landlord and Landlord’s agents shall comply with Tenant’s reasonable security measures.

ARTICLE XXII

LANDLORD’S LEASE UNDERTAKINGS — EXCULPATION FROM PERSONAL LIABILITY; TRANSFER OF LANDLORD’S INTEREST

22.1 Landlord’s Lease Undertakings. Notwithstanding anything to the contrary contained in this Lease, including any Exhibits hereto attached, it is expressly understood and agreed by and between the parties hereto that: (a) the recourse of Tenant or its successors or assigns against Landlord with respect to the alleged breach by or on the part of Landlord of any representation, warranty, covenant, undertaking or agreement contained in this Lease or otherwise arising out of Tenant’s use of the Premises or the Building (collectively, “Landlord’s Lease Undertakings”) shall extend only to Landlord’s interest in the real estate of which the Premises demised under this Lease are a part (“Landlord’s Real Estate”) and not to any other assets of Landlord or its constituent partners; and (b) except to the extent of Landlord’s interest in Landlord’s Real Estate, no personal liability or personal responsibility of any sort with respect to any of Landlord’s Lease Undertakings or any alleged breach thereof is assumed by, or shall at any time be asserted or enforceable against, Landlord, its constituent partners, or against any of their respective directors, officers, managers, members, employees, agents, constituent partners, beneficiaries, trustees or representatives.

22.2 Transfer of Landlord’s Interest. In the event of any transfer of Landlord’s interest in the Building, Landlord shall be automatically freed and relieved from all applicable liability with respect to performance of any covenant or obligation on the part of Landlord accruing after the date of such assignment, including, without limitation, the obligation of Landlord under Article VI of this Lease and Section 1950.7 of the California Civil Code to return the Security Deposit; provided the grantee of Landlord’s interest expressly assumes, subject to the limitations of this Article XXII, all the terms, covenants and conditions of this Lease to be performed on the part of Landlord, it being intended hereby that the covenants and obligations contained in this Lease on the part of Landlord shall, subject to all the provisions of this Article XXII, be binding on Landlord, its successors and assigns, only during their respective periods of ownership.

ARTICLE XXIII

HOLDOVER TENANCY

Nothing contained herein will be construed to give Tenant the right to hold over at any time, and Landlord may exercise any and all remedies at law or in equity to recover possession of the Premises, as well as any damages incurred by Landlord due to Tenant’s failure to vacate and deliver possession to Landlord as provided herein. If Tenant holds possession of the Premises after the expiration or termination of the Lease Term, by lapse of time or otherwise, Tenant shall become a tenant at sufferance upon all of the terms contained herein, except as to Rent. During such holdover period, Tenant shall pay to Landlord, on the first day of each applicable month, a monthly rental equivalent to one hundred fifty percent (150%) of the Rent payable by Tenant to Landlord with respect to the last month of the Lease Term. The monthly rent payable for such holdover period shall in no event be construed as a penalty or as liquidated damages for such retention of possession. Without limiting the foregoing, Tenant hereby agrees to indemnify, defend and hold harmless Landlord, its beneficiary, and their respective agents, contractors and employees, from and against any and all claims, liabilities, actions, losses, damages (including, without limitation, direct, indirect, incidental and consequential) and expenses (including, without limitation, court costs and reasonable attorneys’ fees) asserted against or sustained by any such party and arising from or by reason of such retention of possession, which obligations shall survive the expiration or termination of the Lease Term.

ARTICLE XXIV

NOTICES

All notices which Landlord or Tenant may be required, or may desire, to serve on the other may be served by hand delivery, or alternatively, by (a) delivery by private express courier (such as Federal Express or Airborne Courier) or (b) mailing the same by registered or certified mail, postage prepaid, addressed to Landlord at the addresses for Landlord set forth in Section 1.12 above and to Tenant at the address for Tenant set forth in Section 1.13 above, or addressed to such other address or addresses as either Landlord or Tenant may from time to time designate to the other in writing. Notice shall be deemed to have been served if by
hand or by private express courier on the date of delivery (or refusal if the recipient declines to sign for same), or if by mailing, three business days after the same was posted. Any notice or demand from an attorney acting or purporting to act on behalf of a party shall be deemed to be notice from such party, provided that such attorney is authorized to act on behalf of such party.

ARTICLE XXV

BROKERS

The parties recognize as the broker(s) who procured this Lease the Broker(s) specified in Section 1.14 and agree that Landlord shall be solely responsible for the payment of any brokerage commissions to said broker(s), and that Tenant shall have no responsibility therefor. If Tenant has dealt with any other person or real estate broker in respect to leasing, subleasing or renting space in the Building, Tenant shall be solely responsible for the payment of any fee due said person or firm and Tenant shall protect, indemnify, hold harmless and defend Landlord from any liability in respect thereto. If Landlord has dealt with any other person or real estate broker in respect to this Lease, Landlord shall be solely responsible for the payment of any fee due said person or firm and Landlord shall protect, indemnify, hold harmless and defend Tenant from any liability in respect thereto.

ARTICLE XXVI

COMMUNICATIONS AND COMPUTER LINES

26.1 Generally. Tenant acknowledges and agrees that all telephone and telecommunications services ("Telecommunications Services") desired by Tenant shall be ordered and utilized at the sole expense of Tenant. Unless Landlord otherwise requests or consents in writing, all equipment, apparatus and devices, including without limitation wiring and cables, for the provisions of Telecommunications Services, as well as Tenant’s computer and data wiring and cabling (collectively, the "Telecommunications Equipment") shall be and remain solely in the Premises. Unless otherwise specifically agreed in writing, Landlord shall have no responsibility for the maintenance of Tenant’s Telecommunications Equipment, nor for any wiring or other infrastructure to which Tenant’s Telecommunications Equipment may be connected. Tenant agrees that, to the extent any Telecommunications Services are interrupted, curtailed or discontinued, Landlord shall have no obligation or liability with respect thereto except as otherwise expressly provided in this Lease, and it shall be the sole obligation of Tenant, at its sole expense, to obtain substitute service. Tenant shall not be entitled to any rent abatement and the Commencement Date of this Lease shall not be delayed due to Tenants inability to obtain telecommunication services.

26.2 Interruption. Landlord shall have the right, upon such notice as is practicable in the case of emergencies, and otherwise upon at least two (2) business days prior notice to Tenant, to interrupt or turn off telecommunications facilities in the event of emergency or as necessary in connection with repairs to the Building or installation of telecommunications equipment for other tenants of the Building. Any such interruption shall be after Business Hours, if commercially reasonable, and shall not impair Tenant’s operations more than reasonably necessary.

26.3 Removal. Any and all Telecommunications Equipment installed in the Premises, or elsewhere in the Building by or on behalf of Tenant, including wiring and other facilities for the provision of Telecommunications Services, shall be removed by Tenant upon the expiration or earlier termination of the Lease Term, at its sole expense using a contractor reasonably approved by Landlord.

26.4 Abandonment. If the Telecommunications Equipment is not removed within thirty (30) days of the termination or expiration of this Lease, the Telecommunications Equipment shall conclusively be deemed to have been abandoned and may be removed, appropriated, sold, stored, destroyed, otherwise disposed of, or retained and used, by Landlord without notice to Tenant, without obligation to account therefore, and without payment to Tenant or credit against any amount due from Tenant to Landlord pursuant to this Lease. Tenant shall pay to Landlord upon demand all costs of any such removal, disposition and storage of the Telecommunication Equipment, as well as all costs to repair any damage to the Building caused by such removal. The obligations within this Section 26.4 shall survive the expiration or earlier termination of this Lease.

26.5 New Providers. In the event that Tenant wishes at any time to utilize the services of a telephone or telecommunications provider whose equipment is not then servicing the Building (a “New Provider”), no such New Provider shall be permitted to install its lines or other equipment within the Building without first securing the prior written approval of the Landlord, which approval may be withheld in Landlord’s reasonable discretion. Landlord’s approval shall not be deemed any kind of warranty or representation by Landlord, including, without limitation, any warranty or representation as to the suitability, competence or financial strength of the New Provider. Without limitation of Landlord’s right to withhold consent in its reasonable discretion, Landlord may refuse to give its approval unless all of the following conditions are satisfied: (i) Landlord shall incur no expense whatsoever with respect to any aspect of the New Provider’s provision of its services, including, without limitation, the cost of installation, materials and services; (ii) prior to commencement of any work in or about the Building by the New Provider, the New Provider shall supply Landlord with such written indemnities, insurance, financial statements, and such other items as Landlord, in its reasonable discretion, determines to be necessary to protect its financial interest and the interests of the Building related to the proposed activities of the New Provider; (iii) the New Provider agrees in writing to abide by such rules and regulations, building and other codes, job site rules and such other requirements as are determined by Landlord, in its sole and absolute discretion, to be necessary to protect the interest of the Building, the tenants in the Building and Landlord; (iv) Landlord determines, in its reasonable discretion, that there is sufficient space in the Building for the placement of all of the New Provider’s equipment and materials; and (v) all of the foregoing matters are documented in a written agreement between Landlord and the New Provider, the form and content of which are satisfactory to Landlord in its reasonable discretion. Notwithstanding any provision of the preceding subsection to the contrary, the reasonable refusal of Landlord the grant its approval to any New Provider shall not be deemed a default or breach by Landlord of its obligation under this Lease, and in no event shall Tenant have the right to terminate this Lease or claim entitlement to rent abatement for Landlord’s reasonable refusals to grant Tenant’s request for approval of a New Provider. The provisions of this Article XXVI may be enforced solely by Tenant and Landlord and are not for the benefit of any other party. Specifically, but without limitation, no telephone or telecommunications provider is intended to be, nor shall be deemed, a third party beneficiary of this Lease.

36

Telecommunications Services, shall be removed by Tenant upon the expiration or earlier termination of the Lease Term, at its sole expense using a contractor reasonably approved by Landlord.

26.4 Abandonment. If the Telecommunications Equipment is not removed within thirty (30) days of the termination or expiration of this Lease, the Telecommunications Equipment shall conclusively be deemed to have been abandoned and may be removed, appropriated, sold, stored, destroyed, otherwise disposed of, or retained and used, by Landlord without notice to Tenant, without obligation to account therefore, and without payment to Tenant or credit against any amount due from Tenant to Landlord pursuant to this Lease. Tenant shall pay to Landlord upon demand all costs of any such removal, disposition and storage of the Telecommunication Equipment, as well as all costs to repair any damage to the Building caused by such removal. The obligations within this Section 26.4 shall survive the expiration or earlier termination of this Lease.

26.5 New Providers. In the event that Tenant wishes at any time to utilize the services of a telephone or telecommunications provider whose equipment is not then servicing the Building (a “New Provider”), no such New Provider shall be permitted to install its lines or other equipment within the Building without first securing the prior written approval of the Landlord, which approval may be withheld in Landlord’s reasonable discretion. Landlord’s approval shall not be deemed any kind of warranty or representation by Landlord, including, without limitation, any warranty or representation as to the suitability, competence or financial strength of the New Provider. Without limitation of Landlord’s right to withhold consent in its reasonable discretion, Landlord may refuse to give its approval unless all of the following conditions are satisfied: (i) Landlord shall incur no expense whatsoever with respect to any aspect of the New Provider’s provision of its services, including, without limitation, the cost of installation, materials and services; (ii) prior to commencement of any work in or about the Building by the New Provider, the New Provider shall supply Landlord with such written indemnities, insurance, financial statements, and such other items as Landlord, in its reasonable discretion, determines to be necessary to protect its financial interest and the interests of the Building related to the proposed activities of the New Provider; (iii) the New Provider agrees in writing to abide by such rules and regulations, building and other codes, job site rules and such other requirements as are determined by Landlord, in its sole and absolute discretion, to be necessary to protect the interest of the Building, the tenants in the Building and Landlord; (iv) Landlord determines, in its reasonable discretion, that there is sufficient space in the Building for the placement of all of the New Provider’s equipment and materials; and (v) all of the foregoing matters are documented in a written agreement between Landlord and the New Provider, the form and content of which are satisfactory to Landlord in its reasonable discretion. Notwithstanding any provision of the preceding subsection to the contrary, the reasonable refusal of Landlord the grant its approval to any New Provider shall not be deemed a default or breach by Landlord of its obligation under this Lease, and in no event shall Tenant have the right to terminate this Lease or claim entitlement to rent abatement for Landlord’s reasonable refusals to grant Tenant’s request for approval of a New Provider. The provisions of this Article XXVI may be enforced solely by Tenant and Landlord and are not for the benefit of any other party. Specifically, but without limitation, no telephone or telecommunications provider is intended to be, nor shall be deemed, a third party beneficiary of this Lease.

37

ARTICLE XXVII

MISCELLANEOUS
27.1  **Entire Agreement.** This Lease contains all of the agreements and understandings relating to the leasing of the Premises and the obligations of Landlord and Tenant in connection with such leasing. Landlord has not made, and Tenant is not relying upon, any warranties, or representations, promises or statements made by Landlord or any agent of Landlord, except as expressly set forth herein. This Lease supersedes any and all prior agreements and understandings between Landlord and Tenant and alone expresses the agreement of the parties.

27.2  **Amendments.** This Lease shall not be amended, changed or modified in any way unless in writing executed by Landlord and Tenant. Landlord shall not have waived or released any of its rights hereunder unless in writing and executed by Landlord.

27.3  **Successors.** Except as expressly provided herein, this Lease and the obligations of Landlord and Tenant contained herein shall bind and benefit the successors and assigns of the parties hereto.

27.4  **Force Majeure.** Landlord shall incur no liability to Tenant with respect to, and shall not be responsible for any failure to perform, any of Landlord’s obligations hereunder if such failure is caused by any reason beyond the control of Landlord including, but not limited to, strike, labor trouble, governmental rule, regulations, ordinance, statute or interpretation, or by fire, earthquake, civil commotion, or failure or disruption of utility services, but excluding financial inability. The amount of time for Landlord to perform any of Landlord’s obligations shall be extended by the amount of time Landlord is delayed in performing such obligation by reason of any force majeure occurrence whether similar to or different from the foregoing types of occurrences.

27.5  **Survival of Obligations.** Any obligations of Tenant accruing prior to the expiration of the Lease shall survive the expiration or earlier termination of the Lease, and Tenant shall promptly perform all such obligations whether or not this Lease has expired or been terminated.

27.6  **Light and Air.** No diminution or shutting off of any light, air or view by any structure now or hereafter erected shall in any manner affect this Lease or the obligations of Tenant hereunder, or increase any of the obligations of Landlord hereunder.

27.7  **Governing Law.** This Lease shall be governed by, and construed in accordance with, the laws of the State of California.

27.8  **Severability.** In the event any provision of this Lease is found to be unenforceable, the remainder of this Lease shall not be affected, and any provision found to be invalid shall be enforceable to the extent permitted by law. The parties agree that in the event two different interpretations may be given to any provision hereunder, one of which will render the provision unenforceable, and one of which will render the provision enforceable, the interpretation rendering the provision enforceable shall be adopted.

27.9  **Captions.** All captions, headings, titles, numerical references and computer highlighting are for convenience only and shall have no effect on the interpretation of this Lease.

27.10  **Interpretation.** Tenant acknowledges that it has read and reviewed this Lease and that it has had the opportunity to confer with counsel in the negotiation of this Lease. Accordingly, this Lease shall be construed neither for nor against Landlord or Tenant, but shall be given a fair and reasonable interpretation in accordance with the meaning of its terms and the intent of the parties.

27.11  **Independent Covenants.** Each covenant, agreement, obligation or other provision of this Lease to be performed by Tenant are separate and independent covenants of Tenant, and not dependent on any other provision of the Lease.

27.12  **Number and Gender.** All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include the appropriate number and gender, as the context may require.

27.13  **Time is of the Essence.** Time is of the essence of this Lease and the performance of all obligations hereunder.

27.14  **Joint and Several Liability.** If Tenant comprises more than one person or entity, or if this Lease is guaranteed by any party, all such persons shall be jointly and severally liable for payment of rents and the performance of Tenant’s obligations hereunder.

27.15  **Exhibits.** Exhibits A (Floor Plan of Premises), B (Work Letter Agreement), C (Rules), D (Form of Commencement Date Certificate) and E (Form of SNDA) are incorporated into this Lease by reference and made a part hereof.

27.16  **Offer to Lease.** The submission of this Lease to Tenant or its broker or other agent, does not constitute an offer to Tenant to lease the Premises. This Lease shall not have force and effect until (a) it is executed and delivered by Tenant to Landlord and (b) it is fully reviewed and executed by Landlord; provided, however, that, upon execution of this Lease by Tenant and delivery to Landlord, such execution and delivery by Tenant shall, in consideration of the time and expense incurred by Landlord in reviewing the Lease and Tenant’s credit, constitute an offer by Tenant to Lease the Premises upon the terms and conditions set forth herein (which offer to Lease shall be irrevocable for twenty (20) business days following the date of delivery).

27.17  **Choice of Laws; Waiver of Jury Trial.** In addition, Tenant hereby submits to local jurisdiction in the State of California and agrees that any action by Tenant against Landlord shall be instituted in the State of California and that Landlord shall have personal jurisdiction over Tenant for any action brought by Landlord against Tenant in the State of California. TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING ANY LAW ENACTED AFTER THE LEASE DATE, TENANT AND LANDLORD HEREBY, KNOWINGLY AND VOLUNTARILY, WAIVE TRIAL BY JURY IN ANY ACTION WHATSOEVER BROUGHT BY LANDLORD OR TENANT UNDER OR IN RESPECT OF THIS LEASE, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL COUNTERCLAIMS. THE FOREGOING WAIVER HAS BEEN A MATERIAL INDUCEMENT TO LANDLORD’S AND TENANT’S ENTERING INTO THIS LEASE.

27.18  **Electrical Service to the Premises.** Anything set forth in Section 7.1 or elsewhere in this Lease to the contrary notwithstanding, electricity to the Premises shall not be furnished by Landlord, but shall...
be furnished by the approved electric utility company serving the Building. Landlord shall permit Tenant to receive such service directly from such utility company at Tenant’s cost (except as otherwise provided herein) and shall permit Landlord’s wire and conduits, to the extent available, suitable and safely capable, to be used for such purposes.

27.19 Rights Reserved by Landlord. Landlord reserves the following rights exercisable without notice (except as otherwise expressly provided to the contrary in this Lease) and without being deemed an eviction or disturbance of Tenant’s use or possession of the Premises or giving rise to any claim for setoff or abatement of Rent: (i) to change the name or street address of the Building; (ii) to install, affix and maintain all signs on the exterior and/or interior of the Building; (iii) to designate and/or approve prior to installation, all types of signs, window shades, blinds, drapes, awnings or other similar items, and all internal lighting that may be visible from the exterior of the Premises; (iv) to change the arrangement of entrances, doors, corridors, elevators and/or stairs in the Building, provided no such change shall materially adversely affect access to the Premises; (v) to grant any party the exclusive right to conduct any business or render any service in the Building, provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purposes permitted under this Lease; (vi) to prohibit the placement of vending or dispensing machines of any kind in or about the Premises other than for use by Tenant’s employees; (vii) to prohibit the placement of video or other electronic games in the Premises; (viii) to have access for Landlord and other tenants of the Building to any mail chutes and boxes located in or on the Premises according to the rules of the United States Post Office and to discontinue any mail chute business in the Building; (ix) to close the Building after normal business hours, except that Tenant and its employees and invitees shall be entitled to admission to all times under such rules and regulations as Landlord prescribes for security purposes; (x) to install, operate and maintain security systems which monitor, by close circuit television or otherwise, all persons entering or leaving the Building; (xi) to install and maintain pipes, ducts, conduits, wires and structural elements located in the Premises which serve other parts or other tenants of the Building; and (xii) to retain at all times master keys or pass keys to the Premises. In exercising any of the foregoing rights, Landlord shall not unreasonably interfere with Tenant’s use of the Premises or Tenant’s parking rights and shall not materially increase the obligations or materially decrease the rights of Tenant under this Lease.

27.20 No Recordation. Tenant shall not record this Lease or any memorandum or short form of it.

27.21 No Merger. The voluntary or other surrender of this Lease by Tenant or the cancellation of this Lease by mutual agreement of Tenant and Landlord or the termination of this Lease on account of Tenant’s default will not work a merger, and will, at Landlord’s option, (a) terminate all or any subleases and subtenancies or (b) operate as an assignment to Landlord of all or any subleases or subtenancies. Landlord’s option under this Section 27.21 will be exercised by written notice to Tenant and all known sublesses or subtenants in the Premises or any part of the Premises.

27.22 Tax Credits. Landlord is entitled to claim all tax credits and depreciation attributable to leasehold improvements installed or paid for by Landlord in the Premises. Promptly after Landlord’s demand, Landlord and Tenant will prepare a detailed list of the leasehold improvements and fixtures and their respective costs for which Landlord or Tenant has paid. Landlord will be entitled to all credits and depreciation for those items for which Landlord has paid by means of any tenant finish allowance or otherwise. Tenant will be entitled to any tax credits and depreciation for all items for which Tenant has paid with funds not provided by Landlord.

27.23 Financial Reports. Within fifteen (15) days after Landlord’s request, Tenant will furnish Tenant’s most recent audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant or, if those are not so prepared, Tenant’s internally prepared financial statements. Tenant will discuss such financial statements with Landlord and will give Landlord access to Tenant’s books and records in order to enable Landlord to verify the financial statements. Landlord will not disclose any aspect of Tenant’s financial statements that Tenant designates to Landlord as confidential except (a) to Landlord’s lenders or prospective purchasers of the property, (b) in litigation between Landlord and Tenant, and (c) if required by court order. Notwithstanding the foregoing, this Section shall not apply during any period during the Term when the Tenant under the Lease is a publicly listed entity.

27.24 Presumption. In all cases hereunder, and in any suit, action or proceeding of any kind between the parties, it shall be presumptive evidence of the fact of the existence of a charge being due, if Landlord shall produce a bill, notice or certificate to the effect that such charge appears of record on the books in Landlord’s office or appears as an open charge on the books, records or official bills of municipal authorities, and has not been paid.

27.25 Confidentiality. Tenant acknowledges that the terms and conditions of this Lease are to remain confidential for Landlord’s benefit, and may not be disclosed by Tenant to anyone, by any manner or means, directly or indirectly, without Landlord’s prior written consent; provided, however that this Lease may be disclosed to Tenant’s attorneys, accountants, real estate advisors and otherwise as may be required by law or legal process. The consent by Landlord to any disclosures shall not be deemed to be a waiver on the part of Landlord of any prohibition against any future disclosure. Tenant shall indemnify, defend upon request, and hold Landlord harmless from and against all costs, damages, claims, liabilities, expenses, losses, court costs, and attorney’s fees suffered or claimed against Landlord to the extent based upon the breach of this Section 27.25 by Tenant. The obligations within this Section 27.25, shall survive the expiration or earlier termination of this Lease.

27.26 Parking. Tenant may rent from Landlord or its parking operator, commencing on the Commencement Date, the number of unreserved parking spaces set forth in Section 1.16, which parking passes shall pertain to the Building’s subterranean garage which may be operated on a valet basis. Tenant shall pay to Landlord or its parking operator for automobile parking passes the prevailing rate charged from time to time at the Building. In addition, Tenant shall be responsible for the full amount of any taxes imposed by any governmental authority in connection with the renting of such parking passes by Tenant or the use of the parking facility by Tenant. Tenant’s continued right to use the parking passes is conditioned upon Tenant abiding by all rules and regulations which are prescribed from time to time for the orderly operation and use of the Building’s parking facility, including any sticker or other identification system established by Landlord or its parking operator, and Tenant not being in default under this Lease. Landlord specifically reserves the right to change the size, configuration, design, layout and all other aspects of the Building’s parking facility at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of Rent under this Lease, from time to time, close off or restrict access to the Building’s parking facility for purposes of permitting or facilitating any such construction, alteration or improvements, provided that the number of parking spaces that Tenant is entitled to use under this Lease is not reduced. Landlord may delegate its responsibilities hereunder to a parking operator or a lessee of the parking facility, in which case such parking operator or lessee shall have all the rights of control attributed hereby to Landlord. The parking passes rented by Tenant pursuant to this Section 27.26 are provided to Tenant solely for use by Tenant’s own personnel and such passes may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord’s prior approval. Tenant may validate visitor parking by such method or methods as the Landlord or its parking operator may establish, at the validation rate from time to
27.27 **Signing Authority.** If Tenant is a corporation, partnership or limited liability company, Tenant represents and warrants that each individual executing this Lease on behalf of said entity is duly authorized to execute and deliver this Lease on behalf of said entity in accordance with: (a) if Tenant is a corporation, a duly adopted resolution of the Board of Directors of said corporation or in accordance with the by-laws of said corporation, (b) if Tenant is a partnership, the terms of the partnership agreement, and (c) if Tenant is a limited liability company, the terms of its operating or limited liability company agreement, and that this Lease is binding upon said entity in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written.

**LANDLORD:**
BRANNAN PROPCO, LLC,
a Delaware limited liability company

By: /s/ Mark R. Best
Name: Mark R. Best
Title: V.P.

**TENANT:**
SPLUNK, INC.,
a Delaware corporation

By: /s/ Michael Baum
Name: Michael Baum
Title: CEO

EXHIBIT A

FLOOR PLAN OF PREMISES

EXHIBIT B

WORK LETTER
For and in consideration of the agreement to lease the Premises and the mutual covenants contained herein and in the Lease, Landlord and Tenant hereby agree as follows:

1. **Base Building Work; Tenant's Initial Plans; the Work.**

   a. Landlord shall perform at its sole cost and expense, and notwithstanding anything to the contrary in the Lease or this Work Letter, the Base Building Work more particularly described in Schedule 1 attached hereto (the "Base Building Work"). Such work shall be completed prior to the Commencement Date.

   b. Tenant desires Landlord to perform certain leasehold improvement work in the Premises in substantial accordance with the plan or plans (collectively, the "Initial Plans") prepared by Hooks ASD dated March 3, 2008, a copy or copies of which is/are attached hereto as Schedule 2. The Base Building Work and such work, as shown in the Initial Plans and as more fully detailed in the Working Drawings (as defined and described in Paragraph 2 below), shall be hereinafter referred to as the "Landlord's Work". Not later than March 14, 2008, Tenant shall furnish to Landlord such additional plans, drawings, specifications and finish details as Landlord may reasonably request to enable Landlord's architects and engineers to prepare mechanical, electrical and plumbing plans and to prepare the Working Drawings, including a final telephone layout and special electrical connection requirements, if any. All plans, drawings, specifications and other details describing the Landlord’s Work which are hereafter furnished by or on behalf of Tenant shall be subject to Landlord’s approval, which Landlord agrees shall not be unreasonably withheld. Landlord shall not be deemed to have acted unreasonably if it withholds its approval of any plans, specifications, drawings or other details or of any Additional Work (as defined in Paragraph 7 below) because, in Landlord’s reasonable opinion, the work, as described in any such item, or the Additional Work, as the case may be: (a) is likely to materially adversely affect Building systems, the structure of the Building or the safety of the Building and/or its occupants; (b) might impair Landlord’s ability to furnish services to Tenant or other tenants in the Building; (c) would increase the cost of operating the Building to more than a minimal extent; (d) would violate any governmental laws, rules or ordinances (or interpretations thereof); (e) contains or uses hazardous or toxic materials or substances not permitted under the Lease; (f) would adversely affect the exterior appearance of the Building or the common areas; (g) might adversely affect another tenant’s premises; (h) is prohibited by any ground lease affecting the Building or any mortgage, trust deed or other instrument encumbering the Building; or (i) is likely to be substantially delayed because of unavailability or shortage of labor or materials necessary to perform such work or the difficulties or unusual nature of such work. The foregoing reasons, however, shall not be the only reasons for which Landlord may withhold its approval, whether or not such other reasons are similar or dissimilar to the foregoing. Neither the approval by Landlord of the Landlord’s Work or the Initial Plans or any other plans, drawings, specifications or other items associated with the Landlord's Work nor Landlord's performance, supervision or monitoring of the Landlord's Work shall constitute any warranty by Landlord to Tenant of the adequacy of the design for Tenant’s intended use of the Premises. Notwithstanding anything to the contrary herein, Landlord shall not withhold its approval to any aspect of the Landlord’s Work which conforms to or represents a logical evolution of or development from the Initial Plans; provided however that any changes to the Initial Plans which delays the construction of the Landlord’s Work from the time estimated by Landlord based upon the Initial Plans shall be a Tenant Delay (as hereinafter defined).

2. **Working Drawings; Cost Estimates, Construction Schedule.**

   Landlord shall prepare or cause to be prepared final working drawings and specifications for the Landlord’s Work (the "Working Drawings") based on and consistent with the Initial Plans and the other plans, drawings, specifications, finish details and other information furnished by Tenant to Landlord and approved by Landlord pursuant to Paragraph 1 above. In addition, based on the Initial Plans, Landlord shall request its contractor and up to three (3) other contractors mutually approved by Landlord and Tenant to prepare and submit for Tenant’s review and approval an estimate for the total cost of the Landlord’s Work (the "Initial Cost Estimate") and a projected construction schedule (the "Projected Construction Schedule") identifying the estimated completion date for the Landlord’s Work.

   Tenant shall designate a representative who shall attend all construction meetings and comment and review all iterations of the Working Drawings. So long as the Working Drawings are consistent with the Initial Plans, Tenant shall approve the iterations of the Working Drawings within three (3) business days after receipt of same from Landlord by initialing and returning to Landlord each sheet of the Working Drawings or by executing Landlord’s approval form then in use, whichever method of approval Landlord may designate.

   Alternatively, within such three (3) business day period, Tenant may deliver to Landlord the specific written changes to Working Drawings, Initial Cost Estimate and Projected Construction Schedule that are necessary, in Tenant’s opinion, to conform such plans to the Initial Plans (or to make changes requested by Tenant) or to reduce costs. If Tenant desires changes, Landlord shall not unreasonably withhold its approval of such changes and the parties shall confer and negotiate in good faith to reach agreement on modifications to the Working Drawings, Initial Cost Estimate and Projected Construction Schedule as a consequence of such change.

   When the Working Drawings are complete, the contractor shall prepare a revised cost estimate (which shall include the amount of any overtime projected as necessary to substantially complete the Landlord’s Work by the Commencement Date specified in the Lease) ("Final Cost Estimate") and a revised Projected Construction Schedule (the “Scheduled Completion Date”). Any difference in time between the initial Projected Construction Schedule and the Scheduled Completion Date or the which result from changes made to the Initial Plans or to iterations of the Working Drawings by Tenant (other than to conform them to the Initial Plans) shall be the estimated number of days of Tenant Delay for the Landlord’s Work ("Estimated Tenant Delay").

   As soon as approved by Landlord and Tenant, Landlord shall submit the Working Drawings to all appropriate governmental agencies and thereafter the Landlord shall use commercially reasonable efforts to obtain required governmental approvals as soon as practicable.

   After approval of the Working Drawings, except for additional days of Tenant Delay which are attributed to Tenant Delays pursuant to Section 6 (c), (d), (e) and (f) of this Work Letter or for Additional Work approved by Tenant pursuant to Section 7 for which Tenant shall be responsible, Tenant shall not be responsible for an increase in the number of days of Tenant Delays during construction of the Landlord’s Work over the Estimated Tenant Delay.

3. **Performance of the Landlord’s Work; Allowance.** Except as hereinafter provided to the contrary, Landlord shall cause the performance of the Landlord’s Work in a good and workmanlike manner, free of defects and in compliance with the approved Working Drawings and with applicable law using
(except as may be stated or shown otherwise in the Working Drawings) building standard materials, quantities and procedures then in use by Landlord ("Building Standards"), in accordance with the approved Working Drawings. Landlord shall pay for a portion of the "Cost of the Work" (as defined below) in an amount not to exceed the Allowance and Tenant shall pay for the entire Cost of the Work in excess of the Allowance. Tenant shall not be entitled to any credit, abatement or payment from Landlord in the event that the amount of the Allowance exceeds the Cost of the Work. For purposes of this Agreement, the term "Cost of the Work" shall mean and include any and all costs and expenses of the Work and any Additional Work (as defined in Section 7), including, without limitation, the cost of a space plan prepared by Hooks ASD, the cost of the Working Drawings and of all labor (including overtime) and materials constituting the Landlord’s Work. The Allowance may be used for all hard and soft construction costs in connection with the Landlord’s Work, including architectural and engineering fees, a construction management fee to Landlord in connection with Landlord’s performance and monitoring of the Landlord’s Work and any Additional Work in an amount equal to 3% of the total “hard” construction costs (including any Additional Work and any change orders). In no event may the Allowance or any portion thereof be used for Tenant’s computer networks, telephone systems, data and wiring, furniture purchase or installation, moving costs or Rent.

Notwithstanding anything to the contrary herein, Tenant shall have no responsibility for and the Allowance shall not be used for the following, the costs of which shall be borne by Landlord: (a) costs incurred due to the presence of Hazardous Materials in the Premises or the surrounding area; (b) interest and other costs of financing construction costs; (c) costs to the extent recovered by Landlord upon account of warranties and insurance (which Landlord agrees to use commercially reasonable efforts to enforce but which efforts shall not require Landlord to resort to legal proceedings of any type); (d) costs to bring the Premises into compliance with applicable laws and restrictions, including, without limitation, the Americans with Disabilities Act and environmental laws; (e) construction management, profit and overhead charges of Landlord except for the 3% fee described above; and (f) all Cost of the Work relating to the Base Building Work (which cost and expense is Landlord’s sole responsibility). In addition, Landlord will repair at its sole cost any defects in the Base Building Work of which it is notified in writing within one year after the Commencement Date.

4. Payment.

A. Prior to commencing the Landlord’s Work, Landlord shall submit to Tenant the Final Cost Estimate, which statement shall indicate the amount, if any, by which the total Cost of the Work exceeds the Allowance (the “Excess Costs”). Tenant agrees, within three (3) business days after submission to it of such statement, to execute and deliver to Landlord, in the form then in use by Landlord, an authorization to proceed with the Landlord’s Work (provided that Tenant may, in its discretion approve or disapprove use of overtime), and Tenant shall also then pay to Landlord an amount equal to the Excess Costs. No Landlord’s Work shall be commenced until Tenant has fully complied with the preceding provisions of this Paragraph 4.

After Substantial Completion of the Landlord’s Work, Landlord shall provide Tenant with a written statement of the Cost of the Landlord’s Work together with reasonable supporting documentation, itemizing such costs and evidencing Landlord’s incurrence of the amounts so invoiced. If the final Cost of the Work including the Allowance, and the Excess Costs, is less than the foregoing amounts, Landlord shall refund any overpayment to Tenant within thirty (30) days after delivery of such statement and supporting materials.

Except for costs attributed to Landlord’s negligence or willful misconduct or failure to use commercially reasonable efforts to monitor the Landlord’s Work, if the final Cost of the Landlord’s Work including the Allowance, and the Excess Costs, is more than the foregoing amounts, including increases in Excess Costs after Approval of the Working Drawings which are attributed to Tenant Delays pursuant to Section 6(c), (d), (e) and (f) of this Work Letter or Additional Work approved by Tenant pursuant to Section 7, Tenant shall pay such overage to Landlord within thirty (30) days after delivery of such statement and supporting materials.

5. Substantial Completion. Landlord shall use commercially reasonable efforts to cause the Landlord’s Work to be “substantially completed” on or before (i) the scheduled date of completion of the Premises set forth in the approved Construction Schedule with respect to the Landlord’s Work (the scheduled Completion Date”), subject to delays caused by strikes, lockouts, boycotts or other labor problems, casualties, discontinuance of any utility or other service required for performance of the Landlord’s Work, unavailability or shortages of materials or other problems in obtaining materials necessary for performance of the Landlord’s Work or any other matter beyond the control of Landlord (or beyond the control of Landlord’s contractors or subcontractors performing the Landlord’s Work) and also subject to “Tenant Delays” (as defined and described in Paragraph 6) of this Work Letter. The Landlord’s Work shall be deemed to be “substantially completed” for all purposes under this Work Letter and the Lease if and when Landlord’s architect issues a written certificate to Landlord and Tenant, certifying that the Landlord’s Work has been substantially completed (i.e., completed except for “punchlist” items listed in such architect’s certificate) and reasonably approved by Tenant in substantial compliance with the Working Drawings and Landlord has obtained a certificate of occupancy or “signed off” job cards with respect to the respective portion of the Landlord’s Work. If the applicable portion of the Landlord’s Work is not deemed to be substantially completed on or before the scheduled Commencement Date (a) Landlord agrees to use reasonable efforts to complete the Landlord’s Work as soon as practicable thereafter, (b) the Lease shall remain in full force and effect, (c) Landlord shall not be deemed to be in breach or default of the Lease or this Work Letter as a result thereof and Landlord shall have no liability to Tenant as a result of any delay in occupancy (whether for damages, abatement of Rent or otherwise), and (d) except in the event of Tenant Delays, and notwithstanding anything contained in the Lease to the contrary, the Commencement Date of the Lease Term as specified in Section 1.5 of the Lease shall be extended to the date on which the Landlord’s Work is deemed to be substantially completed. Landlord agrees to use reasonable diligence to complete all punchlist work listed in the aforesaid architect’s certificate promptly after substantial completion.

6. Tenant Delays. There shall be no extension of the scheduled commencement or expiration date of the term of the Lease (as otherwise permissible extended under Paragraph 5 above) if the Landlord’s Work has not been substantially completed on said scheduled commencement date by reason of any delay to the extent attributable to Tenant (“Tenant Delays”), including without limitation which delay continues for more than one (1) business day following written or oral notification to Tenant thereof (“Tenant Delays”), including without limitation:

(a) the failure of Tenant to furnish all or any plans, drawings, specifications, finish details or the other information required under Paragraph 1 above on or before the date stated in Paragraph 1;

(b) the failure of Tenant to grant approval of the Working Drawings within the time required under Paragraph 2 above;

(c) the failure of Tenant to comply with the requirements of Paragraph 4 above;
Landlord performs the Work without the necessity of preparing working drawings and specifications, then whenever the term "Working Drawings" is used in this additional Rent under the Lease and, upon any default in the payment of same, Landlord shall have all of the rights and remedies provided for in the Lease. All amounts payable by Tenant to Landlord hereunder shall be deemed to be provisions of Section 22 of the Lease, are hereby incorporated herein by reference. All such amounts shall be deemed to be Work or Additional Work caused by Tenant or any of Tenant's employees, agents, contractors, workmen or suppliers.

Tenant's improvements and alterations to the Premises, (excluding only the covenant to pay Rent). Landlord shall not be liable for any injury, loss or damage which may occur to any of Tenant's Pre-Occupancy Work made in or about the Premises or to property placed therein prior to the commencement of the term of Tenant's improvements and alterations to the Premises), and excluding only the covenant to pay Rent. Landlord shall not be liable for any injury, loss or damage which may occur to any of Tenant's Pre-Occupancy Work made in or about the Premises or to property placed therein prior to the commencement of the term of the Lease, the same being at Tenant's sole risk and liability. Tenant shall be liable to Landlord for any damage to the Premises or to any portion of the Landlord's Work or Additional Work caused by Tenant or any of Tenant's employees, agents, contractors, workmen or suppliers.

7. Additional Work. Upon Tenant's request and submission by Tenant (at Tenant's sole cost and expense) of the necessary information and/or plans and specifications for work other than the Landlord's Work described in the Working Drawings ("Additional Work") and/or changes to the work in the Working Drawings and the approval by Landlord of such Additional Work, which approval Landlord agrees shall not be unreasonably withheld, Landlord shall perform such Additional Work, at Tenant's sole cost and expense to the extent the Additional Work increases the Cost of the Work to exceed the Allowance, subject, however, to the following provisions of this Paragraph 7. Prior to commencing any Additional Work requested by Tenant, Landlord shall submit to Tenant (i) a written statement of the cost of such Additional Work which shall take into account any cost savings attributable to such Additional Work and, (ii) an estimate of the additional time, if any, required for the construction of the Additional Work and (iii) concurrently with such statement of cost, Landlord shall also submit to Tenant a proposed tenant extra order (the "TEO") for the Additional Work in the standard form then in use by Landlord. If Tenant approves the foregoing, Tenant shall execute and deliver to Landlord such TEO and shall pay to Landlord the entire cost of the Additional Work (as reflected in Landlord's statement of such cost), within one (1) business day after Landlord's submission of such statement and TEO to Tenant and approve any delay in the Commencement Date resulting from the performance of the Additional Work by Landlord. If Tenant fails to execute or deliver such TEO or pay the entire cost of such Additional Work within such one (1) business day period, then Landlord shall not be obligated to do any of the Additional Work and may proceed to do only the Landlord’s Work, as specified in the Working Drawings.

8. Tenant Access. Landlord, in Landlord’s reasonable discretion and upon request by Tenant, shall grant to Tenant a license to have access to Premises from and after the Lease Date and prior to the date designate in the Lease for the commencement of the term of the Lease to allow Tenant to do other work required by Tenant to make the Premises ready for Tenant’s use and occupancy (the "Tenant's Pre-Occupancy Work"). It shall be a condition to the grant by Landlord and continued effectiveness of such license that:

(a) Tenant shall give to Landlord a written request to have such access to the Premises not less than two (2) business days prior to the date on which such access will commence, which written request shall contain or shall be accompanied by each of the following items, all in form and substance reasonably acceptable to Landlord: (i) a detailed description of and schedule for Tenant's Pre-Occupancy Work; (ii) the names and addresses of all contractors, subcontractors and material suppliers and all other representatives of Tenant who or which will be entering the Premises on behalf of Tenant to perform Tenant's Pre-Occupancy Work or will be supplying materials for such work, and the approximate number of individuals, itemized by trade, who will be present in the Premises; (iii) copies of all materials and certificates of insurance required to be delivered under Section 9 of the Lease in connection with Tenant's Pre-Occupancy Work.

(b) Such pre-term access by Tenant and its representatives shall be subject to scheduling by Landlord, so as to avoid material interference with Landlord's Work or any delays in the construction schedule.

(c) Tenant’s employees, agents, contractors, workmen, mechanics, suppliers and invitees shall work in harmony and not interfere with Landlord or Landlord’s agents in performing the Landlord’s Work and any Additional Work in the Premises, Landlord’s work in other premises and in common areas of the Building, or the general operation of the Building. If at any time any such person representing Tenant shall cause or threaten to cause such disharmony or interference, including labor disharmony, and Tenant fails to immediately institute and maintain such corrective actions as directed by Landlord, then Landlord may withdraw such license upon twenty-four (24) hours’ prior written notice to Tenant.

(d) Any such entry into and occupancy of the Premises by Tenant or any person or entity working for or on behalf of Tenant shall be deemed to be subject to all of the terms, covenants, conditions and provisions of the Lease, specifically including the provisions of Article IX thereof (regarding Tenant’s improvements and alterations to the Premises), and excluding only the covenant to pay Rent. Landlord shall not be liable for any injury, loss or damage which may occur to any of Tenant’s Pre-Occupancy Work made in or about the Premises or to property placed therein prior to the commencement of the term of the Lease, the same being at Tenant’s sole risk and liability. Tenant shall be liable to Landlord for any damage to the Premises or to any portion of the Landlord’s Work or Additional Work caused by Tenant or any of Tenant’s employees, agents, contractors, workmen or suppliers.

9. Lease Provisions. The terms and provisions of the Lease, insofar as they are applicable to this Work Letter, including without limitation, the provisions of Section 22 of the Lease, are hereby incorporated herein by reference. All amounts payable by Tenant to Landlord hereunder shall be deemed to be additional Rent under the Lease and, upon any default in the payment of same, Landlord shall have all of the rights and remedies provided for in the Lease.

10. Miscellaneous.

(a) This Work Letter shall be governed by the laws of the state in which the Premises are located.

(b) This Work Letter may not be amended except by a written instrument signed by the party or parties to be bound thereby.

(c) Notices under this Work Letter shall be given in the same manner as under the Lease.

(d) The headings set forth herein are for convenience only.

(e) This Work Letter sets forth the entire agreement of Tenant and Landlord regarding the Landlord’s Work.

(f) In the event that the final working drawings and specifications are included as part of the Initial Plan attached hereto, or in the event Landlord performs the Work without the necessity of preparing working drawings and specifications, then whenever the term "Working Drawings" is used in this
SCHEDULE 1

BASE BUILDING WORK

1. Base Building

Base building electrical, mechanical, fire protection and life safety system distribution (as required by code), shall comply with the applicable provisions of the Americans with Disabilities Act (the “ADA”), the national fire protection administration regulations, the local building and fire code, title 24 and any other requirements of governmental agencies having jurisdiction over the Building (collectively, the “Building Regulations,”) regardless of whether such compliance is due to or triggered by the construction of the tenant improvements. All fire protection, HVAC, electrical and mechanical systems shall be in good working order and repair.

2. Shell Space

The area intended for Tenant’s leasehold improvements shall be reasonably clean and free from any debris.

Drywall (taped, sanded and ready for paint) at all perimeter locations (with the exception of the exposed brick walls), columns exposed, ceiling exposed to structure, exit signs per shell code, upright fire sprinklers, and fire extinguisher cabinets.

Ladies and Mens restrooms will be completed and in compliance with ADA and the Uniform Plumbing Code (relative to construction, number of fixtures, and number/location of restrooms). Finishes to include: laminate counters with sinks, tile floor and base, paint finish at other walls, metal toilet partitions, wood door at entry, appropriate lighting, toilet room accessories, pendant fire sprinklers.

One refrigerated drinking fountain adjacent to restrooms.

3. HVAC Base Building System

Base Building HVAC System to be stubbed to the Premises and shall comply with the state and local Building codes.

4. Electrical

In electrical rooms, service and distribution panel boards and transformers. Specifically, Landlord shall provide on the Premises not less than 400 amp service at 460V/3 phase, one 75-KVA transformer, one 277/480-volt panel board, and one 120/208-volt panel board.

5. Fire Protection

Automatic sprinkler system piping will be connected to the existing system riser, including flow and tamper switches and riser drains. Smoke detectors, main loop and minimum distribution piping will provide required system piping. Relocation and sprinkler head installation will be the responsibility of the Tenant.

6. Building Lobby

a. Completion of the construction of the lobby which shall include interior tenant signage and directory.

b. Modification of main entrance to the Building with new lobby doors and a canopy in accordance with the conceptual renderings prepared by IA Architects and permit drawings prepared by Paradigm Structural and in conformance with all applicable Laws (“Entrance Modification”).

Subject to force majeure delay, Landlord will complete the Entrance Modification not later than eight weeks after receipt of all building permits and governmental approvals.

7. Card Access

Landlord to supply a card access system for the main lobby doors, garage doors for after hours use, and, if approved by local building and fire departments, passage doors at both levels from garage to elevators.

SCHEDULE 2

COPIES OF INITIAL PLAN

INITIAL PLANS DATED MARCH 3, 2008 PREPARED BY HOOKS ASD
EXHIBIT C

RULES

(1) On Saturdays, Sundays and Holidays, and on other days between the hours of 6:00 P.M. and 7:00 A.M. the following day, or such other hours as Landlord shall determine from time to time, access to the Building and/or to the passageways, entrances, exits, shipping areas, halls, corridors, elevators or stairways and other areas in the Building may be restricted and access gained by use of a key or card access system to the outside doors of the Building, or pursuant to such security procedures Landlord may from time to time impose. All such areas, and all roofs, are not for use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence in the judgment of Landlord shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants provided, however, that nothing herein contained shall be construed to prevent such access to persons with whom Tenant deals in the normal course of Tenant’s business unless such persons are engaged in activities which are illegal or violate these Rules. No Tenant and no employee or invitee of Tenant shall enter into areas reserved for the exclusive use of Landlord, its employees or invitees. Tenant shall keep doors to corridors and lobbies closed except when persons are entering or leaving.

(2) Tenant shall not paint, display, inscribe, maintain or affix any sign, placard, picture, advertisement, name, notice, lettering or direction on any part of the outside or inside of the Building, or on any part of the inside of the Premises which can be seen from the outside of the Premises, without the prior consent of Landlord, and then only such name or names or matter and in such color, size, style, character and material as may be first approved by Landlord in writing. Landlord shall prescribe the suite number and identification sign for the Premises (which shall be prepared and installed by Landlord at Tenant’s expense). Landlord reserves the right to remove at Tenant’s expense all matter not so installed or approved without notice to Tenant.

(3) Tenant shall not in any manner use the name of the Building for any purpose other than that of the business address of the Tenant, or use any picture or likeness of the Building, in any letterheads, envelopes, circulars, notices, advertisements, containers or wrapping material without Landlord’s express consent in writing.

(4) Tenant shall not place anything or allow anything to be placed in the Premises near the glass of any door, partition, wall or window which may be unsightly from outside the Premises, and Tenant shall not place or permit to be placed any article of any kind on any window ledge or on the exterior walls. Blinds, shades, awnings or other forms of inside or outside window ventilators or similar devices, shall not be placed in or about the outside windows in the Premises except to the extent, if any, that the character, shape, color, material and make thereof is first approved by the Landlord.

(5) Furniture, freight and other large or heavy articles, and all other deliveries may be brought into the Building only at times and in the manner designated by Landlord, and always through the loading dock and freight elevators, at the Tenant’s sole responsibility and risk. Landlord may impose reasonable charges for use of freight elevators after or before normal business hours. All damage done to the Building by moving or maintaining such furniture, freight or articles shall be repaired by Landlord at Tenant’s expense. Landlord may inspect items brought into the Building or Premises with respect to weight or dangerous nature. Landlord may require that all furniture, equipment, cartons and similar articles removed from the Premises or the Building be listed and a removal permit therefore first be obtained from Landlord. Tenant shall not take or permit to be taken in or out of other entrances or elevators of the Building, any item normally taken, or which Landlord otherwise reasonably requires to be taken, in or out through service doors or on freight elevators. Tenant shall not allow anything to remain in or obstruct in any way, any lobby, corridor, sidewalk, passageway, atrium, entrance, exit, hall, stairway, shipping area, or other such area. Tenant shall move all supplies, furniture and equipment as soon a received directly to the Premises, and shall move all such items and waste (other than waste customarily removed by Building employees) that are at any time being taken from the Premises directly to the areas designated for disposal. Any handcarts used at the Building shall have rubber wheels.

(6) Tenant shall not overload any floor or part thereof in the Premises, or Building, including any public corridors or elevators therein bringing in or removing any large or heavy articles, and Landlord may direct and control the location of safes and all other heavy articles and require supplementary support, at Tenant’s expense of such material and dimensions as Landlord may deem necessary to appropriately distribute the weight.
(7) Tenant shall not attach or permit to be attached additional locks or similar devices to any door or window, change existing locks or the mechanism thereof, or make or permit to be made any keys for any door other than those provided by Landlord. If more than two keys for one lock are desired, Landlord will provide them upon payment therefore by Tenant. Tenant, upon termination of its tenancy, shall deliver to the Landlord all keys of offices, rooms and toilet rooms which have been furnished Tenant or which the Tenant shall have made, and in the event of loss of any keys so furnished shall pay Landlord therefore.

(8) If Tenant desires signal, communication, alarm or other utility or similar service connections installed or changed, Tenant shall not install or change the same without the prior approval of Landlord, and then only under Landlord’s direction at Tenant’s expense. Tenant shall not install in the Premises any equipment which requires more electric current than Landlord is required to provide under this Lease, without Landlord’s prior approval, and Tenant shall ascertain from Landlord the maximum amount of load or demand for or use of electrical current which can safely be permitted in the Premises, taking into account the capacity of electric wiring in the Building and the Premises and the needs of tenants of the Building, and shall not in any event connect a greater load then such safe capacity.

(9) Tenant shall not obtain for use upon the Premises ice, drinking water, towel, janitor and other similar services, except from Persons approved by the Landlord. Any Person engaged by Tenant to provide janitor or other similar services shall be subject to direction by the manager or security personnel of the Building.

(10) The toilet rooms, urinals, wash bowls and other such apparatus shall not be used for any purposes other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this Rule shall be borne by the Tenant who, or whose employees or invitees shall have caused it.

(11) The janitorial closets, utility closets, telephone closets, broom closets, storage closets, and other such closets, rooms and areas shall be used only for the purposes and in the manner designated by Landlord, and may not be used by tenants, or their contractors, agents, employees, or other parties without Landlord’s prior written consent.

(12) Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules. Tenant shall not at any time manufacture, sell, use or give away, any spirituous, fermented, intoxicating or alcoholic liquors on the Premises, nor permit any of the same to occur (except in connection with occasional social or business events conducted in the Premises which do not violate any Laws or bother or annoy any other tenants). Tenant shall not at any time sell, purchase or give away food in any form by or to any of Tenant’s agents or employees or any other parties on the Premises, nor permit any of the same to occur (other than in lunch rooms or kitchens for employees as may be permitted or installed by Landlord, which does not violate any Laws or bother or annoy any other tenant).

(13) Tenant shall not make any suite-to-suite canvas to solicit business or information or to distribute any article or material to or from other tenants or occupants of the Building and shall not exhibit, sell or offer to sell, use, rent or exchange any products or services in or from the Premises unless ordinarily embraced within the Tenant’s use of Premises specified in the Lease.

(14) Tenant shall not waste electricity, water, heat or air conditioning or other utilities or services, and agrees to cooperate fully with Landlord to assure the most effective and energy efficient operation of the Building and shall not allow the adjustment (except by Landlord’s authorized Building personnel) of any controls. Tenant shall keep corridor doors closed and shall not open any windows, except that if the air circulation shall not be in operation, windows which are operable may be opened with Landlord’s consent. As a condition to claiming any deficiency in the air-conditioning or ventilation services provided by Landlord, Tenant shall close any blinds or drapes in the Premises to prevent or minimize direct sunlight.

(15) Tenant shall conduct no auction, “fire sale” or “going out of business sale” or bankruptcy sale in or from the Premises, and such prohibition shall apply to Tenant’s creditors.

(16) Tenant shall cooperate and comply with any reasonable safety or security programs, including fire drills and air raid drills, and the appointment of “fire wardens” developed by Landlord for the Building, or required by Law. Before leaving the Premises unattended, Tenant shall close and securely lock all doors or other means of entry to the Premises and shut off all lights and water faucets in the Premises (except heat to the extent necessary to prevent the freezing or bursting of pipes).

(17) Tenant will comply with all municipal, county, state, federal or other requirements including without limitation, environmental, health, safety and police requirements and regulations respecting the Premises, now or hereinafter in force, at its sole cost, and will not use the Premises for any immoral purposes.

(18) Tenant shall not use or permit to be brought into the Premises or the Building any flammable oils or fluids, or any explosive or other articles deemed hazardous to persons or Building, or do or permit to be done any act or thing which will invalidate or which if brought in would be in conflict with any insurance policy covering the Building or its operation, or the Premises, or any part of either, and will not do or permit to be done anything in or upon the Premises, or bring or keep anything therein, which shall not comply with all rules, orders, regulations or requirements or any organization, bureaus, department or body having jurisdiction with respect thereto (and Tenant shall at all times comply with all such rules, orders, regulations or requirements), or which shall increase the rate of insurance on the Building, its appurtenances, contents or operation.

(19) No vending machines of any description shall be installed, maintained or operated without the written consent of Landlord.

(20) Tenant shall not carry on any business, activity or service except those ordinarily embraced within the permitted use of the Premises specified in the Lease and more particularly, but without limiting the generality of the foregoing, shall not (i) install or operate any internal combustion engine, boiler, machinery, refrigerating, heating or air conditioning equipment in or about the Premises, (ii) use the Premises for housing, lodging or sleeping purposes or for the washing of clothes, (iii) place any radio or television antennae other than inside of the Premises, (iv) operate or permit to be operated any musical or sound producing instrument or device which may be heard outside the Premises, (v) use any source of power other than electricity, (vi) operate any electrical or other device from which may emanate electrical or other waves which may interfere with or impair radio, television, microwave, or other broadcasting or reception from or in the Building or elsewhere, (vii) bring or permit any bicycle or other vehicle, or dog (except as a service dog in the company of a disabled person or except where specifically permitted) or other animal or bird in the Building, (viii) make or permit objectionable noise or odor to emanate from the Premises, (ix) do
unconditionally accepted the improvements constructed by Landlord, if any.

2. Landlord first delivered possession of the Premises to Tenant (either for occupancy by Tenant or for the commencement of construction by Tenant) on 2008.

3. Tenant moved into the Premises (or otherwise first occupied the Premises for Tenant’s business purposes) on 2008, and Tenant has unconditionally accepted the improvements constructed by Landlord, if any.

EXHIBIT D

FORM OF COMMENCEMENT DATE CERTIFICATE

THIS COMMENCEMENT DATE CERTIFICATE (this “Certificate”) is given by , a LLC, a Delaware limited liability company, with respect to that certain Office Lease dated 2008 (the “Lease”), relating to Suite (the “Premises”) at the building commonly known as 250 Brannan Street, San Francisco, California (the “Building”), which Premises are more fully identified in the Lease.

In consideration of the mutual covenants and agreements stated in the Lease, and intending that this Certificate may be relied upon by Landlord and any prospective purchaser or present or prospective mortgagee, deed of trust beneficiary or ground lessor of all or a portion of the Building, Tenant certifies as follows:

Except for those terms expressly defined in this Certificate, all initially capitalized terms will have the meanings stated for such terms in the Lease.

2. Landlord first delivered possession of the Premises to Tenant (either for occupancy by Tenant or for the commencement of construction by Tenant) on 2008.

3. Tenant moved into the Premises (or otherwise first occupied the Premises for Tenant’s business purposes) on 2008, and Tenant has unconditionally accepted the improvements constructed by Landlord, if any.
4. The Commencement Date occurred on , 2008, and the Expiration Date will occur on , 2008.  
5. Tenant’s obligation to make monthly payments of Base Rent under the Lease began (or will begin) on , 2008.  

Executed this day of , 2008.

TENANT:  
By:  
Name:  
Title:  
Dated:  

EXHIBIT E  
FORM OF SNDA  
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT  
This Subordination, Non-Disturbance and Attornment Agreement ("Agreement"), is made as of this th day of , 200 among , ("Lender"), , ("Landlord"), and ("Tenant").  

Background  
Lender has agreed to make a loan to Landlord in the original principal amount $ ("Loan"), which will be secured by a mortgage, deed of trust or similar security instrument (either, "Security Instrument") on Landlord’s property described more particularly on Exhibit A attached hereto ("Property").  

Tenant is the present lessee under that certain lease agreement between Landlord and Tenant dated , as thereafter modified and supplemented ("Lease"), demising a portion of the Property described more particularly in the Lease ("Leased Space").  

A requirement of the Loan is that Tenant’s Lease be subordinated to the Security Instrument. Landlord has requested Tenant to so subsume the Lease in exchange for Lender’s agreement not to disturb Tenant’s possession of the Leased Space upon the conditions set forth in this Agreement.  

NOW, THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:  

Subordination. Tenant agrees that the Lease, and all estates, options and rights created under the Lease, hereby are subordinated and made subject to the lien and effect of the Security Instrument, as if the Security Instrument had been executed and recorded prior to the Lease.  

Non-disturbance. Lender agrees that no foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure, or other sale of the Property in connection with enforcement of the Security Instrument or otherwise in satisfaction of the Loan shall operate to terminate the Lease or Tenant’s rights thereunder to possess and use the Leased Space provided, however, that no uncured default beyond applicable notice and cure periods exists under the Lease.  

Attornment. Tenant agrees to attorn to and recognize as its landlord under the Lease each party acquiring legal title to the Property by foreclosure (whether judicial or nonjudicial) of the Security Instrument, deed-in-lieu of foreclosure, or other sale in connection with enforcement of the Security Instrument or otherwise in satisfaction of the Loan ("Successor Owner"). Provided that the conditions set forth in Section 2 above are met at the time Successor Owner becomes owner of the Property, Successor Owner shall perform all obligations of the landlord under the Lease arising from and after the date title to the Property is transferred to Successor Owner. In no event, however, will any Successor Owner be: (a) liable for any default, act or omission of any prior landlord under the Lease; (b) subject to any offset or defense which Tenant may have against any prior landlord under the Lease; (c) bound by any payment of rent or additional rent made by Tenant to Landlord more than 30 days in advance; (d) bound by any modification or supplement to the Lease, or waiver of Lease terms, made without Lender’s written consent thereto; (e) liable for the return of any security deposit or other prepaid charge paid by Tenant under the Lease, except to the extent such amounts were actually received by Lender; or (f) liable or bound by any right of first refusal or option to purchase all or any portion of the Property. Although the foregoing provisions of this Agreement are self-operative, Tenant agrees to execute and deliver to Lender or any Successor Owner such further instruments as Lender or a Successor Owner may from time to time request in order to confirm this Agreement. If any liability of Successor Owner does arise pursuant to this Agreement, such liability shall be limited to Successor Owner’s interest in the Property. Notwithstanding the foregoing, any Successor Owner shall be liable for the performance of the obligations of the Landlord under the Lease, including construction of the tenant improvements that constitute continuing defaults of a prior Landlord (including without limitation the Landlord) to the extent such act, omission or default is continuing after Successor Owner acquires the Property and it has received from Tenant such notice and opportunity to cure or commence to cure as is provided for in the Lease) with respect to such act, omission or default.  

Rent Payments; Notice to Tenant Regarding Rent Payments. Tenant agrees not to pay rent more than one (1) month in advance unless otherwise specified in the Lease. After notice is given to Tenant by Lender that Landlord is in default under the Security Instrument and that the rentals under the Lease are to be paid to Lender directly pursuant to the assignment of leases and rents granted by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender all rent and all other amounts due or to become due to Landlord under the Lease. Landlord hereby expressly authorizes Tenant to make such payments to Lender upon reliance on Lender’s written notice (without any inquiry into the factual basis for such notice or any prior notice to or consent from Landlord) and hereby releases Tenant from all liability to Landlord in connection with Tenant’s compliance with Lender’s written instructions.
Lender Opportunity to Cure Landlord Defaults. Tenant agrees that, until the Security Instrument is released by Lender, it will not exercise any remedies under the Lease following a Landlord default without having first given to Lender (a) written notice of the alleged Landlord default and (b) the opportunity to cure such default within the longer of (i) 30 days after the cure period provided under the Lease to Landlord, (ii) 30 days from Landlord’s receipt of Tenant’s notice to Lender of a Landlord default, or (iii) if the cure of such default requires possession of the Property, 30 days after Lender has obtained possession of the Property; provided that, in each case, if such default cannot reasonably be cured within such 30-day period and Lender has diligently commenced to cure such default promptly within the time contemplated by this Agreement, such 30-day period shall be extended for so long as it shall require Lender, in the exercise of due diligence, to cure such default, but, unless the parties otherwise agree, in no event shall the entire cure period be more than 120 days. Tenant acknowledges that Lender is not obligated to cure any Landlord default, but if Lender elects to do so, Tenant agrees to accept cure by Lender as that of Landlord under the Lease and will not exercise any right or remedy under the Lease for a Landlord default. Performance rendered by Lender on Landlord’s behalf is without prejudice to Lender’s rights against Landlord under the Security Instrument or any other documents executed by Landlord in favor of Lender in connection with the Loan.

Miscellaneous.

Notices. All notices and other communications under this Agreement are to be in writing and sent to the addresses as set forth below. Default or demand notices shall be deemed to have been duly given upon the earlier of: (i) actual receipt; (ii) one (1) business day after having been timely deposited for overnight delivery, fee prepaid, with a reputable overnight courier service, having a reliable tracking system; (iii) one (1) business day after having been sent by telecopier (with answer back acknowledged) provided an additional notice is given pursuant to (ii); or (iv) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by certified mail, postage prepaid, return receipt requested, and in the case of clause (ii) and (iv) irrespective of whether delivery is accepted. A new address for notice may be established by written notice to the other parties; provided, however, that no address change will be effective until written notice thereof actually is received by the party to whom such address change is sent.

To Lender:

To Tenant:

To Landlord:

Entire Agreement; Modification. This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes and replaces all prior discussions, representations, communications and agreements (oral or written). This Agreement shall not be modified, supplemented, or terminated, nor any provision hereof waived, except by a written instrument signed by the party against whom enforcement thereof is sought, and then only to the extent expressly set forth in such writing.

Binding Effect; Joint and Several Obligations. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors, and assigns, whether by voluntary action of the parties or by operation of law. No Indemnitor may delegate or transfer its obligations under this Agreement.

Unenforceable Provisions. Any provision of this Agreement which is determined by a court of competent jurisdiction or government body to be invalid, unenforceable or illegal shall be ineffective only to the extent of such determination and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Agreement (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed Agreement even though all signatures do not appear on the same document.

Construction of Certain Terms. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns shall be construed to cover all genders. Article and section headings are for convenience only and shall not be used in interpretation of this Agreement. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or other subdivision; and the word “section” refers to the entire section and not to any particular subsection, paragraph or other subdivision; and “Agreement” and each of the Loan Documents referred to herein mean the agreement as originally executed and as hereafter modified, supplemented, extended, consolidated, or restated from time to time.

Governing Law. This Agreement shall be interpreted and enforced according to the laws of the State where the Property is located (excluding any choice of law rules that may direct the application of the laws of another jurisdiction).

Consent to Jurisdiction. Each party hereto irrevocably consents and submits to the exclusive jurisdiction and venue of any state or federal court sitting in the county and state where the Property is located with respect to any legal action arising with respect to this Agreement and waives all objections which it may have to such jurisdiction and venue.

WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY HERETO WAIVES AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT.

[Remainder of page is blank; signatures appear on next page.]
FIRST AMENDMENT TO OFFICE LEASE

This FIRST AMENDMENT TO OFFICE LEASE (“First Amendment”) is made and entered into as of the 10th day of June, 2011, by and between KILROY REALTY, L.P., a Delaware limited partnership (“Landlord”), and SPLUNK INC., a Delaware corporation (“Tenant”).

RECITALS:

A. Brannan Propco, LLC, a Delaware limited liability company, as predecessor-in-interest to Landlord, and Tenant entered into that certain Office Lease dated as of March 6, 2008 (the “Lease”), whereby Landlord leases to Tenant and Tenant leases from Landlord those certain premises consisting of 34,167 rentable square feet of space commonly known as Suite 200 (the “Current Premises”) located on the second (2nd) floor of that certain office building located and addressed at 250 Brannan Street, San Francisco, California (the “Building”).

B. Tenant desires to expand the Current Premises, as shown on Exhibit A attached hereto and made a part hereof, to include that certain space consisting of 23,362 rentable square feet of space commonly known as Suite 100 and located on the first (1st) floor and lower level of the Building (the “Expansion Premises”), as shown on Exhibit A-1 attached hereto and made a part hereof. Landlord and Tenant desire to enter into the Amendment to, among other things, provide for the inclusion of the Expansion Premises in the Premises covered by the Lease, and to make other modifications to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Capitalized Terms. All capitalized terms when used herein shall have the same meaning as is given such terms in the Lease unless expressly superseded by the terms of this First Amendment.

2. Expansion of Current Premises. Upon the full execution and delivery of this First Amendment by Landlord and Tenant (the “Effective Date”) and delivery of the Expansion Premises by Landlord to Tenant for the purpose of commencing the Work (as defined in Exhibit B hereof) with respect to such Expansion Premises (the “Delivery Date”), Tenant shall lease from Landlord and Landlord shall lease to Tenant the Expansion Premises; provided, however, that Base Rent and other amounts payable under the Lease, as amended, will not commence to be payable until the “Expansion Term Commencement Date” (as defined below). Consequently, as of the Effective Date, (a) the “Premises” as defined in the Lease shall be increased to include both the Current Premises and the Expansion Premises, and (b) Exhibits A and A-1 attached hereto, which collectively describe the entire Premises, shall together replace Exhibit A currently attached to the Lease. Notwithstanding the foregoing, if the Delivery Date does not occur within thirty (30) days after the Effective Date, Tenant may, upon delivery of written notice to Landlord at any time after the expiration of such thirty (30) day period (but in any event prior to the Delivery Date), terminate Tenant’s lease of the Expansion Premises, in which event Tenant’s lease of the Expansion Premises shall automatically terminate and be of no further force or effect, and this First Amendment shall be null and void and of no further force or effect. Landlord and Tenant hereby acknowledge and agree that the addition of the Expansion Premises to the Current Premises shall, effective as of the Effective Date, increase the stipulated size of the Premises to a total of 57,529 rentable square feet of space, consisting of 23,362 rentable square feet constituting the Expansion Premises and 34,167 rentable square feet of space constituting the Current Premises.

3. Expansion Term. The term of Tenant’s lease of the Expansion Premises (the “Expansion Term”) shall commence on September 1, 2011 (the “Expansion Term Commencement Date”), as such date may be extended pursuant to Section 4.4 of the “Work Letter” attached hereto as Exhibit B, The Expansion Term shall also expire on October 31, 2013 (the “Expansion Term Expiration Date”), concurrently with expiration of Tenant’s lease of the Current Premises unless sooner terminated as provided in the Lease, as hereby amended. Notwithstanding any term or provision in the Lease to the contrary, effective as of the date of this First Amendment, any references in the Lease to the “Expiration Date” shall refer to the Expansion Term Expiration Date. Tenant and Landlord agree the Term of the Lease is currently scheduled to expire on October 31, 2013 in accordance with the terms of the Lease and Sections 1.4 and 3.1 thereof.

4. Base Rent.

4.1 Base Rent for the Current Premises. Tenant shall continue to pay Base Rent for the Current Premises at the rate currently provided under Section 1.7 of the Lease for the period commencing on the Effective Date and ending on December 31, 2011. Provided this First Amendment has not been terminated in accordance with Section 2 above, commencing on January 1, 2012 and continuing until the Expansion Term Expiration Date, Tenant shall pay to Landlord monthly installments of Base Rent for the Current Premises as follows, and Section 1.7 of the Lease shall be deemed amended accordingly:

<table>
<thead>
<tr>
<th>Period During Lease Term</th>
<th>Annual Base Rent</th>
<th>Monthly Installment of Base Rent</th>
<th>Annual Rental Rate per Rentable Square Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective Date — December 31, 2011</td>
<td>$1,366,680.00</td>
<td>$113,890.00</td>
<td>$40.00</td>
</tr>
<tr>
<td>January 1, 2012 — December 31, 2012</td>
<td>$1,435,014.00</td>
<td>$119,584.50</td>
<td>$42.00</td>
</tr>
<tr>
<td>January 1, 2013 — October 31, 2013</td>
<td>$1,499,181.00</td>
<td>$122,431.75</td>
<td>$43.00</td>
</tr>
</tbody>
</table>

4.2 Base Rent for the Expansion Premises. Commencing on the Expansion Term Commencement Date (subject to Section 4.3 of this First Amendment, below) and continuing throughout the Expansion Term, Tenant shall pay to Landlord monthly installments of Base Rent for the Expansion Premises as follows:

<table>
<thead>
<tr>
<th>Period During Expansion Term</th>
<th>Annual Base Rent</th>
<th>Monthly Installment of Base Rent</th>
<th>Annual Rental Rate per Rentable Square Foot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>Current Premises Base Rent</td>
<td>Expansion Premises Base Rent</td>
<td>Total Base Rent</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>----------------------------</td>
<td>-----------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>September 1, 2011 — December 31, 2011*</td>
<td>$957,842.00</td>
<td>$79,820.17</td>
<td>$1,037,662.17</td>
</tr>
<tr>
<td>January 1, 2012 — December 31, 2012</td>
<td>$981,204.00</td>
<td>$81,767.00</td>
<td>$1,062,971.00</td>
</tr>
<tr>
<td>January 1, 2013 — October 31, 2013</td>
<td>$1,004,566.00</td>
<td>$83,713.83</td>
<td>$1,088,279.83</td>
</tr>
</tbody>
</table>

* Subject to an abatement of the Base Rent otherwise attributable to the Expansion Premises during the first two (2) months of the Expansion Term, pursuant to the terms and conditions of Section 4.3 of this First Amendment, below.

4.3 Expansion Premises Rent Abatement. Notwithstanding anything to the contrary contained in Section 4.2, above, provided that no Event of Default (as defined in Section 15.1 of the Lease) shall occur during the first two (2) months of the Expansion Term, then during the first two (2) months of the Expansion Term (the “Expansion Premises Rent Abatement Period”), Tenant shall not be obligated to pay any Base Rent otherwise attributable to the Expansion Premises during such Expansion Premises Rent Abatement Period. If an Event of Default shall occur during such Expansion Premises Rent Abatement Period, Tenant shall not be entitled to any abatement of Base Rent in connection with the Expansion Premises during any part of the Expansion Premises Rent Abatement Period occurring after such Event of Default occurs.

4.4 First Month’s Rent. Concurrently with Tenant’s execution and delivery of this First Amendment, Tenant shall pay to Landlord the Base Rent payable for the Expansion Premises for the first (1st) full month of the Expansion Term (i.e., Seventy-Nine Thousand Eight Hundred Twenty and 17/100 Dollars ($79,820.17)) (the “First Month’s Rent Payment”). Subject to Section 4.3 above, the First Month’s Rent Payment shall be applied to Base Rent due and owing for the third (3rd) month of the Expansion Term. If Tenant is not entitled to abatement for all or any portion of the Expansion Premises Rent Abatement Period, the First Month’s Rent Payment will be applied to Tenant’s obligations with respect to such Expansion Premises Rent Abatement Period.

5. Property Tax and Operating Expense and Direct Reimbursement Payments Adjustment. Tenant shall continue to pay the Property Tax and Operating Expense and Direct Reimbursement Payments Adjustment in connection with the Current Premises in accordance with the terms of Article IV of the Lease. Additionally, except as specifically set forth in this Section 5, commencing on the Expansion Term Commencement Date, Tenant shall pay the Property Tax and Operating Expense and Direct Reimbursement Payments Adjustment in connection with the Expansion Premises in accordance with the terms of Article IV of the Lease, provided that for purposes of calculating the Property Tax and Operating Expense and Direct Reimbursement Payments Adjustment for the Expansion Premises during the Expansion Term, (a) Tenant’s Percentage Share is 26.46%, and (b) the Base Year shall be the calendar year 2011. Landlord shall clearly separate the calculation of Rent Adjustments attributable to each of the Current Premises and Expansion Premises in any estimates or statements delivered to Tenant pursuant to Section 4.3 of the Lease.

6. Improvements. Notwithstanding Landlord’s ongoing repair and maintenance obligations under the Lease, Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Expansion Premises or of the Current Premises. Tenant shall accept the Expansion Premises and continue to accept the Current Premises in their presently existing “as-is” condition.

7. Broker. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this First Amendment, and that they know of no real estate broker or agent who is entitled to a commission in connection with this First Amendment. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys’ fees) with respect to any leasing commission or equivalent compensation claimed against the beneficiary of the indemnity alleged to arise from or on account of the indemnifying party’s dealings with any real estate broker or agent. The terms of this Section 7 shall survive the expiration or earlier termination of the Lease (as amended hereby).

8. Parking. Section 1.16 of the Lease is hereby amended to provide that effective as of the Delivery Date and continuing throughout the Expansion Term, Tenant shall be entitled to rent a total of up to fifty-seven (57) unreserved parking passes (i.e., one (1) unreserved parking pass per 1,000 rentable square feet of the Premises) in the Building parking facility on the terms set forth in Section 27.26 of the Lease.

9. Expansion Premises Signage. Landlord, at its sole cost and expense, will provide the initial Building standard identification signage at the entry to the Expansion Premises, and make any initially required changes to the Building standard main floor lobby directory signage to reflect Tenant’s lease of the Current Premises and Expansion Premises. Except as expressly set forth herein, Tenant’s signage rights shall be in accordance with the provisions of Section 7.3 of the Lease.

10. Right of First Offer.

10.1 In General. Landlord hereby grants to the Tenant originally named in this First Amendment (the “Original Tenant”) or its Permitted Transferee (as that term is defined in Section 14.1(B) of the Lease) a one-time right of first offer (the “Right of First Offer”) with respect to any premises in the Building (a “First Offer Space”) which will become available for lease to third parties following the expiration or earlier termination of the presently existing lease therefor, including any renewal or extension of any such lease pursuant to an express right that is presently set forth in such lease, but regardless of whether such renewal or extension rights are executed strictly in accordance with their terms, or pursuant to a lease amendment or a new lease. Landlord hereby represents to Tenant that as of the date of this First Amendment (a) no other tenants of the Building have a right to expand within the Building, and Tenant’s Right of First Offer shall be superior to any future expansion rights granted to other tenants of the Building, (b) the copy of the lease between Brannan Propco, LLC and Omniture, Inc. dated January 8, 2008 (the “Omniture Lease”) is a true and correct copy of such lease and any amendments thereto, (c) the Omniture Lease has not been amended except as indicated in the documents provided to Tenant, and (d) the Omniture Lease is presently scheduled to expire on September 30, 2013. Landlord will not make any amendment to the Omniture Lease that shall provide for an option to extend the term beyond September 30, 2013. Tenant’s Right of First Offer shall be on the terms and conditions set forth in this Section 10.

10.2 Procedure for Offer and Acceptance. Subject to the terms of this Section 10, if during the Expansion Term, First Offer Space will become available for lease to third parties, then Landlord shall notify Tenant (a “First Offer Notice”) of (i) the location within the Building and the rentable
square feet of the First Office Space, (ii) the date that Landlord reasonably anticipates the First Offer Space will be available for occupancy by Tenant, (iii) the lease term with respect to such First Offer Space (the “First Offer Space Lease Term”), (iv) the “Market Rent” (as determined pursuant to Exhibit C attached hereto), and (v) other fundamental economic terms and conditions upon which Landlord would be willing to lease such First Offer Space to Tenant. If Tenant wishes to exercise its Right of First Offer with respect to the First Offer Space described in the First Offer Notice, then within ten (10) business days of delivery of such First Offer Notice to Tenant (“Tenant’s Exercise Period”), Tenant shall deliver notice to Landlord of Tenant’s exercise of its Right of First Offer with respect to the entire space described in such First Offer Notice on the terms set forth in the First Offer Notice. If Tenant does not notify Landlord within Tenant’s Exercise Period of Tenant’s exercise of its Right of First Offer, then Landlord, in its sole and absolute discretion, shall have the right to lease the space described in the First Offer Notice to any third party on any terms Landlord desires. Notwithstanding anything to the contrary contained herein, Tenant must elect to exercise its Right of First Offer, if at all, with respect to all of the First Offer Space offered by Landlord to Tenant, and Tenant may not elect to lease only a portion thereof.

10.3 **First Offer Space Rent.** The Base Rent payable by Tenant with respect to the First Offer Space during the First Offer Space Lease Term shall be equal to the Market Rent (as determined pursuant to Exhibit C attached hereto).

10.4 **Construction In First Offer Space.** Except as expressly otherwise provided in the First Offer Notice, Tenant shall take the First Offer Space in its “as is” condition, and the construction of improvements in the First Offer Space shall comply with the terms of Article IX of the Lease.

10.5 **Amendment to Lease.** If Tenant timely exercises Tenant’s right to lease the First Offer Space as set forth herein, Landlord and Tenant shall within thirty (30) days thereafter execute an amendment to the Lease for such First Offer Space upon the terms and conditions as set forth in the First Offer Notice and this Section 10. Tenant shall commence the payment of Base Rent for the First Offer Space, and the term of Tenant’s lease of the First Offer Space shall commence upon the date of delivery of the First Offer Space to Tenant (the “First Offer Space Commencement Date”) and shall terminate on the date set forth in the First Offer Notice.

10.6 **Termination of Right of First Offer.** The Right of First Offer contained in this Section 10 shall be personal to Tenant or its Permitted Transferee, and may only be exercised by Tenant or its Permitted Transferee if Tenant and/or its Permitted Transferee occupies, or together they occupy, at least eighty percent (80%) of the rentable square feet of the Premises (i.e., the Current Premises and the Expansion Premises). The Right of First Offer granted herein shall terminate in its entirety upon the failure by Tenant to exercise its Right of First Offer with respect to such First Offer Space as offered by Landlord. Tenant shall not have the right to lease the First Offer Space, as provided in this Section 10, if, as of the date of the attempted exercise of any right of first offer by Tenant, or, at Landlord’s option, as of the scheduled date of delivery of the First Offer Space to Tenant, an Event of Default exists under the Lease, as amended. Notwithstanding any term or provision to the contrary set forth in this Section 10, the Right of First Offer granted herein shall terminate and be no further force or effect as of January 31, 2013. Upon the Delivery Date, this Section 10 shall supersede any right of first offer contained in the Lease, specifically including Section 3.2 thereof.

10.7 **Deletion of Prior Right of First Offer.** The right of first offer set forth in Section 3.2 of the Lease is hereby deleted and without further force and effect.

11. **Landlord’s Right to Continue Lease Upon Tenant Event of Default.** Section 15.3 of the Lease is hereby deleted and replaced with the following:

“Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee’s breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any Event of Default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.”

12. **No Further Modification.** Except as set forth in this First Amendment, all of the terms and provisions of the Lease shall apply with respect to the Expansion Premises and shall remain unmodified and in full force and effect.

[Signature page immediately follows.]

IN WITNESS WHEREOF, this First Amendment has been executed as of the day and year first above written.

**“LANDLORD”**

KILROY REALTY, L.P.,
a Delaware limited partnership

By: Kilroy Realty Corporation,
a Maryland corporation,
General Partner

By: /s/ Jeffrey C. Hawken
Name: Jeffrey C. Hawken
Its: Executive Vice President & Senior Vice President

By: /s/ John T. Fucci
Name: John T. Fucci
Its: Sr. Vice President Asset Management

**“TENANT”**

SPLUNK INC.,
a Delaware corporation
This Work Letter shall set forth the terms and conditions relating to the construction of the tenant improvements in the Expansion Premises. All references in this Work Letter to Sections of “the Amendment” shall mean the relevant portions of Sections 1 through 12 of the First Amendment to which this Work Letter is attached as Exhibit B. All references in this Work Letter to Sections of “the Lease” shall mean the relevant portions of Articles I through XXVII of the Lease, as amended by the First Amendment. All references in this Work Letter to Sections of “this Work Letter” shall mean the relevant portions of Sections 1 through 5 of this Work Letter. “Work” shall refer to any work of improvement to be performed by Tenant contemplated in this Work Letter. Other capitalized terms used in this Work Letter and not defined herein shall have the meaning ascribed in the Lease, as amended.

SECTION 1
DELIVERY OF THE PREMISES AND BASE BUILDING

Upon the full execution and delivery of this Amendment by Landlord and Tenant, Landlord shall deliver the Expansion Premises and the “Base Building,” as that term is defined below, to Tenant, and Tenant shall accept the Expansion Premises and Base Building from Landlord in their presently existing, “as-is” condition (provided that the personal property of any prior tenant shall be removed from the Expansion Premises prior to the Effective Date). The “Base Building” shall include the structural portions of the Building, and the public restrooms, elevators, exit stairwells and the systems and equipment located in the internal core of the Building on the floor or floors on which the Expansion Premises is located. The “Base Building Plans” are the plans provided by Landlord to Tenant and its Architect and Engineers (as defined herein), covering the Base Building, with notations regarding any errors contained in such plans actually known to Landlord, which are delivered for the purposes of planning and design of the Improvements,

SECTION 2
IMPROVEMENTS

2.1 Improvement Allowance. Tenant shall be entitled to an improvement allowance in the amount of Six Hundred Forty-Two Thousand Four Hundred Fifty-Five and 00/100 Dollars ($642,455.00) (i.e., Twenty-Seven and 50/100 Dollars ($27.50) per rentable square foot of the Expansion Premises) (the “Improvement Allowance”) for (a) costs relating to the design and
construction of the improvements affixed to the Premises, (b) electrical cabling and installation, network cabling and carpeting (collectively with subsection (a), the “Improvements”), (c) “soft costs” of the Improvements, and (d) subject to Section 2.2.1.5, below, furniture, fixtures and equipment to be acquired by Tenant for use in the Premises (“FF&E”). In no event shall Landlord be obligated to make disbursements pursuant to this Work Letter in the event that Tenant fails to pay any portion of the “Over-Allowance Amount,” as defined and required in Section 4.2.1 of this Work Letter, nor shall Landlord be obligated to pay a total amount which exceeds the Improvement Allowance. Notwithstanding the foregoing or any contrary provision of the Lease, as amended, the Improvements shall be deemed Landlord’s property under the terms of the Lease, as amended; provided, however, that the FF&E shall remain the property of Tenant, and shall be removed by Tenant from the Premises upon expiration of the Lease, as amended. Any unused portion of the Improvement Allowance remaining as of August 31, 2012, shall remain with Landlord and Tenant shall have no further right thereto.

2.2 Disbursement of the Improvement Allowance.

2.2.1 Improvement Allowance Items. Except as otherwise set forth in this Work Letter, the Improvement Allowance shall be disbursed by Landlord (each of which disbursements shall be made pursuant to the disbursement process described in this Work Letter, including, without limitation, Landlord’s receipt of invoices for all costs and fees described herein) only for the following items and costs (collectively the “Improvement Allowance Items”):

2.2.1.1 Payment of the fees of the “Architect” and the “Engineers,” as those terms are defined in Section 3.1 of this Work Letter, and payment of the fees incurred by, and the cost of documents and materials supplied by, Landlord and Landlord’s consultants in connection with the preparation and review of the “Construction Drawings,” as that term is defined in Section 3.1 of this Work Letter, in an amount not to exceed Five Thousand Dollars ($5,000.00);

2.2.1.2 The payment of plan check, permit and license fees relating to construction of the Improvements;

2.2.1.3 The cost of construction of the Improvements, including, without limitation, Tenant’s testing and inspection costs, hoisting and trash removal costs at the rate customarily charged by Landlord for such additional services, and contractors’ fees and general conditions incurred by Tenant under the Contract (as defined below);

2.2.1.4 The cost of any changes in the Base Building when such changes are required by the Construction Drawings, such cost to include all direct architectural and/or engineering fees and expenses incurred by Tenant in connection therewith;

2.2.1.5 The costs of any FF&E acquired by Tenant, which costs shall, notwithstanding anything to the contrary contained in this Work Letter, not exceed an aggregate amount equal to Three and 00/100 Dollars ($3.00) per rentable square foot of the Expansion Premises;

2.2.1.6 The cost of any changes to the Construction Drawings or Improvements required by all applicable building codes (the “Code”);

2.2.1.7 The cost of the “Coordination Fee,” as that term is defined in Section 4.2.2.1 of this Work Letter; and

2.2.1.8 Sales and use taxes.

2.2.2 Disbursement of Improvement Allowance. During the construction of the Improvements, Landlord shall make monthly disbursements of the Improvement Allowance for Improvement Allowance Items and shall authorize the release of monies as follows.

2.2.2.1 Monthly Disbursements. On or before a day of each calendar month, as mutually agreed upon by Tenant and Landlord and designated to be the disbursement date (but no less than once per month), during the construction of the Improvements, Tenant shall deliver to Landlord: (i) a request for payment of the “Contractor,” as that term is defined in Section 4.1.1 of this Work Letter, approved by Tenant, in a form to be provided by Landlord and reasonably customary for such requests, showing the schedule, by trade, of percentage of completion of the Improvements in the Premises, detailing the portion of the work completed and the portion not completed; (ii) invoices from all of “Tenant’s Agents,” as that term is defined in Section 4.1.2 of this Work Letter, for labor rendered and materials delivered to or FF&E purchased for the Premises; (iii) executed mechanic’s lien releases from all of Tenant’s Agents, which shall comply with the appropriate provisions, as reasonably determined by Landlord, of California Civil Code Section 3262(d); and (iv) all other information reasonably requested by Landlord. Thereafter, Landlord shall, within thirty (30) days after the date of any such request, deliver a check to Tenant in payment of the lesser of (A) the amounts so requested by Tenant, as set forth in this Section 2.2.2.1, above, less a retention equal to ten percent (10%) of the total amount requested by Tenant for the relevant month (the aggregate amount of such retainers to be known as the “Final Retention”), and (B) the balance of any remaining available portion of the Improvement Allowance (not including the Final Retention), provided that (x) Landlord does not dispute any request for payment based on non-compliance of any work with the “Approved Working Drawings,” as that term is defined in Section 3.4 below, or due to any work that Landlord asserts is below the quality standard required under the Lease, as amended, or the Work Letter, or for any other reason permitted under this Work Letter, (y) Landlord shall, within the time period provided herein, pay any approved portion of the relevant request and only withhold payment for disputed items, and (z) Landlord shall deliver a writing to Tenant that states the amount of any disbursement request that is disapproved, and specifies the reason for any disapproval. Landlord’s payment of such amounts shall not be deemed Landlord’s approval or acceptance of the work furnished or materials supplied as set forth in Tenant’s payment request.

2.2.2.2 Final Retention. Subject to the provisions of this Work Letter, a check for the Final Retention payable to Tenant shall be delivered by Landlord to Tenant following the completion of construction of the Premises, provided that (i) Tenant delivers to Landlord properly executed mechanic’s lien releases in compliance with both California Civil Code Section 3262(d)(2) and either Section 3262(d)(3) or Section 3262(d)(4), (ii) Landlord has reasonably determined that no work exists that is below the quality standard required under the Lease or Work Letter, or which materially adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, the structure or exterior appearance of the Building, or any other tenant’s use of such other tenant’s leased premises in the Building, and (iii) Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Improvements in the Premises has been substantially completed.
2.2.2.3 Other Terms. Landlord shall only be obligated to make disbursements from the Improvement Allowance to the extent costs are incurred by Tenant for Improvement Allowance Items pursuant to Section 2.1 hereof.

2.3 Building Standards. Landlord has established specifications for certain Building standard components to be used in the construction of the Improvements in the Premises, which specifications are attached hereto as Schedule X (collectively, the “Building Standard Documents”). The quality of Improvements shall be equal to or of greater quality than the quality specified in the Building Standard Documents. Landlord may make reasonable changes to the Building Standard Documents from time to time, and shall promptly communicate such changes in writing to Tenant, and Tenant will comply with any changes if (a) such changes do not require a change to any Approved Working Drawings; (b) such changes do not increase the cost of the Improvements from the cost under the Leases; provided, however, that notwithstanding anything to the contrary contained in Section 9.4 of the Lease; in no event shall Tenant be required to remove any Improvements that are approved by Landlord as part of the Final Working Drawings (as defined below).

SECTION 3
CONSTRUCTION DRAWINGS

3.1 Selection of Architect/Construction Drawings. Tenant shall retain an architect/space planner reasonably approved in advance by Landlord (the “Architect”) to prepare the “Construction Drawings,” as that term is defined in this Section 3.1. Tenant shall retain the engineering consultants reasonably approved in advance by Landlord (the “Engineers”) to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing and HVAC work in the Premises, which work is not part of the Base Building. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the “Construction Drawings.” All Construction Drawings shall be subject to Landlord’s reasonable approval. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the Base Building Plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord’s review of the Construction Drawings as set forth in this Section 3, shall be for Landlord’s sole purpose and shall not imply Landlord’s review of the same for the benefit of any other person, including, without limitation, Tenant, Architect, or Contractor, or obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord’s space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Tenant’s waiver and indemnity set forth in the Lease shall specifically apply to the Construction Drawings.

3.2 Final Space Plan. Tenant shall supply Landlord with one (1) hard copy signed by Tenant of its final space plan for the Premises before any architectural working drawings or engineering drawings have been commenced, and concurrently with Tenant’s delivery of such hard copy, Tenant shall send to Landlord via electronic mail one (1) .pdf electronic copy of such final space plan. The final space plan (the “Final Space Plan”) shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and fixtures to be contained therein. Landlord may request clarification or more specific drawings for special use items not included in the Final Space Plan to the extent the Final Space Plan does not, in Landlord’s judgment, fully describe such items in reasonable detail. Landlord shall advise Tenant within five (5) business days after Landlord’s receipt of the Final Space Plan for the Premises if the same is unsatisfactory or incomplete in any respect in Landlord’s reasonable judgment, provided Landlord will specify any objections in writing and in reasonable detail. If Tenant is so advised, Tenant shall promptly cause the Final Space Plan to be revised to correct any deficiencies or other matters Landlord may reasonably require, and Landlord thereafter will have five (5) business days after each revised draft is delivered to Landlord to respond with any further reasonable objections, provided all objections will be specified in writing and in reasonable detail.

3.3 Final Working Drawings. After the Final Space Plan has been approved by Landlord, Tenant shall supply the Engineers with a complete listing of standard and non-standard equipment and specifications, including, without limitation, B.T.U. calculations, electrical requirements and special electrical receptacle requirements for the Premises, to enable the Engineers and the Architect to complete the “Final Working Drawings” (as that term is defined below) in the manner as set forth below. Upon the approval of the Final Space Plan by Landlord and Tenant, Tenant shall promptly cause the Architect and the Engineers to complete the architectural and engineering drawings for the Premises, and Architect shall compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to complete the work and to obtain all applicable permits (collectively, the “Final Working Drawings”) and shall submit the same to Landlord for Landlord’s reasonable approval. Tenant shall supply Landlord with one (1) hard copy signed by Tenant of the Final Working Drawings, and concurrently with Tenant’s delivery of such hard copy, Tenant shall send to Landlord via electronic mail one (1) .pdf electronic copy of such Final Working Drawings. Landlord shall advise Tenant within ten (10) business days after Landlord’s receipt of the Final Working Drawings for the Premises if the same is unsatisfactory or incomplete in any respect in the reasonable judgment of Landlord, provided Landlord will specify any objections in writing and in reasonable detail. If Tenant is so advised, Tenant shall promptly cause the Final Working Drawings to be revised to correct any deficiencies or other matters Landlord may reasonably require. Landlord will thereafter have five (5) business days after each revised draft is delivered to Landlord to respond with any further reasonable objections, provided all objections will be specified in writing and in reasonable detail. If the Final Working Drawings or any amendment thereof or supplement thereto shall require alterations in the Base Building, and if Landlord in its sole and exclusive discretion agrees to any such alterations, and notifies Tenant of the need and cost for such alterations, then Tenant shall pay the cost of such required changes as part of the Work, provided the Improvement Allowance may be applied to the cost of such alterations.

3.4 Approved Working Drawings. Landlord shall approve the Final Working Drawings prior to the commencement of construction of the Premises by Tenant (as so approved, the “Approved Working Drawings”), Tenant may then submit the Approved Working Drawings to the appropriate municipal authorities for all applicable building permits. Tenant hereby agrees that neither Landlord nor Landlord’s consultants shall be responsible for obtaining any building permit or certificate of occupancy for the Premises and that obtaining the same shall be Tenant’s responsibility. Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any permit or certificate of occupancy as required to substantially complete the Improvements. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, which consent may not be unreasonably withheld.
3.5 Electronic Approvals. Notwithstanding any provision to the contrary contained in the Lease, as amended, or this Work Letter, Landlord may, in Landlord’s sole and absolute discretion, transmit or otherwise deliver any of the approvals required under this Work Letter via electronic mail to Tenant’s representative identified in Section 5.1 of this Work Letter, or by any of the other means identified in Article XXIV of the Lease.

SECTION 4
CONSTRUCTION OF THE IMPROVEMENTS

4.1 Tenant’s Selection of Contractors.

4.1.1 The Contractor. A general contractor shall be retained by Tenant to construct the Improvements. Such general contractor (“Contractor”) shall be selected by Tenant from a list of general contractors supplied by Landlord, and Tenant shall deliver to Landlord notice of its selection of the Contractor upon such selection.

4.1.2 Tenant’s Agents. All subcontractors, laborers, materialmen, and suppliers used by Tenant in connection with the Improvements (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as “Tenant’s Agents”) must be approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed. If Landlord does not approve any of Tenant’s proposed subcontractors, laborers, materialmen or suppliers, Tenant shall submit other proposed subcontractors, laborers, materialmen or suppliers for Landlord’s written approval. If Landlord disapproves of any of Tenant’s Agents, Landlord will specify the reason for any disapproval in writing. The designation of any subcontractors, laborers, materialmen, suppliers, or the Contractor as Tenant’s Agents will not be deemed to imply the existence of an agency relationship between Tenant and any such Tenant’s Agent, which relationship shall be and remain that of contractor or subcontractor, in accordance with the relevant contract documents.

4.2 Construction of Improvements by Tenant’s Agents.

4.2.1 Construction Contract; Cost Budget. Tenant shall engage the Contractor under a fixed price contract reasonably acceptable to Tenant, Contractor and Landlord (the “Contract”). Landlord’s approval of any proposed contract shall not be unreasonably withheld or delayed, and if Landlord objects to any Contract submitted for approval by Landlord, Landlord shall specify the reason for any disapproval in writing, within five (5) business days after such contract is submitted for approval by Tenant. Prior to the commencement of the construction of the Improvements, Tenant shall provide Landlord with a reasonably detailed breakdown, by trade, of the final costs to be incurred or which have been incurred, as set forth more particularly in Sections 2.2.1.1 through 2.2.1.8, above, in connection with the design and construction of the Improvements to be performed by or at the direction of Tenant or the Contractor, which costs shall form a basis for the amount of the Contract (the “Final Costs”). Prior to the commencement of construction of the Improvements, Tenant shall supply Landlord with cash in an amount (the “Over-Allowance Amount”) equal to the difference between the amount of the Final Costs and the amount of the Improvement Allowance (less any portion thereof already disbursed by Landlord, or in the process of being disbursed by Landlord, on or before the commencement of construction of the Improvements). The Over-Allowance Amount shall be disbursed by Landlord on a pro-rata basis along with any of the then remaining portion of the Improvement Allowance, and such disbursement shall be pursuant to the same procedure as the Improvement Allowance. In the event that, after the Final Costs have been delivered by Tenant to Landlord, the costs relating to the design and construction of the Improvements shall change, any additional costs necessary to such design and construction in excess of the Final Costs, shall be paid by Tenant to Landlord within one (1) business day after written demand by Landlord, as an addition to the Over-Allowance Amount or at Landlord’s option, Tenant shall make payments for such additional costs out of its own funds, but Tenant shall continue to provide Landlord with the documents described in Sections 2.2.2.1(i), (ii), (iii) and (iv), of this Work Letter, above, for Landlord’s approval, prior to Tenant paying such costs.

4.2.2 Tenant’s Agents.

4.2.2.1 Landlord’s General Conditions for Tenant’s Agents and Improvement Work. Tenant’s and Tenant’s Agent’s construction of the Improvements shall comply with the following: (i) the Improvements shall be constructed in substantial accordance with the Approved Working Drawings; (ii) Tenant’s Agents shall submit schedules of all work relating to the Improvements to Contractor and Contractor shall, within five (5) business days of receipt thereof, inform Tenant’s Agents of any changes which are necessary thereto, and Tenant shall use commercially reasonable efforts to cause Tenant’s Agents to adhere to any approved schedule; and (iii) Tenant shall abide by all rules made by Landlord’s Building manager with respect to the use of freight, loading dock and service elevators, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Work Letter, including, without limitation, the construction of the Improvements. Tenant shall pay a logistical coordination fee (the “Coordination Fee”) to Landlord in an amount equal to three percent (3%) of the “hard costs” of the Improvements, which Coordination Fee shall be Landlord’s sole compensation for services relating to the coordination of the construction of the Improvements. The Coordination Fee shall be paid from the Improvement Allowance. Tenant shall not be charged for the use of freight elevators, security access to loading docks or for utilities or temporary HVAC in the Expansion Premises prior to the Expansion Term Commencement Date, if use of such facilities and/or services is required for the Improvements.

4.2.2.2 Indemnity. Tenant’s indemnity of Landlord as set forth in the Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant’s Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant’s non-payment of any amount arising out of the Improvements and/or Tenant’s disapproval of all or any portion of any request for payment. Such indemnity by Tenant, as set forth in the Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord’s performance of any ministerial acts reasonably necessary (i) to permit Tenant to complete the Improvements, and (ii) to enable Tenant to obtain any building permit or certificate of occupancy for the Premises, except to the extent such losses are caused by Landlord’s gross negligence or willful misconduct.
4.2.2.3 **Requirements of Tenant’s Agents.** Each of Tenant’s Agents shall guarantee to Tenant and for the benefit of Tenant and Landlord that the portion of the Improvements for which such Tenant’s Agent is responsible shall be free from any defects in workmanship and materials for such period and on such terms as may be customary for similar subcontractors or trades performing work in first class office buildings in the Comparable Area (as defined in Exhibit C). All such warranties or guarantees as to materials or workmanship of or with respect to the Improvements shall be contained in the Contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect any right of direct enforcement if required to enforce such warranty.

4.2.2.4 **Insurance Requirements.**

4.2.2.4.1 **General Coverages.** All of Tenant’s Agents shall carry worker’s compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in the Lease.

4.2.2.4.2 **Special Coverages.** Tenant shall carry “Builder’s All Risk” insurance in an amount approved by Landlord covering the construction of the Improvements, and such other insurance as Landlord may require, it being understood and agreed that the Improvements shall be insured by Tenant pursuant to the Lease immediately upon completion thereof. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that all of Tenant’s Agents shall carry excess liability and Products and Completed Operation Coverage insurance, each in such amounts as may be reasonably approved by Landlord, in form and with companies as are required to be carried by Tenant as set forth in the Lease.

4.2.2.4.3 **General Terms.** Certificates for all insurance carried pursuant to this Section 4.2.2.4 shall be delivered to Landlord before the commencement of construction of the Improvements and before the Contractor’s equipment is moved onto the site. All such certificates must indicate that the relevant policy contains a provision that the company writing said policy will give Landlord thirty (30) days prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance for a period of one year following the issuance of any such certificate. In the event that the Improvements are damaged by any cause during the course of the construction thereof, Tenant shall promptly repair the same at Tenant’s sole cost and expense, provided that any resulting delay shall be a Force Majeure Delay if the damage results from any of the causes enumerated in Section 4.4.1 below. Tenant’s Agents shall maintain all of the foregoing insurance coverage in force until the Improvements are fully completed and accepted by Landlord, except for any Products and Completed Operation Coverage insurance required by Landlord, which is to be maintained for ten (10) years following completion of the work and acceptance by Landlord.

and Tenant. All policies carried under this Section 4.2.2.4 shall insure Landlord and Tenant, as their interests may appear, as well as Contractor and Tenant’s Agents. All insurance, except Workers’ Compensation, maintained by Tenant’s Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner (Landlord) and that any other insurance maintained by owner (Landlord) is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under Section 4.2.2.2 of this Work Letter.

4.2.3 **Governmental Compliance.** The Improvements shall comply in all respects with the following: (i) Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer’s specifications.

4.2.4 **Inspection by Landlord.** Landlord shall have the right to inspect the Improvements upon prior written notice of at least one (1) business day, provided however, that Landlord’s failure to inspect the Improvements shall in no event constitute a waiver of any of Landlord’s rights hereunder nor shall Landlord’s inspection of the Improvements constitute Landlord’s approval of the same. Should Landlord disapprove any portion of the Improvements, Landlord shall notify Tenant in writing of the disapproved items and shall specify the reasons for such disapproval. Any defects or deviations in, and/or disapproval by Landlord of, the Improvements in accordance with the foregoing shall be rectified by Tenant at no expense to Landlord, provided however, that in the event Landlord determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Improvements and such defect, deviation or matter might adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life-safety systems of the Building, the structure or exterior appearance of the Building or any other tenant’s use of such other tenant’s leased premises, Landlord may, after five (5) business days’ prior written notice of such matter to Tenant, take such action as Landlord deems reasonably necessary, at Tenant’s expense and without incurring any liability on Landlord’s part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Improvements until such time as the defect, deviation and/or matter is corrected to Landlord’s reasonable satisfaction. Tenant will pay any costs incurred by Landlord in compliance with the foregoing within ten (10) business days after it receives an invoice therefor.

4.2.5 **Meetings.** Commencing upon the execution of this First Amendment, Tenant shall hold at least bi-weekly meetings at a reasonable time, with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Improvements, which meetings shall be held at a location in the Building designated by Landlord.

and Landlord and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings, and, upon Landlord’s request, Tenant shall use commercially reasonable efforts to cause any of Tenant’s Agents reasonably required for any review to attend such meetings. If request is made by Landlord before any meeting commences, a person attending the meeting shall be designated to take minutes, and minutes shall be taken at such meeting, a copy of which minutes shall be promptly delivered to Landlord. One such meeting each month shall include the review of any current request for payment submitted by Tenant, but the foregoing will not be deemed to extend any period provided herein for payment of such request, so long as Tenant has acted in compliance with this section in scheduling any meetings.

4.3 **Notice of Completion; Copy of Record Set of Plans.** Within ten (10) days after completion of Substantial Completion of the Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Building is located in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same as Tenant’s agent for such purpose, at Tenant’s sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved
Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the “record-set” of as-built drawings are true and correct,
MINIMUM BUILDING STANDARD TENANT IMPROVEMENT SPECIFICATIONS

STANDARD PARTITIONS

DEMISING PARTITION

a.  3-5/8” x 20 gauge metal studs @ 16” on center.
b.  1 layer each side 5/8” thick type ‘x’ gypsum wallboard.
c.  Height from floor slab to underside of structure above.
d.  R11 haft sound insulation in partition cavity.
e.  Partition taped and sanded smooth to a minimum of Level 4 finish to receive paint.
f.  Fire caulk @ partition and metal deck and at any penetrations as required by City of San Francisco. (Fill deck flutes voids to achieve one (1) hour fire rating as required by code).
g.  Provide openings above ceiling with sound boots as required, for return air as required by mechanical engineering and applicable code.

INTERIOR PARTITION

a.  2-1/2” x 25 gauge metal studs @ 24” on center.
b.  1 layer each side 5/8” thick type ‘x’ gypsum wallboard.
c.  From floor slab to underside of ceiling grids as applicable.
d.  Wall Bracing: 2-1/2” x 25 gauge metal studs at 45 degree diagonal to structure above staggered @ 4’-0” on center or as required by code and at door openings.
e.  Partition taped and sanded smooth to a minimum of Level 4 finish.
f.  Metal corner bead at terminations of partitions and at the ceiling.

INTERIOR ONE-HOUR SEPARATION PARTITION

a.  3-5/8” x 20 gauge metal studs © 16” on center.
b.  1 layer each side 5/8” thick type ‘x’ gypsum wallboard.
c.  Height from floor slab to underside of structure above.
d.  Partition taped and sanded smooth to a minimum of Level 4 finish to receive paint.
e.  Fire tape and fire caulk connections between partition, slab and deck as required.
f.  Provide Fire dampers as required for penetrations and return air.

INTERIOR LOW PARTITION

a.  2-1/2” x 25 gauge metal studs @ 16” on center.
b.  1 layer each side and top 5/8” thick type ‘x’ gypsum wallboard.
c.  Heights vary to maximum allowed by code.
d.  Metal corner beads at all exposed corners.
e.  Partition taped and sanded smooth to receive paint to a minimum of Level 4 finish.
f.  Pipe support at free end within partition cavity and every 4’ on center.

COLUMN FURRING

a.  2-1/2” x 25 gauge metal studs @ 24” on center.
b.  1 layer one side 5/8” thick type ‘x’ gypsum wallboard.
c.  Height from floor slab to 6” above ceiling grid or to deck above.
d.  Partition taped and sanded smooth to a minimum of Level 4 finish to receive paint.

FURRING AT PERIMETER

a.  Below glazing sill and above glazing head, 1 layer 5/8” thick type ‘x’ gypsum wallboard.
b.  Taped and sanded smooth to a minimum of Level 4 finish to receive paint.
c.  Gypsum wallboard to finish flush with face of mullion.

WALL TERMINATION AT MULLION
DOORS, FRAMES AND HARDWARE

SINGLE CORRIDOR DOOR AND HARDWARE

a. Single leaf U.L. rated, 20-minute suite entry door. Label attached to hinge side of door, 1-3/4" x 3'-0" x 8'-2", solid core wood, 7 ply red oak veneer, plain sliced, clear finish and premium grade.
b. Door shall be pre-finished and pre-mortised for hardware.
c. Door shall be pre-bored to accept optional electrified hardware.
d. Frame: 3'-0" x 8'-2" RACO (or equal approved by management for manufacturer/supplier of ACI Frames) extruded aluminum frames, with White DURALQ paint anodized finish, 20-minute fire rated.
e. Hardware:
   - **Lockset**: Schlage L9000 Series with B LG Rose, finish 625 polished chrome.
   - **Lever and Trim**: Schlage L9000-03 Series, finish 625 polished chrome.
   - **Cylinders**: Schlage cylinder: North Tower keyway 1457, South Tower keyway 1458.
   - **Hinges**: Stanley, FBB179, 4.5, finish 625 Polished Chrome.
   - **Closer**: Norton 7500 series regular Arm non-hold open 689 Aluminum.
   - **Stop**: Wall Mount Ives WS 406-26. Floor Mount Ives FS 436 26 (low) FS 438-26 (high)
   - **Smoke Seals**: Smoke Seal to be provided by the door frame manufacturer.

Substitutions of equal hardware shall be subject to approved by landlord

DOUBLE CORRIDOR DOOR AND HARDWARE

a. Double leaf U.L. rated 20-minute suite entry doors. Label attached to hinge side of doors, 1-3/4" x 6'-0" x 8'-2" solid core wood, 7 ply red oak veneer, plain sliced finish and premium grade.
b. Matching veneer at vertical edges.
c. Door shall be pre-finished and mortised for hardware.
d. Door shall be pre-bored to accept optional electrified hardware.
e. Frame: 6'411" x 8'-2", RACO (or equal approved by management for manufacturer/supplier of ACI Frames) extruded aluminum frames, with White DURALQ paint anodized finish, 20-minute fire rated.
f. Hardware:
   - **Lockset**: Schlage L9000 Series with B LG Rose, finish 625 polished chrome.
   - **Lever and Trim**: Schlage L9000-03 Series, finish 625 polished chrome.
   - **Cylinders**: Schlage cylinder: North Tower keyway 1457, South Tower keyway 1458.
   - **Hinges**: Stanley, FBB179, 4.5, finish 625 Polished Chrome.
   - **Closer**: Norton 7500 series regular Arm non-hold open 689 Aluminum.
   - **Stop**: Wall Mount Ives WS 406-26. Floor Mount Ives FS 436 26 (low) FS 438-26 (high)
   - **Smoke Seals**: Smoke Seal to be provided by the door frame manufacturer.
   - **Auto Flush Bolt**: Glynn-Johnson FB31 Polished Chrome
   - **Coordinator**: Ingersoll-Rand Aluminum Finish.
   - **Astragal**: Pemko 355, Aluminum finish

Substitutions of equal hardware shall be subject to approved by landlord

SINGLE INTERIOR DOOR AND HARDWARE

a. Single leaf 1-3/4" x 3'-0" x 8'-2", solid core wood, 7 ply red oak veneer, plain sliced, clear finish and premium grade.
b. Door shall be prefinished and mortised for hardware.
c. Frame: 3-0" x 8'-2", RACO (or equal approved by management for manufacturer/supplier of ACI Frames) extruded aluminum frames, with White DURALQ paint anodized finish, 20-minute fire rated.
d. Hardware:
   - **Lockset**: Schlage L9000 Series with B LG Rose, finish 625 polished chrome.
   - **Lever and Trim**: Schlage L9000-03 Series, finish 625 polished chrome.
   - **Cylinders**: Schlage cylinder: North Tower keyway 1457, South Tower keyway 1458.
   - **Hinges**: Stanley, FBB179, 4.5, finish 625 Polished Chrome.
   - **Closer**: Norton 7500 series regular Arm non-hold open 689 Aluminum.
   - **Stop**: Wall Mount Ives WS 406-26. Floor Mount Ives FS 436 26 (low) FS 438-26 (high)
   - **Smoke Seals**: Smoke Seal to be provided by the door frame manufacturer.

Substitutions of equal hardware shall be subject to approved by landlord

DOUBLE INTERIOR DOOR AND HARDWARE

a. Double leaf, 1-3/4" x 3'-0" x 8'-2", solid core wood, 7 ply red oak veneer, plain sliced, clear finish and premium grade. 20-minute fire rated.
c. Door shall be prefinished and mortised for hardware.
d. Frame: 6'-0" x 8'-2", RACO (or equal approved by management for manufacturer/supplier of ACI Frames) extruded aluminum frames, with White DURALQ paint anodized finish, 20-minute fire rated.
e. Hardware
   - Lockset: Schlage L9000 Series with B LG Rose, finish 625 polished chrome.
   - Lever and Trim: Schlage L9000-03 Series, finish 625 polished chrome.
   - Cylinders: Schlage cylinder: North Tower keyway 1457, South Tower keyway 1458.
   - Hinges: Stanley, FBB179, 4.5, finish 625 polished chrome.
   - Closer: Norton 7500 series regular Arm non-hold open 689 Aluminum.
   - Smoke Seals: Smoke Seal to be provided by the door frame manufacturer.

   · Auto Flush Bolt: Glynn-Johnson FB31 Polished Chrome
   · Coordinator: Ingersoll-Rand Aluminum Finish.
   · Astragal: ‘Pemko’ 355, Aluminum finish

Substitutions of equal hardware shall be subject to approval by landlord

OPTIONAL DOORS AS APPROVED BY LANDLORD

Optional Doors as Selected by the Tenant for the tenant’s interior space may be submitted and subject to Landlord’s Approval

ACOUSTICAL CEILING
   - 2’ x 2’ USG Fine Line 9/16” bolt slot system with 1/4” reveals.
   - 2’ x 2’ Armstrong, Dune 1775 white
   - Installed Seismic, Compression Posts, and Splay wiring requires as per code.
   - Access tiles as required for repair and maintenance of all mechanical equipment. Coded pin colors by equipment type, T.B.S

ELECTRICAL SYSTEMS

The main base building electrical service consists of a 277/480 Volt 3 Phase, 4 Wire, 4000 amps, Main Switch board located within an electrical room for each tower. House panel meter, distribution, and sub panel function for core improvement only.

Distribution within the tenant suites shall be modified as a part of the Tenant Improvements and part of the tenant improvement allowance.

Tenant Improvement distribution shall include all necessary distribution boards, transformers and sub panels, engineered and designed for both lighting and convenience power as required by tenants demand in compliance with California Title 24.

Low Voltage (Telephone/Data Cabling);
   - Teflon coated in plenum space
   - Cabling to be bundled, sleeved and sealed at firewalls and Independently supported per code.

Tenant installed lighting and controls shall be installed in compliance with California Title 24.

LIGHT FIXTURES
   - Recessed Avante direct/ indirect 2x4 (2) lamp Fluorescent
     - T-8 lamps with Electronic Ballasts
     - Lamps: F32T8/TL835/ALTO
     - Color 741-3500K (cool white)
   - Recessed Avante direct 1 indirect 2x2 (2) lamp Fluorescent Fixture
     - T-8 lamps with Electronic Ballasts
     - Lamp F32/TL835/ALTO
     - Color 741-3500K (cool white)

Tenant may elect to use additional alternate Architectural Lighting subject to Landlords Approval of Plans and Specs.

LIGHT CONTROL
   - All new lighting work shall be tied into and coordinated with the buildings lighting control panels.
   - Subject to Landlord’s review and approval dimmable ballast may be Incorporated in the Tenant lighting systems. Dimmable fixtures shall be coordinated with and tied into the building lighting controls as required.
ELECTRICAL WALL OUTLET
- Specification Grade, Leviton 20A, 120V, single pull switch.
- White.
- Mounted vertically.
- Outlet height at 15” above finish floor to centerline of outlet U.O.N. as required for ADA compliance.

TELEPHONE WALL OUTLET
- Mud ring cut into wall - mounted vertically.
- 3/4” metal conduit stub above ceiling with 6” pigtail at top of wall.
- Cover plate and wiring by Tenant’s telephone vendor.

EXIT SIGN LIGHTS
- Lithonia LRP-1-GC-RA -LED recessed architectural edge lit exit sign or double face, two (2) circuit 277 volt.
- Housing trim with white finish.

FIRE/LIFE SAFETY
All Life/Safety components shall be furnished and installed by the Landlord’s proprietary Life/Safety contractor:

Sabah International
Matt Ramesy
925-734-5754

Fire Extinguisher:
- Larsen Extinguisher Cabinet Fully Recessed, Architectural Series Vertical Duo Door. Brushed Stainless Steel #304
- Extinguisher: ABC Type B.C. Size B 10Lb.

AUTOMATIC FIRE SPRINKLERS
Fire sprinkler design & installation in accordance with U.B.C., NFPA 13 (1999 ed.) standards and San Francisco fire & life safety published requirements.

Sprinklers: drops to be included in Tenant Improvement allowance Central GBEC-20’s with escutcheon.

HEATING, VENTILATION AND AIR CONDITIONING:

THE TENANT HVAC SYSTEM SHALL BE designed to meet California Title 24 Energy standards.

The tenant HVAC system shall be designed to comply with California Quality Standards Section 118.

All new tenant HVAC system shall meet or exceed California Energy Efficiency Standards Sections 111-113-115 and 120 through 129.

All new tenant automatic controls shall comply with California Energy Efficiency Standards Sections 112 and 122.

The Heating, Ventilating & Air Conditioning system consists of a central plant HVAC system that is pneumatically controlled with VAV mixing boxes and perimeter reheat coils.

All Zones shall be conditioned and heated by Water Source Heat Pumps as manufactured by Mammoth and relocated and/or installed as part of the tenant improvements.

Water Source Heat Pumps shall be sized as required to meet ASHREA standards and equipped with Vibration Isolators, Balancing Valves, Strainers, Flow Controls and Shut Off Valves.

TENANT AIR DISTRIBUTION:
The sheet metal ducts will all be designed and installed in accordance with ASHRAE and SMACNA recommendations.

Controls:
Thermostats: Johnson Controls
- Interior Zones T-4002 and Exterior Zones T-4054

Hot water control valves: Johnson Controls V-3000-1 Diaphragm Activator.

VAV Boxes: Kruger Manufacturer ESV 3000 Series with perimeter Reheat Coil. Two rows of coils required

Heat Pumps: Mammoth (water source ONLY).

Condenser Water Pumps: Bell and Gosset Manufacturer. Series 1550 Multi-Stage Centrifugal Pump.

Ductwork: Medium Pressure ductwork- No snap locks or adjustable elbows no conical taps at main ductwork.
Downstream to VAV Boxes: four (4') feet of ductwork with 1” sound liner or base building standard fiberglass ductboard.

All Metal Supply and Return Ducts to be wrapped with 1 1/2” foil faced duct wrap.

Connection at Air Outlet to be made with flex wire no more than 5 Ft long.

Registers: Titus 4-way directional

Exhaust Fans: Penn TDA with speed controllers

Independent Pre-Air Balance required for close out packages for construction
  - To determine the exact main air quantities available for design
  - To verify the operation of all VAV boxes
  - To check and repair controllers, actuators and thermostats

Fire and smoke dampers shall be provided per code.

Diffusers will be any one of the following as selected by Landlords Architect:
  - Architectural air-bar linear diffusers
  - Light troffer diffuser
  - Lay-in tile ceiling diffusers

PLUMBING

Core Plumbing provided shall include all fixtures, trim, piping and accessories as required for the Core Improvements.

T.I. Plumbing hot and cold water, waste lines accessible from core areas and shall meet minimum code requirements.

FINISHES

PAINT
  - Three coats of eggshell finish by Benjamin Moore Eco-Spec or other approved low VOC.
  - Wall Paneling and Other Wall Coverings as selected by tenant subject to Landlords approval.

FLOOR COVERING
  - Carpet, Atlas cut pile “Vancouver”. Other Premium grade available but subject to landlord review.
  - Carpets or carpet tile as selected by tenant subject to landlord approval.
  - Direct glue down installation for all carpet.
  - VCT Armstrong, standard excelon, 12”x 12” Vinyl Tile or approved equal, colors to be selected from a standard color chart. Clean after installation and seal with high quality floor finish according to manufacturers printed directions for commercial traffic.
    - Premium Grade Wood Floors subject to landlords approval
    - Premium Grade Tile Floors subject to Landlords approval

RUBBER BASE
  - Rubber Base Roppe or equivalent 4” straight at carpet and coved at hard surface flooring.
  - Wood Base subject to Landlords approval.
  - Tile or Slate Base subject to Landlords approval.

PLASTIC LAMINATE
  - Formica or WilsonArt.
  - Other plastic laminates as selected by tenant subject to Landlords approval

WINDOW COVERINGS

Vertical Blinds: Perforated Ivory 3 1/2” by Louverdrape. Header to match mullion.

NOTES

Landlord can substitute like quality materials. Where more than one (1) type of material or structure is available, the selection will be at Landlord’s option, provided that such selection does not increase the cost of such material or fixture.
EXHIBIT C

250 BRANNAN STREET

MARKET RENT DETERMINATION FACTORS

When determining Market Rent, the following rules and instructions shall be followed.

1. **RELEVANT FACTORS.** The “Comparable Transactions” shall be the “Net Equivalent Lease Rates” per rentable square foot, at which tenants, are, pursuant to transactions consummated within twelve (12) months prior to the commencement of the First Offer Space Lease Term, leasing non-sublease, non-encumbered space comparable in location and quality to the First Offer Space containing a square footage comparable to that of the First Offer Space for a term of five (5) years, in an arm’s-length transaction, which comparable space is located in the “Comparable Buildings,” provided, however, the concessions applicable to such Comparable Transactions having terms of five (5) years shall be appropriately prorated on a fractional basis to account for the shorter or longer term of Tenant’s lease of the First Offer Space for the First Offer Space Lease Term. The terms of the Comparable Transactions shall be calculated as a “Net Equivalent Lease Rate” pursuant to the terms of this Exhibit C, and shall take into consideration only the following terms and concessions: (i) the rental rate and escalations for the Comparable Transactions, (ii) the amount of parking rent per parking permit paid in the Comparable Transactions, if any, (iii) operating expense and tax protection granted in such Comparable Transactions such as a base year or expense stop (although for each such Comparable Transaction the base rent shall be adjusted to a triple net base rent using reasonable estimates of operating expenses and taxes as determined by Landlord for each such Comparable Transaction); (iv) rental abatement concessions, if any, being granted such tenants in connection with such comparable space, (v) any “First Offer Space Allowance,” as defined hereinafter, to be provided to Tenant in connection with the First Offer Space Lease Term as compared to the improvements or allowances provided or to be provided in the Comparable Transactions, taking into account the contributory value of the existing improvements in the First Offer Space, such value to be based upon the age, design, quality of finishes, and layout of the existing improvements, and (vi) all other monetary concessions (including the value of any signage), if any, being granted such tenants in connection with such Comparable Transactions. Notwithstanding any contrary provision hereof, in determining the Market Rent, no consideration shall be given to any commission paid or not paid in connection with such Comparable Transaction. The Market Rent shall include adjustment of the stated size of the First Offer Space based upon the standards of measurement utilized in the Comparable Transactions; provided, however, the size of the First Offer Space shall, notwithstanding the foregoing, be at least equal to the greater of: (i) the square footage set forth in the First Offer Notice, and (ii) the square footage of the First Offer Space determined pursuant to the standards of space measurement used in the Comparable Transactions.

C-1

2. **TENANT SECURITY.** The Market Rent shall additionally include a determination as to whether, and if so to what extent, Tenant must provide Landlord with financial security, such as an enhanced security deposit, a letter of credit or guaranty, for Tenant’s Base Rent obligations during the First Offer Space Lease Term. Such determination shall be made by reviewing the extent of financial security then generally being imposed in Comparable Transactions from tenants of comparable financial condition and credit history to the then existing financial condition and credit history of Tenant (with appropriate adjustments to account for differences in the then-existing financial condition of Tenant and such other tenants, and giving reasonable consideration to Tenant’s prior performance history during the Lease Term).

3. **FIRST OFFER SPACE ALLOWANCE.** Notwithstanding anything to the contrary set forth in this Exhibit C, once the Market Rent for the First Offer Space Lease Term is determined as a Net Equivalent Lease Rate, if, in connection with such determination, it is deemed that Tenant is entitled to an improvement or comparable allowance for the improvement of the Premises, the total dollar value of such allowance shall be referred to herein as the “First Offer Space Allowance”), Landlord shall pay the First Offer Space Allowance to Tenant pursuant to a commercially reasonable disbursement procedure determined by Landlord, and, as set forth in Section 5, below, of this Exhibit C, the rental rate component of the Market Rent shall be increased to be a rental rate which takes into consideration that Tenant will receive payment of such First Offer Space Allowance and, accordingly, such payment with interest shall be factored into the base rent component of the Market Rent.

4. **COMPARABLE BUILDINGS.** For purposes of the Lease, the term “Comparable Buildings” shall mean other first-class institutionally-owned office buildings which are comparable to the Building in terms of age (based upon the date of completion of construction or major renovation as to the building containing the portion of the Premises in question), quality of construction, level of services and amenities (including, but not limited to, the type (e.g., surface, covered, subterranean) and amount of parking), size and appearance, and are located in the “Comparable Area,” which is the area bounded by Market Street, 314 Street, and the Embarcadero.

5. **METHODOLOGY FOR REVIEWING AND COMPARING THE COMPARABLE TRANSACTIONS.** In order to analyze the Comparable Transactions based on the factors to be considered in calculating Market Rent, and given that the Comparable Transactions may vary in terms of length of term, rental rate, concessions, etc., the following steps shall be taken into consideration to “adjust” the objective data from each of the Comparable Transactions. By taking this approach, a “Net Equivalent Lease Rate” for each of the Comparable Transactions shall be determined using the following steps to adjust the Comparable Transactions, which will allow for an “apples to apples” comparison of the Comparable Transactions.

C-2

5.1 The contractual rent payments for each of the Comparable Transactions should be arrayed monthly or annually over the lease term. All Comparable Transactions should be adjusted to simulate a net rent structure, wherein the tenant is responsible for the payment of all property operating expenses in a manner consistent with the Lease. This results in the estimate of Net Equivalent Rent received by each landlord for each Comparable Transaction being expressed as a periodic net rent payment.

5.2 Any free rent or similar inducements received over time should be deducted in the time period in which they occur, resulting in the net cash flow arrayed over the lease term.

5.3 The resultant net cash flow from the lease should be then discounted (using an 8% annual discount rate) to the lease commencement date, resulting in a net present value estimate.
5.4 From the net present value, up front inducements (improvements allowances and other concessions) and leasing commissions should be deducted. These items should be deducted directly, on a “dollar for dollar” basis, without discounting since they are typically incurred at lease commencement, while rent (which is discounted) is a future receipt.

5.5 The net present value should then be amortized back over the lease term as a level monthly or annual net rent payment using the same annual discount rate of 8.0% used in the present value analysis. This calculation will result in a hypothetical level or even payment over the First Offer Space Lease Term, termed the “Net Equivalent Lease Rate” (or constant equivalent in general financial terms).

6. **USE OF NET EQUIVALENT LEASE RATES FOR COMPARABLE TRANSACTIONS.** The Net Equivalent Lease Rates for the Comparable Transactions shall then be used to reconcile, in a manner usual and customary for a real estate appraisal process, to a conclusion of Market Rent which shall be stated as a “NNN” lease rate applicable to each year of the First Offer Space Lease Term.
CUPERTINO CITY CENTER

NET OFFICE LEASE

by and between

CUPERTINO CITY CENTER BUILDINGS,
a California limited partnership,
as Lessor

and

SPLUNK, INC.,
a Delaware corporation

as Lessee

TABLE OF CONTENTS

1. SUMMARY OF LEASE PROVISIONS 1
2. PREMISES DEMISED 2
3. TERM 2
4. POSSESSION 4
5. RENT 5
6. SECURITY DEPOSIT 5
7. PROJECT TAXES AND OPERATING EXPENSE ADJUSTMENTS 6
8. USE 11
9. COMPLIANCE WITH LAWS 12
10. ALTERATIONS AND ADDITIONS 13
11. REPAIRS 14
12. LIENS 15
13. ASSIGNMENT AND SUBLETTING 16
14. HOLD HARMLESS 18
15. SUBROGATION 19
16. LESSEE’S INSURANCE 19
17. SERVICES AND UTILITIES 20
18. RULES AND REGULATIONS 21
19. HOLDING OVER 21
20. ENTRY BY LESSOR 22
21. RECONSTRUCTION 22
22. DEFAULT 23
23. REMEDIES UPON DEFAULT 24
24. EMINENT DOMAIN 25
CUPERTINO CITY CENTER
NET OFFICE LEASE

For and in consideration of rentals, covenants, and conditions hereinafter set forth, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the herein described Premises for the term, at the rental rate specified herein and subject to and upon all of the terms, covenants and agreements set forth in this lease ("Lease"):  

1. SUMMARY OF LEASE PROVISIONS. a. Lessee: SPLUNK, INC., a Delaware corporation ("Lessee").

b. Lessor: CUPERTINO CITY CENTER BUILDINGS, a California limited partnership ("Lessor").

c. Date of Lease (for reference purposes only): January 14, 2011.

d. Premises: That certain office space commonly known as 20400 Stevens Creek Boulevard, Suite 750, Cupertino, California, and shown cross-hatched on the reduced floor plan attached hereto as Exhibit A consisting of approximately Eleven Thousand Three Hundred Sixty-Five (11,365) square feet of Rentable Area (the "Premises"). (ARTICLE 2)

e. Term: Sixty-two (62) months. (ARTICLE 3)

f. Commencement Date: March 1, 2011 ("Commencement Date"). (ARTICLE 3)

g. Lease Termination: April 30, 2016 ("Expiration Date"), unless sooner terminated pursuant to the terms of this Lease. (ARTICLE 3)

h. Base Rent: Monthly base rent ("Base Rent") shall be in accordance with the following rent schedule:

<table>
<thead>
<tr>
<th>Months</th>
<th>Base Rent Per Month Per SF of Rentable Area</th>
<th>Per Month</th>
<th>Base Rent Abated</th>
</tr>
</thead>
<tbody>
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<td>1-2</td>
<td>Rent Abated $2.20</td>
<td>$25,003.00</td>
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</tr>
<tr>
<td>3-14</td>
<td>Rent Abated $2.30</td>
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<tr>
<td>15-26</td>
<td>Rent Abated $2.40</td>
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<tr>
<td>27-38</td>
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</tr>
<tr>
<td>51-62</td>
<td>Rent Abated $2.70</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(ARTICLE 5)

i. Security Deposit: Forty-Two Thousand Fifty Dollars and 50/1002 ($42,050.50). (ARTICLE 6)

j. Lessee’s Percentage Share: Three and 20/100 percent (3.20%). (ARTICLE 7)

k. Parking: Non-Exclusive right to use no more than thirty-four (34) unreserved, uncovered spaces without charge during the Term, subject to the provisions of Article 26. (ARTICLE 26)

l. Addresses for Notices:

Lessor: c/o Prometheus Real Estate Group, Inc.
1900 South Norfolk Street, Suite 150
San Mateo, CA 94403
Attn: Executive Vice President
Telephone No.: Fax No.:
The parties shall have thirty (30) days after Lessor receives the Option Notice in which to agree upon the adjustment of Base Rent as of the expiration or sooner termination of the Lease ("Option Notice") to Lessor no more than twelve (12) months but no less than nine (9) months before the expiration of the Initial Term.

Lessor’s ability to plan for the orderly transaction of its rental business, to accommodate the needs of other existing and potential tenants, and to enjoy the benefits of increasing rentals at such times as Lessor is able to do so in its sole and absolute discretion, are fundamental elements of Lessor’s willingness to provide Lessee with the option to extend contained herein. Accordingly, Lessee hereby acknowledges that strict compliance with the notification provisions contained herein, and Lessor’s strict compliance with the time period for such notification contained herein, are material elements of the bargain for exchange between Lessor and Lessee and are material elements of Lessee’s consideration paid to Lessor in exchange for the grant of the option. Therefore, Lessor’s failure to adhere strictly and completely to the provisions and time frame contained in this provision shall render the option automatically null, void and of no further force or effect, without notice, acknowledgement, or any action of any nature or sort, required of Lessor. Lessee acknowledges that no other act or notice, other than the express written notice set forth hereinabove, shall act to put Lessor on notice of Lessee’s intent to extend, and Lessee hereby waives any claims to the contrary, notwithstanding any other actions of Lessee during the Initial Term of this Lease or any statements, written or oral, of Lessee to Lessor to the contrary during the Initial Term of this Lease. Notwithstanding the foregoing, if an Event of Default (as defined below) exists on the date of giving the Option Notice, the Option Notice shall be totally ineffective, or if an Event of Default exists on the date the Extended Term is to commence, in addition to any and all other remedies available to Lessor under this Lease, at Lessor’s election, the exercise of the option shall be deemed null and void, the Extended Term shall not commence, and this Lease shall expire at the end of the Initial Term.

The option to extend granted pursuant hereto is personal to original Lessee signatory to this Lease and cannot be assigned, transferred or conveyed to, or exercised for the benefit of, any other person or entity (voluntarily, involuntarily, by operation of law or otherwise) including, without limitation, to any assignee or subtenant permitted under Article 13, except in the event of a “Permitted Transfer” (as defined in Article 13). All of Lessee’s rights under this Article 3.b. shall terminate upon the expiration of the Initial Term or sooner termination of this Lease.
Building in which the Premises is located, including, without limitation, and taking into consideration all other factors normally considered when determining fair market rental value (including, without limitation, the duration of the Extended Term and such rental increases as may be appropriate during such period).

Upon determination of the Fair Market Rental Value for the Premises, the parties shall immediately execute an amendment to this Lease stating the adjustment of the Base Rent as of the commencement of the Extended Term. In the event Lessor has retained the services of a real estate broker to represent Lessee during the negotiations in connection with the Extended Term, it is expressly understood that Lessor shall have no obligation for the payment of all or any part of a real estate commission or other brokerage fee to Lessee’s real estate broker in connection with the Extended Term. Lessee shall be solely responsible for payment of fees for services rendered to Lessee by such broker in connection with the Extended Term.

If the parties are unable to agree, in their sole and absolute discretion, on the Fair Market Rental Value for the Premises within such thirty (30) day period, then the Fair Market Rental Value as of the commencement of the Extended Term shall be determined as follows:

(i) Following the expiration of such thirty (30) day period, Lessor and Lessee shall meet and endeavor in good faith to agree upon a licensed commercial real estate agent with at least seven (7) years full-time experience as a real estate agent active in leasing of commercial office buildings in the area of the Premises to appraise and set the Fair Market Rental Value as of the commencement of the Extended Term. If Lessor and Lessee fail to reach agreement upon such agent within fifteen (15) days following the expiration of such thirty (30) day period, then, within fifteen (15) days thereafter, each party, at its own cost and by giving notice to the other party, shall appoint a licensed commercial real estate agent will at least seven (7) years full-time experience as a real estate agent active in leasing of commercial office buildings in the area of the Premises to appraise and set the Fair Market Rental Value as of the commencement of the Extended Term. If a party does not appoint an agent within fifteen (15) days after the other party has given notice of the name of its agent, the single agent appointed shall be the sole agent and shall set the Fair Market Rental Value as of the commencement of the Extended Term. If there are two (2) agents appointed by the parties as stated above, the agents shall meet within ten (10) days after the second agent has been appointed and attempt to set Fair Market Rental Value as of the commencement of the Extended Term. If the two (2) agents are unable to agree on such Fair Market Rental Value within fifteen (15) days after the second agent has been appointed, they shall, within fifteen (15) days after the last day the two (2) agents were to have set such Fair Market Rental Value, attempt to select a third agent who shall be a licensed commercial real estate agent meeting the qualifications stated above. If the two (2) agents are unable to agree on the third agent within such fifteen (15) day period, either Lessor or Lessee may request the President of the local chapter of the Society of Industrial and Office Realtors (SIOR) or a then equivalent organization if SIOR is not then in existence to select third agent meeting the qualifications stated in this subsection. Each of the parties shall bear one-half (1/2) of the cost of appointing the third agent and of paying the third agent’s fee. No agent shall be employed by, or otherwise be engaged in business with or affiliated with, Lessor or Lessee, except as an independent contractor.

(ii) Within fifteen (15) days after the selection of the third agent, a majority of the agents shall set the Fair Market Rental Value as of the commencement of the Extended Term. If a majority of the agents are unable to set such Fair Market Rental Value within the stipulated period of time, each agent shall make a separate determination of such Fair Market Rental Value and the three (3) appraisals shall be added together and the total shall be divided by three (3). The resulting quotient shall be the Fair Market Rental Value for the Premises as of the commencement of the Extended Term. If, however, the low appraisal and/or high appraisal is/are more than twenty percent (20%) lower and/or higher than the middle appraisal, such low appraisal and/or such high appraisal shall be disregarded. If only one (1) appraisal is disregarded, the remaining two (2) appraisals shall be added together and their total divided by two (2), and the resulting quotient shall be Fair Market Rental Value as of the commencement of the Extended Term. If both the low appraisal and the high appraisal are disregarded as stated in this subsection, the middle appraisal shall be the Fair Market Rental Value as of the commencement of the Extended Term.

(iii) Each agent shall hear, receive and consider such information as Lessor and Lessee earls care to present regarding the determination of Fair Market Rental Value as of the commencement of the Extended Term and each agent shall have access to the information used by each other agent. Upon determination of the Fair Market Rental Value as of the commencement of the Extended Term, the agents shall immediately notify the parties hereto in writing of such determination by certified mail, return receipt requested.

4. POSSESSION. a. Construction of Improvements/Delay in Possession. Lessor and Lessee agree to the provisions set forth in the work letter attached hereto as Exhibit C (“Work Letter”), if any. Lessor agrees to construct within the Premises, at Lessor’s sole cost and expense, the improvements described in the Work Letter (“Lessee Improvements”), upon and subject to the provisions thereof. If Lessor, for any reason whatsoever, cannot deliver possession of the Premises to Lessee at the date specified in Article 1.f. above, this Lease shall not be void or voidable, nor shall Lessor be liable to Lessee for any loss or damage resulting therefrom; except, however, that in such event the “Commencement Date” for all purposes of this Lease shall be adjusted to be the date when Lessor delivers possession or such earlier date upon which such delivery of possession would have occurred but for delay in delivery of possession of the Premises caused and/or contributed to by Lessee and/or Lessee’s agents, officers, employees, representatives, contractors, servants, invitees and/or guests (collectively “Lessee’s Agents”), and the

“Expiration Date” for all purposes of this Lease shall be the date which is the period of the Term specified in Article 1.e. following such Commencement Date. Lessor shall be deemed to have delivered possession to Lessee on the earlier of (i) the date that Lessor gives notice to Lessee that the Lessee Improvements are substantially completed and available for occupancy by Lessee, subject only to punch list items which do not prevent Lessee from using the Premises for its intended use, or (ii) the date on which the Lessee Improvements would have been substantially completed but for delays caused by Lessee or Lessee’s Agents, including without limitation, change orders requested by Lessee or required because of any errors or omissions in plans submitted by Lessee, or (iii) the date upon which Lessee actually occupies or commences operation from the Premises. Lessor shall endeavor to give Lessee notice of the estimated date of the Commencement Date at least thirty (30) days prior to the then-estimated Commencement Date.

b. Early Possession. Provided that Lessee’s early occupancy shall not interfere with Lessor’s construction of the Lessee Improvements, Lessee shall be permitted to occupy the Premises commencing on January 15, 2011 for purposes of installing its equipment, furniture, fixtures and related cabling, which occupancy shall be subject to all the provisions of this Lease other than the payment of Base Rent. Said early possession shall not advance the Expiration Date.

c. Certificates and Licenses. Prior to occupancy, Lessee shall provide to Lessor the certificate(s) of insurance required by Article 16 and a copy of all licenses and authorizations that may be required for the lawful operation of Lessee’s business upon the Premises, including any City business licenses as may be required.

5. RENT. Lessee agrees to pay to Lessor as rental for the Premises, without offset, deduction, prior notice or demand, the monthly Base Rent designated in Article 1.h., as the same may be adjusted from time to time pursuant to Article 7.a. below. Base Rent shall be payable monthly in advance on or before the first
day of each calendar month during the Term, except that Base Rent for the first full calendar month during the Term shall be paid upon the execution of this Lease, and if the Commencement Date is other than the first day of a calendar month, Base Rent for the initial partial calendar months during the Term shall be prorated and paid upon the Commencement Date. Base Rent for any period during the Term which is for less than one (1) month shall be prorated based upon a thirty (30) day month. Base Rent and all other amounts owing to Lessor pursuant to this shall be paid to Lessor in lawful money of the United States of America which shall be legal tender at the time of payment, at the office of the Project, or to such other person or at such other place as Lessor may from time to time designate in writing.

6. SECURITY DEPOSIT. Upon Lessee’s execution of this Lease, Lessee shall deposit with Lessor the sum set forth in Article 1.i. as the security deposit ("Security Deposit"). Lessee hereby grants to Lessor a security interest in the Security Deposit in accordance with applicable provisions of the California Commercial Code. The Security Deposit shall be held by Lessor as security for the faithful performance by Lessee of all the terms, covenants and conditions of this Lease to be kept and performed by Lessee during the Term. If Lessee defaults with respect to any provision of this Lease, including, but not limited to the provisions relating to the payment of Rentals or relating to the condition of the Premises at Lease Termination, Lessor may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any Rental or any other sum in default, or for the payment of any amount which Lessor may spend or become obligated to spend by reason of Lessee’s default, or to compensate Lessor for any other loss or damage which Lessor may suffer by reason of Lessee’s default. If any portion of the Security Deposit is so used or applied, Lessor shall within five (5) business days after Lessor’s receipt of written demand therefor, deposit cash with Lessor in an amount sufficient to restore the Security Deposit to its original amount and Lessee’s failure to do so shall be a material breach of this Lease. Lessor shall not be required to keep the Security Deposit separate from its general funds, and Lessee shall not be entitled to interest on the Security Deposit. Lessor is not a trustee of the Security Deposit and may use it in ordinary business, transfer it or assign it, or use it in any combination of such ways. The remaining portion of the Security Deposit shall be returned to Lessee (or, at Lessor’s option, to the last assignee of Lessee’s interest hereunder) within two (2) weeks after Lease Termination and vacation of the Premises by Lessee or its last assignee; provided, however if any portion of the Security Deposit is to be applied to repair damages to the Premises caused by Lessee or Lessor’s Agents or to clean the Premises, then the balance of the Security Deposit shall be returned to Lessee (or, at Lessor’s option to the last assignee of Lessee’s interests hereunder) no later than thirty (30) days from the date Lessor receives possession of the Premises. Lessee waives any rights it may have under Section 1950.7 of the California Civil Code with respect to the Security Deposit. Lessee shall not transfer or encumber tire Security Deposit nor shall Lessor be bound by Lessee’s attempt to do so. If Lessor’s interest in this Lease is terminated, Lessor may transfer the Security Deposit to Lessor’s successor in interest, and upon such transfer, Lessor shall be released from any liability to Lessee with respect to the Security Deposit and Lessor shall look only to the transferee for any return of the Security Deposit to which Lessee may be entitled.

7. PROJECT TAXES AND OPERATING EXPENSE ADJUSTMENTS.

a. Intentionally Deleted.

b. Building Taxes and Building Operating Expenses. Lessee shall pay to Lessor, as additional rent and without deduction or offset, Lessee’s percentage share set forth in Article 1.j. ("Lessee’s Percentage Share") of the amount of annual “Building Taxes” and “Building Operating Expenses” (as such terms are defined below). Building Taxes and Building Operating Expenses are collectively referred to herein as “Building Expenses.” Lessee’s Percentage Share shall be determined by dividing the Rentable Area of the Premises by the total Rentable Area in the Building. Lessee’s Percentage Share shall be subject to an equitable adjustment upon a condemnation, sale by Lessor of part of the Building, reconstruction after damage or destruction or expansion or reduction of the areas within the Building. Lessee’s Percentage Share of Building Expenses shall be payable during the Terms in equal monthly installments on the first day of each month hr advance, without deduction, offset or prior demand.

At any time during the Term, Lessor may give Lessee notice of Lessor’s estimate of the Building Expenses for the current calendar year. An amount equal to one twelfth (1/12) of Lessee’s Percentage Share of the estimated Building Expenses shall be payable monthly by Lessee as aforesaid, commencing on the first day of the calendar month following thirty (30) days written notice and continuing until receipt of any notice of adjustment from Lessor given pursuant to this paragraph. Until notice of the estimated Building Expenses for a subsequent calendar year is delivered to Lessee, Lessee shall continue to pay its Percentage Share of Building Expenses on the basis of the prior year’s estimate. Lessor may at any time during the Term adjust estimates of the Building Expenses to reflect current expenditures and following Lessor’s written notice to Lessee of such revised estimate, subsequent payments by Lessee shall be based upon such revised estimate.

If the Commencement Date is on a date other than the first day of a calendar year, the amount of the Building Expenses payable by Lessee in such calendar year shall be prorated based upon a fraction, the numerator of which is the number of days from the Commencement Date to the end of the calendar year in which the Commencement Date falls, and the denominator of which is three hundred sixty (360).

Within one hundred twenty (120) days after the end of each calendar year during the Term or as soon thereafter as practicable, Lessor will furnish to Lessee a statement ("Lessor’s Statement") setting forth in reasonable detail the actual Building Expenses paid or incurred by Lessor during the preceding year, and thereupon within twenty (20) days an adjustment will be made by Lessee’s payment to Lessor or credit to Lessee by Lessor against the Building Expenses next becoming due from Lessee, as the case may require, to the end that Lessor shall receive the entire amount of Lessee’s Percentage Share of Building Expenses for such calendar year and no more. If, based on Lessor’s Statement a payment from Lessee is required, Lessee shall not have the right to withhold or defer such payment pending a review of Lessor’s books and records pursuant to the following paragraph or the resolution of any dispute relating to Building Expenses. If the Expiration Date is on a day other than the last day of a calendar year, the amount of Building Expenses payable by Lessee for the calendar year in which Lease Termination falls shall be prorated on the basis which the number of days from the commencement of such calendar year to and including such Expiration Date bears to three hundred sixty (360). The termination of this Lease shall not affect the obligations of Lessor and Lessee pursuant to this Article 7.

Within sixty (60) days after Lessee receives a statement of actual Building Expenses paid or incurred for a calendar year, Lessee shall have the right, upon written demand and reasonable notice, to inspect Lessor’s books and records relating to such Building Expenses for the calendar year covered by Lessor’s Statement for the purpose of verifying the amount set forth in such statement. Such inspection shall be made during Lessor’s normal business hours, at the place where such books and records are customarily maintained by Lessor. In no event may any such inspection be performed by a person or entity being compensated on a contingency fee basis or based upon a share of any refund obtained by Lessee. Information obtained by such inspection shall be kept in the strictest confidence by Lessee. Unless Lessee asserts in writing a specific error within thirty (30) days following Lessor’s receipt of Lessor’s Statement, the amounts set forth in Lessor’s Statement shall be conclusively deemed correct and binding on Lessee.

(i) Operating Expenses. As used in this Lease, “Building Operating Expenses” means all of the Building Service Expenses and an allocable portion of the Project Expenses as follows:
Building Service Expenses. Building Operating Expenses shall include, without duplication, all costs of operation, maintenance, and repair (which for purposes of this Lease shall be deemed to include, without limitation, replacement as and when deemed appropriate by Lessor) and management of the Building and Building Common Area (defined in Article 55), hereinafter collectively referred to as "Building Service Expenses", as determined by Lessor’s standard accounting practices. Building Service Expenses as used herein shall mean all sums expended in connection with all general maintenance, repairs, painting, cleaning, sweeping and janitorial services; maintenance and repair of signs, indoor plants, and atriums; trash removal; sewage; electricity, gas, water and any other utilities (including any temporary or permanent utility surcharge or other excitation whether now or hereafter imposed); maintenance and repair of any fire protection systems, elevator systems, lighting systems, storm drainage systems, heating, ventilation and air conditioning systems and other utility and/or mechanical systems; any governmental imposition or surcharge imposed upon Lessor with respect to die Building or assessed against the Building; all costs and expenses pertaining to a security alarm system or other security services or measures for the Building, if Lessor deems necessary in Lessor’s sole business judgment; materials; supplies; tools; depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); service agreements on equipment; maintenance, and repair of the roof (including repair of leaks and resurfacing) and the exterior surfaces of all improvements (including painting); maintenance and repair of structural parts (including repair of leaks and resurfacing) and the exterior surfaces of all improvements (including painting); maintenance and repair of structural parts (including foundation, floor slabs and load bearing walls); window cleaning; elevator or escalator services; materials handling; fees for licenses and permits relating to the Building; the cost of complying with rules, regulations and orders of governmental authorities; Building office rent or rental value; accounting and legal fees; the cost of contesting the validity or applicability of any governmental enactment which may affect Building Service Expenses; personnel to implement such services (including, without limitation, if Lessor deems necessary, the cost of security guards, maintenance personnel, engineers and valet attendants); public liability, environmental impairment, property damage and fire and extended coverage insurance on the Building (in such amounts and providing such coverage as determined in Lessor’s sole discretion and which may include, without limitation, liability, all risk property, lessor’s risk liability, war risk, vandalism, malicious mischief, boiler and machinery, rental income, earthquake, flood and worker’s compensation insurance); compensation and fringe benefits payable to all persons employed by Lessor in connection with the operation, maintenance, repair and management of the Building; and a management fee equal to four percent (4%) of gross receipts from the Building (including, without limitation, all rentals and parking receipts from Building tenants and/or visitors). Lessor may cause any or all of said services to be provided by an independent contractor or contractors, or they may be rendered by Lessor. It is the intent of the parties hereto that Building Service Expenses shall include every cost paid or incurred by Lessor in connection with the operation, maintenance, repair and management of the Building, and the specific examples of Building Service Expenses stated in this Article 7 are in no way intended to, and shall not, limit the costs comprising Building Service Expenses, nor shall such examples be deemed to obligate Lessor to incur such costs or to provide such services or to take such actions, except as may be expressly required of Lessor or otherwise stated in this Lease, or except as Lessor, in its sole discretion, may elect. The maintenance of the Building shall be at the sole discretion of Lessor and the costs incurred by Lessor in good faith shall be deemed conclusively binding on Lessee. If less than one hundred percent (100%) of the Rentable Area of the Building is occupied during any calendar year, then in calculating Building Service Expenses for such year, the components of Building Service Expenses which vary based upon occupancy level shall be adjusted to equal Lessor’s reasonable estimate of the amount of such Building Service Expenses had one hundred percent (100%) of the total Rentable Area of the Building been occupied during such year. In addition, if Lessor is not furnishing any particular work or service (the cost of which, if performed by Lessor, would be included in Building Service Expenses) to a tenant who has undertaken to perform such work or service in lieu of the performance thereof by Lessor, Building Service Expenses shall be deemed to be increased by an amount equal to the additional Building Service Expenses which would have been incurred during such period by Lessor if it had at its own expense furnished such work or service to such tenant.

Project Expenses. Building Operating Expenses shall include the Building’s equitable share of all direct costs of operation, maintenance, repair and management of the Project (as opposed to expenses relating solely to the Building or any other particular building within the Project) and/or the Exterior Common Area, determined by Lessor’s standard accounting practices (collectively, "Project Expenses"). Such costs shall be allocated by Lessor between the Building containing the Premises and the other buildings located within the Project from time to time, in such manner as Lessor reasonably determines in good faith provided that such allocated costs to all parties shall not exceed one hundred percent (100%) thereof. Project Expenses as used herein shall include, but not be limited to, all sums expended in connection with all general maintenance, repairs, resurfacing, painting, restringing, cleaning, sweeping, and janitorial services; maintenance and repair of sidewalks, curbs, signs and other Exterior Common Areas; maintenance and repair of sprinkler systems, planting, and landscaping; trash removal; sewage; electricity, gas, water and any other utilities (including any temporary or permanent utility surcharge or other excitation whether now or hereafter imposed); maintenance and repair of directional signs and other markers and bumbes; maintenance and repair of any fire protection systems, elevator systems, lighting systems, storm drainage systems and other utility systems; any governmental imposition or surcharge imposed upon Lessor or assessed against the Exterior Common Area or the Project; materials; supplies, tools; depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); service agreements on equipment; maintenance and repair of parking areas and parking structures, if any; maintenance and repair of structural parts (including foundation and floor slabs); elevator services, if applicable; material handling; fees for licenses and permits relating to the Exterior Common Area; the cost of complying with rules, regulations and orders of governmental authorities; accounting and legal fees; the cost of contesting the validity or applicability of any governmental enactment which may affect Project Expenses; personnel to implement such services (including, without limitation, if Lessor deems necessary, the cost of security guards, maintenance personnel, engineers and valet attendants); all annual assessments and special assessments levied or charged against the Project and/or Lessor pertaining to the Project by the Cupertino City Center Owner’s Association pursuant to the “CC&R’s” (as hereinafter defined); public liability, environmental impairments, property damage and fire and extended coverage insurance on Exterior Common Area (in such accounts and providing such coverage as determined in Lessor’s sole discretion and which may include, without limitation, liability, all risk property, lessor’s risk liability, war risk, vandalism, malicious mischief, sprinkler leakage, boiler and machinery, parking income, earthquake, flood and worker’s compensation insurance); compensation and fringe benefits payable to all persons employed by Lessor in connection with the operation, maintenance, repair and management of the Exterior Common Area; and a management fee equal to four percent (4%) of gross receipts from the Project (exclusive of amounts collected from tenants of any building within the Project under their respective leases). Lessor may cause any or all of said services to be provided by an independent contractor or contractors, or they may be rendered by Lessor. It is the intent of the parties hereto that Project Expenses shall include every cost paid or incurred by Lessor in connection with the operation, maintenance, repair and management of the Exterior Common Area, and the specific examples of Project Expenses stated in this Article 7 are in no way intended to, and shall not, limit the costs comprising Project Expenses, nor shall such examples be deemed to obligate Lessor to incur such costs or to provide such services or to take such actions except as Lessor may be expressly required in other portions of this Lease, or except as Lessor, in its sole discretion, may elect. The maintenance of the Exterior Common Areas shall be at the sole discretion of Lessor and all costs incurred by Lessor in good faith shall be deemed conclusively binding on Lessee. If less than one hundred percent (100%) of the Rentable Area of the Project is occupied during any calendar year, then in calculating Project Expenses for such year, the components of Project Expenses which vary based upon occupancy level shall be adjusted to equal Lessor’s reasonable estimate of the amount of such Project Expenses had one hundred percent (100%) of the total Rentable Area of the Project been occupied during such year. In addition, if Lessor is not furnishing any particular work or service (the cost of which, if performed by Lessor, would be included in Project Expenses) to a tenant who has undertaken to perform such work or service in lieu of the performance thereof by Lessor, Project Expenses shall be deemed to be increased by an amount equal to the additional Project Expenses which would reasonably have been incurred during such period by Lessor if it had at its own expense furnished such work or service to such tenant.
public improvements or benefits; personal property taxes; taxes based on vehicles utilizing parking areas on the Parcel; taxes computed or based on rental income (including without limitation any municipal business tax but excluding federal, state and municipal net income taxes); Environmental Surcharges; excise taxes; gross receipts taxes; sales and/or use taxes; employee taxes; water and sewer taxes, levies, assessments and other charges in the nature of taxes or assessments (including, but not limited to, assessments for public improvements or benefits); and all other governmental, quasi-governmental or special district impositions of any kind and nature whatsoever, regardless of whether now customary or within the contemplation of the parties hereto and regardless of whether resulting from increased rate and/or valuation, or whether extraordinary or ordinary, general or special, unforeseen or foreseen, or similar or dissimilar to any of the foregoing which during the Lease Term are laid, levied, assessed or imposed upon Lessor and/or become a lien upon or chargeable against the Project or the Premises, Building, Common Area and/or Parcel under or by virtue of any present or future laws, statutes, ordinances, regulations, or other requirements of any governmental authority or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments whatsoever. The term “Environmental Surcharges” shall include any and all expenses, taxes, charges or penalties imposed by the Federal Department of Energy, Federal Environmental Protection Agency, the Federal Clean Air Act, or any regulations promulgated thereunder, or imposed by any other local, state or federal governmental agency or entity now or hereafter vested with the power to impose taxes, assessments or other types of surcharges as a means of controlling or abating environmental pollution or the use of energy in regard to the use, operation or occupancy of the Project including the Premises, Building, Common Area and/or Parcel. The teen “Project Taxes” shall include (to the extent the same are not paid by Lessee pursuant to Article 7.c. below), without limitation: the cost to Lessor of contesting the amount or validity or applicability of any Project Taxes described above; and all taxes, assessments, levies, fees, impositions or charges levied, imposed, assessed, measured, or based in any manner whatsoever upon or with respect to the use, possession, occupancy, leasing, operation or management of the Project (including, without limitation, the Premises, Building, Common Area and/or Parcel) or in lieu of or equivalent to any Project Taxes set forth in this Article 7.b.(ii).

If at any time during the Term, Project Taxes are under-assessed by the taxing authorities so that they are not computed on a fully-completed and occupied basis in accordance with the then applicable taxing authority of the governmental entities having jurisdiction, Lessor shall have the right, but not the obligation, to adjust Project Taxes to reflect the amount that Project Taxes would be if the Project were assessed on a fully-completed and occupied basis, as determined in Lessor’s reasonable discretion, and such adjusted amount shall be allocated to the Project in accordance with the terms of this Lease.

c.  Other Taxes. Lessee shall pay the following:

(i)  Lessee shall pay (or reimburse Lessor as additional rent if Lessor is assessed), before delinquency, any and all taxes levied or assessed, and which become payable for or in connection with any period during the Term, upon all of the following (collectively, “Leasehold Improvements and Personal Property”): Lessor’s Leasehold Improvements, the Lessee Improvements, equipment, furniture, furnishings, fixtures, merchandise, inventory, machinery, appliances and other personal property located in the Premises; except only that which has been paid for by Lessor and is the standard of the Building. Lessee hereby acknowledges receipt of a copy of a schedule setting forth the improvements comprising the standard of the Building. If any or all of the Leasehold Improvements and Personal Property are assessed and taxed with the Project, Lessee shall pay to Lessor such taxes within ten (10) days after delivery to Lessee by Lessor of a statement in writing setting forth the amount applicable to the Leasehold Improvements and Personal Property. If the Leasehold Improvements and Personal Property are not separately assessed on the tax statement or bill, Lessor’s good faith reasonable determination of the amount of such taxes applicable to the Leasehold Improvements and Personal Property shall be a conclusive determination of Lessor’s obligation to pay such amount as so determined by Lessor.

(ii)  Lessee shall pay (or reimburse Lessor if Lessor is assessed, as additional rent), prior to delinquency or within ten (10) days after receipt of a statement thereof, any and all other taxes, levies, assessments, or surcharges payable by Lessor or Lessee and relating to this Lease, the Premises or Lessee’s activities in the Premises (other than Lessor’s net income, succession, transfer, gift, franchise, estate, or inheritance taxes), whether or not now customary or within the contemplation of the parties hereto, now in force or which may hereafter become effective, including but not limited to taxes: (1) upon, allocable to, or measured by the area of the Premises or on the Rentals payable hereunder, including without limitation any gross income, gross receipts, excise, or other tax levied by the state, any political subdivision thereof, city or federal government with respect to the receipt of such

Rentals; (2) upon or with respect to the use, possession, occupancy, leasing, operation and management of the Premises or any portion thereof; (3) upon this transaction or any document to which Lessee is a party creating or transferring an interest or an estate in the Premises; or (4) imposed as a means of controlling or abating environmental pollution or the use of energy, including, without limitation, any parking taxes, levies or charges or vehicular regulations imposed by any governmental agency. Lessee shall also pay, prior to delinquency, all privilege, sales, excise, use, business, occupation, or other taxes, assessments, license fees, or charges levied, assessed, or imposed upon Lessee’s business operations conducted at the Premises. If any such taxes are payable by Lessor and it shall not be lawful for Lessee to reimburse Lessor for such taxes, then the Rentals payable hereunder shall be increased to net Lessor the net Rental after imposition of any such tax upon Lessor as would have been payable to Lessor prior to the imposition of any such tax.

(iii) Any payments made by Lessee directly to the applicable taxing authority pursuant to this subsection 7.c. shall be made prior to the applicable delinquency date for such payment, and Lessee shall deliver evidence of such payment to Lessor within fifteen (15) days thereafter.

d.  Exclusions to Operating Expenses. Notwithstanding anything to the contrary contained in this Lease, in no event shall Taxes and Operating Expenses include, and under no circumstances shall Lessee otherwise be required to pay directly or indirectly or indemnify Lessor or any other person for any of the following (the “Exclusions”): (1) any costs relating to the replacement of the roof or relating to structural repairs or replacements to maintain the structural integrity of the Building (including, without limitation, the structural repairs to the structural elements of the exterior, walls, columns, roof, footings and floor slab of the Building), (2) costs, including permit, license and inspection costs, incurred with respect to the construction of leasehold improvements or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant leasable space within the Building, (3) costs in order to market space to potential tenants, leasing commissions, and attorneys’ fees, accounting fees or other professionals’ fees in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments or other costs in connection with lease, sublease and/or assignment negotiations with present or prospective tenants or other occupants of the Building, (4) costs incurred for restoration following condemnation to the extent reimbursed by condemnation award or for repair of damage to the Building to the extent reimbursed by insurance proceeds (provided that insurance deductibles and uninsured casualty damage shall
been incurred if such supplies or services were obtained from unrelated third parties (but this provisions does not prevent the payment of a management fee to Lessor as provided above), (21) depreciation costs except as explicitly provided elsewhere in this Article 7, or (22) costs for the replacement or repair of capital items, where such cost exceeds $200,000 (as determined with respect to each such capital item and not on an aggregate basis for all such capital items), except to the extent amortized over the useful life of the capital item in question (along with interest on the unamortized amount).

8. **USE.** a. In no event shall Lessee use or permit the use of the Premises for any purpose other than general office use and other related legal uses incidental thereto.

Lessor and Lessee hereby acknowledge and agree that the foregoing use restriction is an absolute prohibition against a change in use of the Premises contemplated under California Civil Code Section 1997.230. Lessee shall not do or permit to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the Building or the Project or any of its contents, or cause cancellation of any insurance policy covering the Building or the Project or any part thereof or any of its contents. Lessee shall not, without prior consent of Lessor, bring into the Building or the Premises or use or incorporate in the Premises any apparatus, equipment or supplies that may cause substantial noise, odor, or vibration or overload the Premises or the Building or any of its utility or elevator systems or jeopardize the structural integrity of the Building or any part thereof. Lessee and Lessee’s Agents shall not use, store, or dispose of any “Hazardous Materials” (defined below) on any portion of the Project. Without limiting the generality of the foregoing, Lessee shall not (either with or without negligence) cause or permit the escape, disposal, release or discharge of any Hazardous Materials in, on or below the Premises or any other portion of the Project. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release or other use of Hazardous Materials at the Premises during the Term of this Lease, then the reasonable costs thereof shall be reimbursed by Lessee to Lessor upon demand as additional rent. In addition, Lessee shall execute such affidavits, representations and certifications as may be reasonably required by Lessor from time to time concerning Lessee’s best knowledge and belief regarding the presence of Hazardous Materials at the Premises. Lessee shall indemnify, defend with counsel acceptable to Lessor, and hold Lessor and Lessor’s employees, agents, partners, officers, directors and shareholders harmless from and against any and all claims, actions, suits, proceedings, orders, judgment, losses, costs, damages, liabilities, penalties, or expenses (including, without limitation, attorneys’ fees) arising in connection with the breach of the obligations described in any of the previous four sentences and the obligations of Lessee pursuant hereto and under the previous four sentences shall survive the Lease Termination. As used in this paragraph, “Hazardous Materials” means any chemical, substance or material which has been determined or is hereafter determined by any federal, state, or local governmental authority to be capable of posing risk of injury to health or safety, including, without limitation, petroleum, asbestos, polychlorinated biphenyls, radioactive materials, radon gas, and/or biologically and/or chemically active materials. Without limiting the generality of the foregoing, the definition of “Hazardous Materials” shall include those definitions found in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq., the Hazardous Materials Transportation Authorization Act, 49 U.S.C. §§ 5101 et seq., the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq., Division 20 of the California Health and Safety Code commencing at Section 24000, Division 7 of the California Water Code commencing at Section 13000, each as amended from time to time, and all similar federal, state and local statutes and ordinances and all rules, regulations or policies promulgated thereunder. Lessee shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or the Project or injure them or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Lessee cause, maintain or permit any nuisance in, on or about the Premises. Lessee shall not commit or suffer to be committed any waste in or upon the Premises.

b. Effect of Use Restriction. Lessor and Lessee hereby acknowledge and agree that the use restriction set forth in subsection 8.a. above shall be deemed reasonable in all respects and under all circumstances. Lessor and Lessee further acknowledge and agree that, notwithstanding any provision of this Lease to the contrary, (i) in the event Lessee requests Lessor’s consent to a proposed assignment of this Lease or subletting of the Premises, Lessor shall be deemed reasonable in withholding its consent to such assignment or subletting if the proposed assignee or subtenant desires to use the Premises for any purpose other than as expressly provided in subsection 8.a. above, and (ii) in the event of a default by Lessee under the Lease, the enforcement of the use restriction set forth in subsection 8.a. above shall be deemed reasonable for purposes of computing the rental loss that could be or could have been reasonably avoided by Lessor pursuant to California Civil Code Section 5151.2 and in connection with the exercise of Lessor’s remedies under California Civil Code Section 5151.4.

Notwithstanding the preceding to the contrary, if Lessor withholds its consent to an assignment of the Lease or subletting of the Premises based upon the desire of the proposed assignee or subtenant to use the Premises for any purpose other than as expressly provided in subsection 8.a. above, or if on Event of Default exists under this Lease, then, prior to commencing or pursuing any claim or defense against Lessor based upon the unreasonableness of the use restriction set forth in subsection 8.a. above, Lessee shall provide Lessor with written notice (by certified mail, postage prepaid and return receipt requested) setting forth Lessee’s objections to the enforcement of the use restriction in such instance, the basis upon which Lessee intends to demonstrate that the enforcement of such use
restriction would be unreasonable in such instance, and the use(s) which Lessee believes Lessor should allow Lessee or its proposed assignee or subtenant, as the case may be, to make of the Premises. Within thirty (30) days of Lessor’s receipt of Lessee’s written notice of objection, Lessor shall provide Lessee with written notice of Lessor’s election to either (A) enforce the use restriction set forth in subsection 8.a. above, or (B) permit a change in the use of the Premises, provided that such proposed use shall in no event (1) require the use, storage or disposal of Hazardous Materials on or about the Premises or the Project, (2) increase or affect any fire or other insurance covering the Building or the Project, (3) interfere with the rights of other tenants of the Building or Project, including, without limitation, any exclusive use rights of such tenants, (4) be in violation of applicable federal, state or local laws, rules, regulations, codes or ordinances, or (5) require Lessor to construct or install, or to provide any allowance for the construction or installation of, any tenant improvements in the Premises. Notwithstanding the preceding to the contrary, in no event shall Lessor have any obligation to allow a change in the use of the Premises, it being expressly understood by the parties that the use restriction set forth in subsection 8.a. above is an absolute prohibition against a change in use of the Premises. In the event Lessor fails to provide Lessee with written notice of its election to either enforce the use restriction or allow a change in use of the Premises within said thirty (30) day period, Lessor shall be deemed to have elected to enforce the use restriction. In the event Lessor elects or is deemed to have elected to enforce the use restriction as provided hereinafter, Lessee shall have the right to pursue such valid claims or defenses against Lessor as may be permitted under California Civil Code section 1997.840 and which Lessee is able to prove.

9. COMPLIANCE WITH LAWS. Lessee shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with or violate any law, statute, ordinance, order or governmental rule or regulation or requirement of duly constituted public authorities or quasi-public authorities now in force or which may hereafter be enacted or promulgated. Lessee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, orders and governmental or quasi-governmental rules, regulations or requirements now in force or which may hereafter be in force and with all recorded documents which relate to or affect the condition, use or occupancy of the Premises, including, without limitation, that certain Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Cupertino City Center, recorded October 9, 1985, Series No. 8554457 of the Official Records of Santa Clara County, California, as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Cupertino City Center recorded September 12, 1987, Series No. 9417820 of the Official Records of Santa Clara County, California (as amended, the “CC&R’s”), and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Lessee’s improvements, acts or use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission of Lessee in any action against Lessor, whether Lessor be a party thereto or not, that Lessee has violated any law, statute, ordinance, or governmental or quasi-governmental rule, regulation or requirement, shall be conclusive of that fact as between the Lessor and Lessee. Lessor shall obtain, prior to taking possession of the Premises, all permits, licenses, or other authorizations for the lawful operation of its business at the Premises. Lessor shall indemnify, defend with counsel acceptable to Lessor and hold Lessor and Lessor’s employees, agents, partners, officers, directors and shareholders harmless from and against any claim, action, suit, proceeding, order, judgment, liability, penalty or expense (including, without limitation, attorneys’ fees) arising out of the failure of Lessor to comply with any applicable law, statute, ordinance, order, rule, regulation, requirement or recorded document. Lessor acknowledges that Lessee has independently investigated and is satisfied that the Premises are suitable for Lessee’s intended use and that the Building and Premises meet all governmental and quasi-governmental requirements for such intended use. Notwithstanding anything to the contrary contained in this Lease, Lessee shall not be liable or responsible (legally, financially or otherwise) for any violations of or non-compliances with applicable laws (including environmental laws) relating to the Premises if such violations or non-compliances either (i) exist on the Commencement Date (except to the extent exacerbated by Lessee), or (ii) do not arise as a result of Lessee’s or Lessee’s Agents’ act, failure to act or particular use of the Premises.

Lessee and Lessor acknowledge that, in accordance with the provisions of the Americans with Disabilities Act of 1990 (the “ADA”), responsibility for compliance with the terms and conditions of Title III of the ADA may be allocated as between Lessor and Lessee. In this regard and notwithstanding anything to the contrary contained in the Lease, Lessor and Lessee agree that the responsibility for compliance with the ADA (including, without limitation, the removal of architectural and communications barriers and the provision of auxiliary aids and services to the extent required) shall be allocated as follows: (i) Lessee shall be responsible for compliance with the provisions of Title I of the ADA, and of Title II and Title III of the ADA as Titles II and III relate to any construction, renovations, alterations and repairs made within the Premises if such construction, renovations, alterations and repairs are made by Lessor, at its expense without the assistance of Lessor; (ii) Lessor shall be responsible for compliance with the provisions of Title II and Title III of the ADA for all construction, renovations, alterations and repairs which Lessor is required, under this Lease, to make within the Premises, whether (pursuant to the relevant provisions of the Lease) at Lessor’s or Lessee’s expense; and (iii) Lessor shall be responsible for compliance with the provisions of Title III of the ADA for all exterior and interior areas of the Building not included within the Premises except to the extent such compliance is necessitated as a result of Lessee’s particular use of, or alterations to, the Premises. Lessor agrees to indemnify, defend and hold Lessee harmless from and against any claims, damages, costs and liabilities arising out of Lessor’s failure, or alleged failure, as the case may be, to comply with the ADA, to the extent such compliance has been allocated to Lessor herein, which indemnification obligation shall survive the expiration or termination of this Lease. Lessor and Lessee each agrees that the allocation of responsibility for ADA compliance shall not require Lessor or Lessee to supervise, monitor or otherwise review the compliance activities of the other with respect to its assumed responsibilities for ADA compliance as set forth in this Article 9. Lessor shall, in complying with the ADA to the extent such compliance has been allocated to Lessor herein, be entitled to rely upon representations made to, or information given to Lessor by Lessee in regard to Lessee’s use of the Premises, Lessee’s employees, and other matters pertinent to compliance with the ADA. The indemnity of Lessor set forth above shall apply as to any liability arising against Lessor by reason of any misrepresentations or misinformation given by Lessee to Lessor. The allocation of responsibility for ADA compliance between Lessor and Lessee, and the obligations of Lessor and Lessee established by such allocations, shall supersede any other provisions of the Lease that may contradict or otherwise differ from the requirements of this Article 9.

10. ALTERATIONS AND ADDITIONS. a. Lessee’s Alterations. Lessee shall not make or suffer to be made any alterations, additions, changes or improvements (collectively, “Alterations”) to or of the Premises, or any part thereof without Lessor’s prior written consent, which consent shall not, except as otherwise expressly provided in the Lease, be unreasonably withheld, provided, however, that Lessor’s consent shall not be required for any interior, non-structural Alteration that satisfies all of the following conditions: (i) its cost does not exceed $15,000 per work of Alteration, (ii) it will not require the demolition of any material existing improvements, and (iii) it will not affect the structure of the building in which the Premises is located or the building’s mechanical or utility systems or the exterior appearance of the Building. Lessor may, in its discretion, require that such Alterations, additions or improvements as may deemed necessary in its sole discretion, including without limitation: the manner in which the work is done; a right of approval of the contractor by whom the work is to be performed; the times during which such work is to be accomplished; the requirement that Lessee post a lien and completion bond (or its equivalent) in an amount equal to one and one-half times any and all estimated Alterations costs and otherwise in form satisfactory to Lessor to insure Lessor against any liability for mechanics’ and materialmen’s liens and to insure completion of the work; the requirement that Lessor reimburse Lessor, as additional rent, for Lessor’s reasonable costs incurred in reviewing any proposed Alterations, whether or not Lessor’s consent is granted; and the requirement that at Lease Termination, either (i) Lessee, at its expense, will remove any and all such Alterations installed by Lessee and shall, at its cost, promptly repair all damages to the Project caused by such removal, or (ii) the Alterations made by Lessee shall remain with the Premises, be a part of the realty, and belong to Lessor. If Lessor consents to any Alterations made by Lessee, Lessor shall have the right to pursue such valid claims or defenses against Lessor as may be permitted under California Civil Code section 1997.840 and which Lessee is able to prove.
all applicable laws, ordinances and codes and in a first class workmanlike manner, and shall not weaken or impair the structural strength or lessen the value of the Building, shall not invalidate, diminish, or adversely affect any warranty applicable to the Building or any other improvements located within the Project, including any equipment therein, and shall be performed in a manner causing Lessor and Lessor’s agents and other tenants of the Building the least interference and inconvenience practicable under the circumstances. In making any such Alterations, Lessee shall, at Lessee’s sole cost and expense:

(i) File for and secure any necessary permits or approvals from all governmental departments or authorities having jurisdiction, and any utility company having an interest therein,

(ii) Notify Lessor in writing at least fifteen (15) days prior to the commencement of work on any Alteration, so that Lessor can post and record appropriate notices of non-responsibility, and

(iii) Provide Lessor with copies of all drawings and specifications prior to commencement of construction of any Alterations, and provide Lessor with “as built” plans and specifications (on CAD diskette if available) following completion of such Alterations.

In no event shall Lessee make or suffer to be made any Alteration to the mechanical or utility systems of the Building, to the Common Area or the structural portions of the Building or any part thereof without Lessor’s prior written consent, which consent may be withheld in Lessor’s sole discretion.

b. Removal. Upon Lease Termination, Lessee shall, upon written demand by Lessor at Lessee’s sole cost and expense, forthwith and with all due diligence remove any Alterations made by Lessee, which is then designated by Lessor to be removed and Lessee shall, forthwith and with all due diligence at its sole cost and expense, repair any damage to the Project caused by such removal. Lessee shall also, upon Lease Termination and provided that Lessee is not then in default hereunder, remove Lessee’s movable equipment, furnishings, trade fixtures and other personal property (excluding any Alterations made by Lessee not specifically designated by Lessor to be removed), provided that Lessee shall, forthwith and with all due diligence at its sole cost and expense, repair any damages to the Project caused by such removal. Unless Lessor elects to have Lessee remove any such Alterations, all such Alterations except for movable furniture and trade fixtures of Lessee not affixed to the Premises, shall become the property of Lessor upon Lease Termination (without any payment therefor) and remain upon and be surrendered with the Premises.

c. Alterations Required by Law. Lessee shall pay to Lessor as additional rent, the cost of any structural or non-structural alteration, addition or change to the Building and/or at Lessor’s election, shall promptly make, at Lessee’s sole expense and in accordance with the provisions of subsection 10.a. above, any structural or non-structural alteration, addition or change to the Premises required to comply with laws, regulations, ordinances or orders of any public agencies, whether now existing or hereinafter promulgated, where such alterations, additions or changes are required by reason of Lessee’s or Lessee’s Agents’ acts; Lessee’s use or change of use of the Premises; alterations or improvements to the Premises made by or for Lessee; or Lessee’s application for any permit or governmental approval.

d. Lessor’s Improvements. All fixtures, improvements or equipment which are installed, constructed on or attached to the Premises, or any part of the Project by Lessor at its expense shall be a part of the realty and belong to Lessor.

II. REPAIRS

a. By Lessee. By taking possession of the Premises, Lessee shall be deemed to have accepted the Premises as being in good and sanitary order, condition and repair and to have accepted the Premises in their condition existing as of the date of such possession, subject to all applicable laws, covenants, conditions, restrictions, easements, and other matters of public record and the Rules and Regulations from time to time promulgated by Lessor governing the use of any portion of the Project. Lessee shall further be deemed to have accepted Lessor’s Improvements constructed by Lessor, if any, as being completed in accordance with the plans and specifications for such improvements, excluding only the punch list items referred to in Article 4.a. above. Notwithstanding the foregoing, Lessor, at its sole cost and expense, shall promptly repair any defects set forth in any written notice delivered to Lessor within fifteen (15) days after Lessee takes possession of the Premises, to the extent that the Premises are not in the condition set forth in the first full sentence of this paragraph. Lessee shall at Lessee’s sole cost and expense, keep every part of the Premises in good condition and repair, damage thereto from causes beyond the control of Lessee (and not caused by any act or omission of Lessee or Lessee’s Agents) and ordinary wear and tear excepted. If Lessee fails to maintain the Premises as required by this Lease, Lessor may give Lessee notice to do such acts as are reasonably required to so maintain the Premises and if Lessee fails to commence such work immediately in an emergency or where immediate action is required to protect the Premises or any portion of the Project, or within ten (10) days after such notice is given under other circumstances, and diligently prosecute it to completion, then Lessor or Lessor’s agents, in addition to all of the rights and remedies available hereunder or by law and without waiving any alternative remedies, shall have the right to enter the Premises and to do such acts and expend such funds at the expense of Lessee as are reasonably required to perform such work. Any amount so expended by Lessor shall be paid by Lessee to Lessor as additional rent, upon demand. With respect to any work performed by Lessor pursuant to this Article II.a., Lessor shall be liable to Lessee only for physical damage caused to Lessee’s personal property located within the Premises to the extent such damage is caused by Lessor’s active negligence or willful misconduct and is not covered by the insurance required to be maintained by Lessee pursuant to this Lease. In no event shall Lessor have any liability to Lessee for any other damages, or for any inconvenience or interference with the use of the Premises by Lessee, or for any consequential damages, including lost profits, as a result of performing any such work. Except as specifically provided in an addendum, if any, to this Lease, Lessor shall have no obligation whatsoever to alter, remodel, improve, repair, decorate or paint the Premises or any part thereof and the parties hereto affirm that Lessor has made no representations or warranties, express or implied, to Lessee respecting the condition of the Premises or any part of the Project except as specifically set forth in this Lease.

b. By Lessor. The costs of repairs and maintenance which are the obligation of Lessor under this Lease or which Lessor elects to perform under this Lease except such repairs and maintenance which are the responsibility of Lessee hereunder, shall be an Operating Expense. Lessor shall repair and maintain the structural portions of the Building, including the basic plumbing, air conditioning, heating and electrical systems installed or furnished by Lessor, unless such maintenance or repairs are caused in part or in whole by the act, neglect, fault or omission of any duty by Lessee or Lessee’s Agents, in which case Lessee shall pay to Lessor the reasonable cost of such maintenance or repairs as additional rent. Lessor shall not be liable for any failure to make any such repairs or to perform any maintenance for which Lessor is responsible as provided above unless Lessor fails to commence such work for a period of more than thirty (30) days after written notice of the need of such repairs or maintenance is given to Lessor by Lessee and the failure is due solely to causes within Lessor’s reasonable control. Except as provided in Article 21 of this Lease, there shall be no abatement of Rentals, and in any event there shall be no liability of Lessor by reason of any injury to or interference with Lessee’s business arising from the making of any repairs, alterations or improvements in or to any portion of the Project or in or
to fixtures, appurtenances and equipment therein. Lessee waives the benefits of any statute now or hereafter in effect (including, without limitation, the provisions of subsection 1 of Section 1922, Section 1941 and Section 1942 of the California Civil Code and any similar or dissimilar law, statute or ordinance now or hereafter in effect) which would otherwise afford Lessee the right to make repairs at Lessor’s expense (or to deduct the cost of such repairs from Rentals due hereunder) or to terminate this Lease because of Lessor’s failure to keep the Premises in good and sanitary order.

12. LIENS. Lessee shall keep the Premises and every portion of the Project free from any and all mechanics’, materialmen’s and other liens, and claims thereof, arising out of any work performed, materials furnished or obligations incurred by or for Lessee. Lessee shall indemnify and defend with counsel acceptable to Lessor and hold Lessor harmless from and against any liens, demands, claims, actions, suits, proceedings, orders, losses, costs, damages, liabilities, penalties, expenses, judgments or encumbrances (including without limitation, attorneys’ fees) arising out of any work or services performed or materials furnished by or at the direction of Lessee or Lessor’s Agents or any contractor employed by Lessor with respect to the Premises. Should any claims of lien relating to work performed, materials furnished or obligations incurred by Lessee be filed against, or any action be commenced affecting the Premises, any part of the Project, and/or Lessee’s interest therein, Lessee shall give Lessor notice of such lien or action within three (3) days after Lessee receives notice of the filing of the lien or the commencement of the action. If Lessee does not, within twenty (20) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Lessor shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including by payment of the claim giving rise to such lien or by posting a proper bond, or by requiring Lessee to post for Lessor’s benefit a bond, surety, or cash amount equal to one and one-half (1 1/2) times the amount of lien and sufficient to release the Premises and Project from the lien. All sums paid by Lessor pursuant to this Article 12 and all expenses incurred by it in connection therewith including attorneys’ fees and costs shall be payable to Lessor by Lessee as additional rent on demand.

13. ASSIGNMENT AND SUBLETTING. a. Prohibitions in General. Lessee shall not (whether voluntarily, involuntarily, or by operation of law) assign this Lease or allow all or any part of the Premises to be sublet, without Lessor’s prior written consent in each instance, which consent shall not be unreasonably withheld, subject, nevertheless, to the provisions of this Article 13. Notwithstanding anything to the contrary contained herein, Lessee shall have the right without Lessor’s prior consent and without being subject to Article 13.e below, but upon not less than fifteen (15) days prior written notice to Lessor, to assign this Lease or sublet the Premises to any entity (i) controlling, controlled by or having fifty percent (50%) or more common control with Lessee, or (ii) resulting from a merger or consolidation with Lessor or acquiring substantially all of the assets and/or substantially all of the stock of Lessee; provided that any such entity shall assume the obligations and liabilities of Lessee under this Lease (or such of such obligations and liabilities as are to be performed by the sublessee under the terms of the applicable sublease in the event of a sublease), and no such assignment or sublease shall in any manner release Lessee from its primary liability under this Lease (except in the case of an assignment to the surviving entity in a merger or consolidation transaction permitted pursuant to the foregoing provisions of this sentence where the prior “Lessee” does not survive such merger or consolidation transaction). For all purposes of this Lease, a “Permitted Transfer” shall mean an assignment or subletting by which is permitted without Lessor’s prior consent pursuant to clause (i) or (ii) above. Except for an allowed assignment or subletting pursuant to the foregoing provisions of this paragraph, Lessee shall not (whether voluntarily, involuntarily, or by operation of law) (iii) allow all or any part of the Premises to be occupied or used by any person or entity other than Lessee, (iv) transfer any right appurtenant to this Lease or the Premises, (v) mortgage, hypothecate or encumber the Lease or Lessee’s interest in the Lease or Premises (or otherwise use the Lease as a security device) in any manner, or (vi) permit any person to assume or succeed to any interest whatsoever in this Lease, without Lessor’s prior written consent in each instance, which consent may be withheld in Lessor’s sole and absolute discretion.

Any assignment, sublease, hypothecation, encumbrance, or transfer (collectively “Transfer”) without Lessor’s consent shall constitute an Event of Default by Lessee and shall be voidable. Lessor’s consent to any one Transfer shall not constitute a waiver of the provisions of this Article 13 as to any subsequent Transfer or a consent to any subsequent Transfer. The provisions of this subsection 13.a. expressly apply to all heirs, successors, sublessees, assigns and transferees of Lessee. If Lessor consents to a proposed Transfer, such Transfer shall be valid and the transferee shall have the right to take possession of the Premises only if the Assumption Agreement described in subsection 13.c. below is executed and delivered to Lessor, Lessee has paid the costs and fees described in subsection 13.i. below, and an executed counterpart of the assignment, sublease or other document evidencing the Transfer is delivered to Lessor and such transfer document contains the same terms and conditions as stated in Lessee’s notice given to Lessor pursuant to subsection 13.d. below, except for any such modifications Lessor has consented to in writing. The acceptance of Rentals by Lessor from any person or entity other than Lessee shall not be deemed to be a waiver by Lessor of any provision of this Lease or to be a consent to any such Transfer.

b. Collection of Rent. Lessee irrevocably assigns to Lessor, as security for Lessee’s obligations under this Lease, all rent not otherwise payable to Lessor by reason of any Transfer of all or any part of the Premises or this Lease. Lessor, as assignee of Lessee, or a receiver for Lessee appointed on Lessor’s application, may collect such rent and apply it toward Lessee’s obligations under this Lease; provided, however, that until the occurrence of any default by Lessee or except as provided by the provisions of subsection 13.f. below, Lessee shall have the right to collect such rent.

c. Assumption Agreement. As a condition to Lessor’s consent to any Transfer of Lessee’s interest in this Lease or the Premises, Lessee and Lessee’s assignee, sublessee, encumbrancer, hypothecatee, or transferee (collectively “Transferee”), shall execute a written Assumption Agreement, in a form approved by Lessor, which Agreement shall include a provision that Lessee’s Transferee shall expressly assume all obligations of Lessee under this Lease, and shall be and remain jointly and severally liable with Lessee for the performance of all conditions, covenants, and obligations under this Lease from the effective date of the Transfer of Lessee’s interest in this Lease (except that as to a subletting, such Assumption Agreement shall relate only to performance of Lessee’s non-payment obligations under this Lease relating to the portion of the Premises subleased). In no event shall Lessor have any obligation to materially amend or modify this Lease in connection with any proposed Transfer, including, without limitation, amending or modifying the use restriction set forth in subsection 8.a. above.

d. Request for Transfer. Lessee shall give Lessor at least thirty (30) days prior written notice of any desired Transfer and of the proposed terms of such Transfer, including but not limited to: the name and legal composition of the proposed Transferee; an audited financial statement (or unaudited if proposed Transferee does not have audited financials) of the proposed Transferee prepared in accordance with generally accepted accounting principles within one year prior to the proposed effective date of the Transfer; the nature of the proposed Transferee’s business to be carried on in the Premises; the payment to be made or other consideration to be given on account of the Transfer; and other such pertinent information as may be requested by Lessor, all in sufficient detail to enable Lessor to evaluate the proposed Transfer and the prospective Transferee. Lessee’s notice shall not be deemed to have been served or given until such time as Lessee has provided Lessor with all information specified above and all additional information requested by Lessor pursuant to this subsection 13.d. Lessee shall immediately notify Lessor of any modification to the proposed terms of such Transfer.
e. Excess Consideration. In the event of any Transfer (other than a Permitted Transfer), Lessor shall receive as additional rent hereunder, fifty percent (50%) of Lessee’s “Excess Consideration” derived from such Transfer to the extent directly attributable to the Lease of the Premises. As used herein, “Excess Consideration” shall mean all rent, additional rent, key money, bonus money and/or other consideration received by Lessee from a Transferee and/or paid by a Transferee on behalf of Lessee in connection with the Transfer in excess of the rent, additional rent and other sums payable by Lessee under this Lease (on a per square foot basis if less than all of the Premises is subject to such Transfer), excluding any consideration attributable to the sale or lease of Lessee’s furniture, fixtures, or equipment in the Premises, less the sum of Lessee’s actual out-of-pocket costs incurred for brokerage commissions, attorneys’ fees and any Alterations to the Premises or improvement allowances in connection with such Transfer, any lease takeover payment paid to or for the benefit of the Transferee, any actual costs of advertising the Premises (or applicable portion thereof) for sublease or assignment. If part of the Excess Consideration shall be payable by the Transferee other than in cash, then Lessor’s share of such non-cash consideration shall be in such form as is reasonably satisfactory to Lessor.

f. Standards for Consent. Without otherwise limiting the criteria upon which Lessor may withhold its consent to any proposed Transfer, the parties hereby agree that it shall be deemed presumptively reasonable for Lessor to withhold its consent to a proposed Transfer if:

(i) The proposed Transferee’s net worth (according to generally accepted accounting principles) is less than the greater of (A) the net worth of Lessee immediately prior to the Transfer; or (B) the net worth of Lessee at the time this Lease is executed;

(ii) The proposed Transferee’s use of the Premises is inconsistent with the permitted use of the Premises set forth in this Lease or the proposed Transferee is of a character or reputation which is not consistent with the quality of the Building or Project;

(iii) As to a Transfer of less than all of the Premises, the space to be Transferred is not regular in shape with appropriate means of ingress and egress suitable for normal leasing purposes;

(iv) The proposed Transferee is a governmental agency or instrumentality thereof or a person or entity (or an affiliate thereof) currently leasing or occupying space within the Project or with whom Lessor is then negotiating for the lease or occupancy of space within the Project;

(v) An Event of Default exists under this Lease at the time Lessee requests consent to the proposed Transfer;

(vi) The proposed Transfer will result in more than a reasonable and safe number of occupants per floor within the space proposed to be Transferred or will result in insufficient parking for the Building;

(vii) The rent proposed to be payable by the proposed Transferee will be less (on a per square foot of Rentable Area basis) than the rent payable by Lessee under this Lease; or

(viii) The Project is then below the level of ninety-five percent (95%) occupancy of Rentable Area.

g. Intentionally Deleted.

h. Corporations and Partnerships. If Lessee is a partnership, a withdrawal or substitution (whether voluntary, involuntary, or by operation of law and whether occurring at one time or over a period of time) of any partner(s) owning twenty-five percent (25%) or more of the partnership, any assignment(s) of twenty-five percent (25%) or more (cumulatively) of any interest in the capital or profits of the partnership, or the dissolution of the partnership shall be deemed a Transfer of this Lease. If Lessee is a corporation, limited liability company or other entity, any dissolution, merger, consolidation or other reorganization of Lessee, any sale or transfer (or cumulative sales or transfers) of the capital stock of or equity interests in Lessee in excess of fifty percent (50%) (disregarding original issuances of stock to financing parties (e.g., venture capitalists and strategic investors), provided that Lessee shall provide fifteen (15) days prior written notice to Lessor of any such issuance) or any sale (or cumulative sales) of more than fifty percent (50%) of the value of the assets of Lessee shall be deemed a Transfer of this Lease. This subsection 13.h. shall not apply to corporations the capital stock of which is publicly traded.

i. Attorneys’ Fees and Costs. Lessee shall pay, as additional rent, Lessor’s actual costs and attorneys’ fees incurred for reviewing, investigating, processing and/or documenting any requested Transfer, whether or not Lessor’s consent is granted.

j. Miscellaneous. Regardless of Lessor’s consent, no Transfer shall release Lessee of Lessee’s obligations under this Lease or alter the primary liability of Lessee to pay the Rentals and to perform all other obligations to be performed by Lessee hereunder. The acceptance of Rentals by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Upon default by any assignee of Lessee or any successor of Lessee in the performance of any of the terms hereof, Lessor may proceed directly against Lessee without the necessity of exhausting remedies against said assignee or successor. Lessor may consent to subsequent assignments or sublettting of this Lease or amendments or modifications to this Lease with any assignee of Lessee, without notifying Lessee, or any successor of Lessee, and without obtaining its or their consent thereto and such action shall not relieve Lessee of liability under this Lease.

k. Reasonable Provisions. Lessee acknowledges that, but for Lessee’s identity, financial condition and ability to perform the obligations of Lessee under the Lease, Lessor would not have entered into this Lease nor demised the Premises in the manner set forth in this Lease, and that in entering into this Lease, Lessor has relied specifically on Lessee’s identity, financial condition, financial condition, responsibility and capability of performing the obligations of Lessee under the Lease. Lessee acknowledges that Lessor’s rights under this Article 13, including the right to terminate this Lease or withhold consent to certain Transfers in Lessor’s sole and absolute discretion, are reasonable, agreed upon and bargained for rights of Lessor and that the Rentals set forth in the Lease have taken into consideration such rights. Lessee expressly agrees that the provisions of this Article 13 are not unreasonable standards or conditions for purposes of Section 1951.4(b)(2) of the California Civil Code, as amended from time to time, under the Federal Bankruptcy Code or for any other purpose.

14. HOLD HARMLESS. Lessee shall indemnify, defend with counsel acceptable to Lessor, and hold Lessor and Lessor’s employees, agents, partners, officers, directors and shareholders harmless from and against any and all claims, damages, losses, liabilities, penalties, judgments, and costs and expenses (including, without limitation, attorneys’ fees) and any suit, action or proceeding brought pursuant thereto (collectively, “Claims”), including, without limitation, Claims for property damage, or personal injury including death, and arising out of (i) Lessee’s use of the Premises or any part thereof, (ii) any activity, work or other thing done, permitted in or about the Premises, or any part thereof, by Lessee or Lessee’s Agents, (iii) any breach or default in the performance of any obligation on Lessee’s part to be performed under the terms of this Lease, (including, without limitation, a failure to maintain insurance as provided in Article 16), or (iv) any negligence of the Lessee or Lessee’s Agents ha connection with its use of the Premises and/or the Project.
The indemnity herein shall extend to the costs and expenses incurred by Lessor for administrative expenses, consultant fees, expert costs, investigation expenses and costs incurred in settling indemnified claims, whether such costs occurred before or after any litigation is commenced. The obligations of Lessee pursuant to this

Article 14 and elsewhere in this Lease with respect to indemnification of Lessor shall survive the Lease Termination and shall continue in effect until any and all claims, actions or causes of action with respect to any of the matters indemnified against are fully and finally barred by the applicable statute of limitations. In no event shall any of insurance provisions set forth in Article 16 of this Lease be construed as any limitation on the scope of indemnification set forth herein.

Lessee as a material part of the consideration to Lessor hereby assumes all risk of damage or loss to property or injury or death to person in, upon or about all portions of the Project from any cause except as hereinafter stated. Lessor or its agents shall not be liable for any damage or loss to property entrusted to employees of any part of the Project nor for loss or damage to any property by theft or otherwise, nor for any injury or death or damage to persons or property resulting from any accident, casualty or condition occurring in or about any portion of the Project, or to any equipment, appliances or fixtures therein, or from any other cause whatsoever. Lessor’s assumption of risk and die excuption of Lessor pursuant hereto is unqualified with the single exception that it shall not apply to the portion of any claim, damage or loss that arises out of Lessor’s negligence or willful misconduct and which is not covered by the insurance required to be maintained by Lessee pursuant to this Lease, but it shall apply without limitation to all other claims, damages or losses. Lessor or its agents shall not be liable for interference with the light or other incorporeal hereditaments, nor shall Lessor be liable for any latent defect in the Premises or in the Building. Notwithstanding any other provision of this Lease, in no event shall Lessor have any liability for loss of business (including, without limitation, lost profits) by Lessee. Lessee shall give prompt written notice to Lessor in case of fire or accidents in the Premises or in the Building or of defects therein or in the fixtures or equipment.

If, by reason of any act or omission of Lessee or Lessee’s Agents, Lessor is made a party defendant to any litigation concerning this Lease or any part of the Project or otherwise, Lessee shall indemnify, defend with counsel acceptable to Lessor, and hold Lessor harmless from any liability and damages incurred by (or threatened against) Lessor as a party defendant, including without limitation all damages, costs and expenses, including attorneys’ fees.

15. SUBROGATION. Lessor releases Leesee and Lessee’s officers, directors, agents, employees, partners and shareholders from any and all claims or demands for damages, loss, expense or injury arising out of any perils to the extent covered by insurance carried by Lessor, whether due to the negligence of Lessee or Lessee’s officers, directors, agents, employees, partners and shareholders and regardless of cost or origin, to the extent such waiver is permitted by Lessor’s insurers and does not prejudice the insurance required to be carried by Lessee under this Lease. Lessee releases Lessor and Lessor’s officers, directors, agents, employees, partners and shareholders from any and all claims or demands for damages, loss, expense or injury arising out of any perils which are insured against under any insurance carried by Lessor, whether due to the negligence of Lessor or its officers, directors, agents, employees, partners and shareholders and regardless of cost or origin, to the extent such waiver is permitted by Lessor’s insurers and does not prejudice the insurance required to be carried by Lessee under this Lease.

16. LESSEE’S INSURANCE. a. Lessee shall, at Lessee’s expense, obtain and keep in force during the Term a policy of commercial general liability insurance, including the broad form endorsement, insuring Lessor and Lessor against any liability arising out of the ownership, use, occupancy, maintenance, repair or improvement of the Premises and all areas appurtenant thereto. Such insurance shall provide single limit liability coverage of not less than Five Million Dollars ($5,000,000.00) per occurrence for bodily injury or death and property damage. Such insurance shall name Lessor and, at Lessor’s request, Lessor’s mortgagee, each as an additional insured, and shall provide that Lessor and any such mortgagee, although an additional insured, may recover for any loss suffered by Lessor or Lessor’s agents by reason of Lessee’s or Lessor’s negligence. All such insurance shall be primary and non-contributing with respect to any insurance maintained by Lessor and shall specifically cover Lessee’s performance of the indemnity and hold harmless agreements contained in Article 14 above and, although Lessee’s obligations pursuant to Article 14 shall not be limited to the amount of any insurance required of or carried by Lessee under this Article 16 and Lessee is responsible for ensuring that the amount of liability insurance carried by Lessee is sufficient for Lessee’s purposes. Lessee may carry said insurance under a blanket policy provided that such policy conforms with the requirements specified in this Article and the coverage afforded Lessor is not diminished thereby.

b. Lessee acknowledges and agrees that insurance coverage carried by Lessor will not cover Lessee’s property within the Premises or widths the Building. Lessee shall, at Lessee’s expense, obtain and keep in force during the Terms a policy of “All Risk” property insurance; boiler and machinery (if applicable); sprinkler damage; vandalism; malicious mischief; and demolition, increased cost of construction and contingent liability from changes in building laws on all leasehold improvements installed in the Premises by Lessee at its expense (if any), and on all equipment, trade fixtures, inventory, fixtures and personal property located on or in the Premises, including improvements or fixtures hereinafter constructed or installed on the Premises. Such insurance shall be an amount equal to the full replacement cost of the aggregate of the foregoing and shall provide coverage comparable to the coverage in the Standard ISO All Risk form, when such form is supplemented with the coverage required above.

c. If Lessee fails to procure and maintain any insurance required to be procured and maintained by Lessee pursuant to this Lease, Lessor may, but shall not be required to, procure and maintain all or any portion of the same, at the expense of Lessee. Lessor’s election pursuant to this subsection 16.c. to procure and maintain all or any portion of the insurance which Lessee fails to procure and maintain is acknowledged by Lessee to be for Lessor’s sole benefit. Lessee acknowledges that any insurance procured and maintained by Lessor pursuant to this subsection 16.c. may not be sufficient to adequately protect Lessee. Any personal property insurance procured and maintained by Lessor for Lessee’s equipment, trade fixtures, inventory, fixtures and personal property located on or in the Premises, including improvements or fixtures hereafter constructed or installed on the Premises, may not sufficiently cover the replacement cost thereof. Any insurance procured and maintained by Lessor pursuant to this subsection 16.c. may provide for less coverage than is required to be maintained by Lessee pursuant to this Lease. Lessee acknowledges and agrees that Lessee is and shall remain solely responsible for procuring insurance sufficient for Lessee’s purposes, notwithstanding the fact that Lessor has procured or maintained any insurance pursuant to this subsection 16.c. Any insurance required to be maintained by Lessee hereunder shall be in companies with a security rating of A or better, and a financial size category rating of X or better, in the then most recently published “Best’s Insurance Guide”. Prior to occupancy of the Premises (and thereafter annually with respect to renewals, not later than thirty (30) days prior to expiration of then existing policies), Lessee shall deliver to Lessor copies of the policies of insurance required to be kept by Lessee hereunder, or certificates evidencing the existence and amount of such insurance, with evidence satisfactory to Lessor of payment of premiums. No policy shall be cancelable or subject to reduction of coverage except after thirty (30) days prior written notice to Lessor.
Lessor as additional rent. The costs of all utilities and services furnished by Lessor to Lessee pursuant to this Article 17 which are not specified as being reimbursed or paid directly by Lessee shall be included as items of Building Operating Expenses.

Lessee will not, without the prior written consent of Lessor, use or permit the use of any apparatus or device in or upon the Premises (including, but without limitation thereto, machines using in excess of 120 volts), which will in any way increase the amount of gas, electricity or water usually furnished or supplied for the use of the Premises as general office space (which, as to electricity consumption, the parties hereby agree to mean not more than three (3) watts per square foot of usable area on a demand load basis); nor will Lessee connect or permit connection of any apparatus or device for the purpose of using gas, electric current or water with electric current, gas or water supply lines, except for electricity through existing electrical outlets in the Premises. If Lessee requires water or electric current in excess of that usually furnished or supplied for the use of the Premises as general office space, Lessee shall first procure the written consent of Lessor (which consent may be granted or withheld in Lessor’s sole and absolute discretion), to the use thereof and Lessor may cause a water or gas meter or electric current meter to be installed in the Premises so as to measure the amount of water, gas and electric current consumed for any such use. The cost of any such meters and of installation, maintenance and repair thereof shall be paid for by the Lessee and Lessee agrees to pay to Lessor, as additional rent, promptly upon demand therefor by Lessor for all such water, gas and electric current consumed as shown by said meters, at the rates charged for such services by the local public utility furnishing the same, plus any additional expense incurred in keeping account of the water, gas and electric current so consumed. If a separate meter is not installed, such excess cost for such water, gas and electric current will be conclusively established by an estimate made by a utility company or electrical engineer selected by Lessor.

If requested by Lessee in writing at least one (1) business day in advance (or such shorter time in advance as is reasonably practicable given Building mechanical systems), heating, ventilation and air conditioning (“HVAC”) service shall be provided to the Premises other than during Building Hours (for a minimum period of three (3) consecutive hours at a time, except for after-hours HVAC service immediately following Building Hours, at which time the minimum period shall be one (1) hour), provided that Lessee shall pay to Lessor for each such hour of HVAC service during non-Building Hours, the then prevailing charge by Lessor for such service (which shall equal Lessor’s determination in Lessor’s reasonable business judgment of the actual cost of providing such non-Building Hours HVAC service, including, without limitation, a reasonable administrative charge). Lessor’s current hourly cost for such additional HVAC usage is sixty-two dollars ($62.00) per zone. Amounts payable by Lessee hereunder shall be paid as additional rent within thirty (30) days following Lessee’s receipt of Lessor’s billing therefor.

18. RULES AND REGULATIONS. Lessee shall faithfully observe and comply with the rules and regulations that Lessor shall from time to time promulgate for the Building and the Project. Lessor reserves the right from time to time to make all reasonable modifications to said rules and regulations. The additions and modifications to these rules and regulations shall be binding upon Lessee upon delivery of a copy of them to Lessee. Lessor shall not be responsible to Lessee for the non-performance of any said rules by any other tenants or occupants. The current “Rules and Regulations” are attached hereto as Exhibit D.

19. HOLDING OVER. If Lessee remains in possession of the Premises or any part thereof after Lease Termination, with the express written consent of Lessor, such occupancy shall be a tenancy from month to month at a Base Rent in the amount of one hundred fifty percent (150%) of the Base Rent in effect immediately preceding such Lease Termination, plus all other rental charges payable hereunder, and upon all the terms hereof applicable to a month to month tenancy. In such case, either party may thereafter terminate this Lease at any time upon giving not less than thirty (30) days written notice to the other party. For any possession of the Premises after the Lease Termination without Lessor’s consent, Lessee shall be liable for all detriment proximately caused by Lessee’s possession, including without limitation, attorneys’ fees, costs and expenses, claims of any succeeding tenant founded on Lessee’s failure to vacate and for payment to Lessor of Base Rent in an amount equal to the greater of (a) two hundred percent (200%) of the Base Rent in effect immediately preceding such Lease Termination, or (b) the fair market rental value for the Base Rent for the Premises, together with such other Rentals provided in this Lease to the date Lessee actually vacates the Premises, and such other remedies as are provided by law, in equity or under this Lease, including without limitation punitive damages recoverable under California Code of Civil Procedure Section 1174.
In no event shall Lessor have any liability to Lessee for, and Lessee hereby waives any claim for, damages or for any injury or inconvenience to or interference with Lessee’s business, any loss of occupancy or quiet enjoyment of the Premises, and any other damage or loss occasioned thereby. For each of the aforesaid purposes, Lessor shall at all times have and retain a lacy with which to unlock all of the doors in, upon and about the Premises, excluding Lessor’s vaults, safes, and files, and Lessor shall have the right to use any and all means which Lessor may deem proper to open said doors in an emergency in order to obtain entry to the Premises, without liability to Lessee except for any failure to exercise due care for Lessee’s property under the circumstances of each entry. Any entry to the Premises obtained by Lessor by any of said means or otherwise shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Lessee from the Premises or any portion thereof. If Lessee has removed substantially all of Lessee’s property from the Premises, Lessor may, without abatement of Rentals, enter the Premises for alteration, renovation or decoration during the last thirty (30) days of the Term.

With respect to any entry by Lessor into the Premises, Lessor shall be liable to Lessee solely for physical damage caused to Lessee’s personal property located within the Premises to the extent such damage is caused by Lessor’s active negligence or willful misconduct and which is not covered by the insurance required to be maintained by Lessee pursuant to this Lease, and only with respect to an entry in an non-emergency situation.

21. **RECONSTRUCTION.** If the Premises are damaged and rendered substantially untenable, or if the Building is damaged (regardless of damage to the Premises) or destroyed, Lessor may, within ninety (90) days after the casualty, notify Lessee of Lessor’s election not to repair, in which event this Lease shall terminate at the expiration of the ninetieth (90th) day. If Lessor elects to repair the damage or destruction, this Lease shall remain in effect and the then current Base Rent and Lessee’s Percentage Share of Building Expenses shall be proportionately reduced during the period of repair. The reduction shall be based upon the extent to which the snaking of repairs interferes with Lessee’s business conducted in the Premises, as reasonably determined by Lessor. All other Rentals due hereunder shall continue unaffected, and Lessee shall have no claim against Lessor for compensation for inconvenience or loss of business during any period of repair or reconstruction. Lessee shall continue the operation of its business on the Premises during any period of reconstruction or repair to the extent reasonably practicable from the standpoint of prudent business management. Upon Lessor’s election to repair, Lessor shall diligently repair the damage to the extent of insurance proceeds available to Lessor. Lessor shall not be required to repair or replace, whether injured or damaged by fire or other cause, any items required to be insured by Lessee under this Lease including Lessee’s fixtures, equipment, merchandise, personal property, inventory, panels, decoration, furniture, railings, floor covering, partitions or any other improvements, alterations, additions, or property made or installed by Lessee to the Premises, and Lessee shall be obligated to promptly rebuild or restore the same to the same condition as they were in immediately before the casualty. Lessee hereby waives all claims for loss or damage to the foregoing. Lessee waives any rights to terminate this Lease if the Premises are damaged or destroyed, including without limitation any rights pursuant to the provisions of Subdivision 2 of Section 1932 and Subdivision 4 of Section 1933 of the Civil Code of California, as amended from time to time, and the provisions of any similar law hereinafter enacted. If the Lease is terminated by Lessor pursuant to this Article 21, the unused balance of the Security Deposit and any Rentals unearned as of the effective date of termination shall be refunded to Lessee. Lessee shall pay to Lessor any Rentals or other charges due Lessor under the Lease, prorated as of the effective date of termination. Notwithstanding anything to the contrary in the foregoing, if the damage is due to the fault or neglect of Lessee, or Lessee’s Agents, there shall be no abatement of Base Rent or any other Rentals.

Notwithstanding the foregoing, if less than thirty-three percent (33%) of the Rentable Area of the Building is damaged from an insured casualty and the insurance proceeds actually available to Lessor for reconstruction (net of costs to recover such proceeds and after all claimants thereto including lienholders have been satisfied or waive their respective claims) (“Net Insurance Proceeds”) are sufficient to completely restore the Building, Lessor agrees to make such reparations and continue this Lease in effect. If, upon damage of less than thirty-three percent (33%) of the Rentable Area of the Building there are not sufficient insurance proceeds actually available to allow Lessor to completely restore the Building, Lessor shall not be obligated to repair the Building and the provisions of the first paragraph of this Article shall control.

Lessee shall not be entitled to any compensation or damages from Lessor for loss of the use of the whole or any part of the Premises, or for any damage to Lessee’s business, or any inconvenience or annoyance occasioned by such damage, or by any repair, reconstruction or restoration by Lessor, or by any failure of Lessor to make any repairs, reconstruction or restoration under this Article or any other provision of this Lease.

22. **DEFAULT.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee (“Event of Default”):

- a. Lessee’s failure to pay when due Base Rent or any other Rentals or other sums payable hereunder;
- b. Lessee’s failure to occupy and use the Premises for thirty (30) consecutive days, which failure shall deem an abandonment of the Premises by Lessee.
- c. Commencement, and continuation for at least thirty (30) days, of any case, action, or proceeding by, against, or concerning Lessee, or any guarantor of Lessee’s obligations under this Lease (“Guarantor”), under any federal or state bankruptcy, insolvency, or other debtor’s relief law, including without Emulation, (i) a case under Title 11 of the United States Code concerning Lessee, or a Guarantor, whether under Chapter 7, 11, or 13 of such Title or under any other Chapter, or (ii) a case, action, or proceeding seeking Lessee’s or a Guarantor’s financial reorganization or an arrangement with any of Lessee’s or a Guarantor’s creditors;
- d. Voluntary or involuntary appointment of a receiver, trustee, keeper, or other person who takes possession for more than thirty (30) days of substantially all of Lessee’s or a Guarantor’s assets, or of any asset used in Lessee’s business on the Premises, regardless of whether such appointment is as a result of insolvency or any other cause;
- e. Execution of an assignment for the benefit of creditors of substantially all assets of Lessee or a Guarantor available by law for the satisfaction of judgment creditors;
- f. Commencement of proceedings for winding up or dissolving (whether voluntary or involuntary) the entity of Lessee or a Guarantor, if Lessee or such Guarantor is a corporation, partnership, limited liability company or other entity;
- g. Levy of a writ of attachment or execution on Lessee’s interest under this Lease, if such writ continues for a period of ten (10) days;
- h. Any Transfer or attempted Transfer of this Lease by Lessee contrary to the provisions of Article 13 above; or
- i. With respect to any report that Lessee is required to submit hereunder, the submission by Lessee of any false report;
- j. The use or occupancy of the Premises for any use or purpose not specifically allowed by the terms of this Lease; or
k. Breach of Lessee of any term, covenant, condition, warranty, or provision contained in this Lease or of any other obligation owing or due to Lessor other than as described in subsections 22.a., b., c., d., e., f., g., h., i. or j. of this Article 22, where such failure shall continue for the period specified in this Lease or if no such period is specified, for a period of thirty (30) days after written notice thereof by Lessor to Lessee; provided, however, that if the nature of Lessee’s default is such that more than thirty (30) days are reasonably required for its cure, Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter:

diligently prosecutes such cure to completion, and if Lessee provides Lessor with such security as Lessor may require to fully compensate Lessor for any loss or liability to which Lessor might be exposed.

23. REMEDIES UPON DEFAULT. Upon any default or breach by Lessee, at any time thereafter, with or without notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have hereunder or otherwise at law or in equity by reason of such default or breach Lessor may do the following:

a. Termination of Lease. Lessor may terminate this Lease or Lessee’s right to possession of the Premises by notice to Lessee or any other lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee:

(i) The worth at the time of award of the unpaid Rentals which had been earned at the time of termination;

(ii) The worth at the time of award of the amount by which the unpaid Rentals which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;

(iii) The worth at the time of award (computed by discounting at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent) of the amount by which the unpaid Rentals for the balance of the Term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; and

(iv) Any other amounts necessary to compensate Lessor for detriment proximately caused by the default by Lessee or which in the ordinary course of events would likely result, including without limitation the reasonable costs and expenses incurred by Lessor for:

(A) Retaking possession of the Premises;

(B) Cleaning and making repairs and alterations (including installation of leasehold improvements, whether or not the same shall be funded by a reduction of rent, direct payment or otherwise) necessary to return the Premises to good condition and preparing the Premises for reletting;

(C) Removing, transporting, and storing any of Lessee’s property left at the Premises (although Lessor shall have no obligation to remove, transport, or store any of the property);

(D) Retelling the Premises, including without limitation, brokerage commissions, advertising costs, and attorneys’ fees;

(E) Attorneys’ fees, expert witness fees and court costs;

(F) Any unamortized real estate brokerage commissions paid in connection with this Lease; and

(G) Costs of carrying the Premises, such as repairs, maintenance, taxes and insurance premiums, utilities and security precautions, if any.

The “worth at the time of award” of the amounts referred to in Articles 23.a.(i) and 23.a.(ii) is computed by allowing interest at an amoral rate equal to the greater of: ten percent (10%); or five percent (5%) plus the rate established by the Federal Reserve Bank of San Francisco, as of the 25th day of the month immediately preceding the default by Lessee, on advances to member banks under Section 13 and 13(a) of the Federal Reserve Act, as now in effect or hereafter from time to time amended (the “Stipulated Rate”). The computation of the amount of rental loss that could be or could have been reasonably avoided by Lessor pursuant to California Civil Code section 1951.2 shall take into account the use restrictions set forth in Article 8.a. above except to the extent that Lessee proves that under all circumstances the enforcement of the use restriction would be unreasonable.

b. Continuation of Lease. Lessor may continue this Lease in full force and effect, and the Lease shall continue in effect as long as Lessor does not terminate Lessee’s right to possession, and Lessor shall have the right to enforce all rights and remedies under this Lease including the right to collect all Rentals when due. During the period Lessee is in default, Lessor can enter the Premises and relet them, or any part of them, to third parties for Lessee’s account. Lessee shall be liable immediately to Lessor for all costs Lessor incurs in reletting the Premises, including without limitation, those items outlined in subsections a. (i) through a.(iv) of this Article 23, and other like costs. Reletting can be for a period shorter or longer than the remaining Term. Lessee shall pay to Lessor all Rentals due under this Lease on the date the Rentals are due, less the rent Lessor receives from any reletting. The use restriction provided in Article 8.a. above shall apply to Lessor’s remedies under California Civil Code section 1951.4 except to the extent that Lessee proves that under all circumstances enforcement of the use restriction would be unreasonable.

c. Other Remedies. Lessor may pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the State in which the Premises are located.

d. General. The following shall apply to Lessor’s remedies:
Notwithstanding this Article 24 above, upon a temporary taking of all or any portion of the Premises, the Lease shall remain in effect and Lessee shall continue to pay and be liable for all Rentals under this Lease. Upon such temporary taking, Lessee shall be entitled to any Award for the temporary use of the portion of the Premises taken which is attributable to the period prior to the date of Lease Termination, and Lessee shall be entitled to any portion of the Award for such use attributable to the period after Lease Termination. As used in this paragraph, a temporary taking shall mean a salting for a period of one year or less and does not include a taking which is to last for an indefinite period and/or which will terminate only upon the happening of a specified event unless it can be determined at the time of the taking when such event will occur.

25. OFFSET STATEMENT; MODIFICATIONS FOR LENDER. Lessee shall at any time and from time to time within ten (10) days following request from Lessor execute, acknowledge and deliver to Lessor a statement in writing, (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect), (ii) acknowledging that there are not, to Lessee’s knowledge, any uncured defaults on the part of the Lessor hereunder, or specifying such defaults if any are claimed, (iii) certifying the date to which Rentals and other charges are paid in advance, if any, (iv) certifying the status of this Lease as may be required either by a lender making a loan affecting or a purchaser of the Premises, or part of the Project from Lessor, (v) certifying that all improvements to be constructed on the Premises by Lessor are substantially completed (if applicable), except for any punch list items which do not prevent Lessee from using the Premises for its intended use, and (vi) certifying such other matters relating to this Lease and/or the Premises as may be reasonably requested by Lessor or a lender making a loan to Lessor or a purchaser of the Premises, or any part of the Project from Lessor. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Project, or any interest therein. Lessee shall, within ten (10) days following request of Lessor, deliver such other documents including Lessee’s financial statements as are reasonably requested in connection with the sale of, or loan to be secured by, any portion of the Project, or any interest therein.

If in connection with obtaining financing for all or any portion of the Project, any lender shall request modifications of this Lease as a condition to Lessor obtaining such financing, Lessee will not unreasonably withhold, delay or condition its consent thereto, provided that such modifications do not increase the financial obligations of Lessee hereunder or materially and adversely affect the leasehold interest hereby created or Lessee’s rights hereunder.
27. **AUTHORITY.** If Lessee is a corporation, partnership, limited liability company or other entity, each individual executing this Lease on behalf of said entity represents and warrants on behalf of such entity that he is duly authorized to execute and deliver this Lease on behalf of said entity in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the by-laws of said corporation or on behalf of said partnership in accordance with the partnership agreement of such partnership or otherwise on behalf of said entity in accordance with the organizational documents governing such entity, and that this Lease is binding upon said entity in accordance with its terms. If Lessee is a corporation or other entity, Lessee shall, upon execution of this Lease, deliver to Lessor a certified copy of a resolution of the Board of Directors of said corporation or other evidence of organizational approval authorizing or ratifying the execution of this Lease. If Lessee fails to deliver such resolution or other evidence to Lessor upon execution of this Lease, Lessor shall not be deemed to have waived its right to require delivery of such resolution or other evidence, and at any time during the Term Lessor may request Lessee to deliver the same, and Lessee agrees it shall thereafter promptly deliver such resolution or other evidence to Lessor. If Lessee is a corporation or other entity, Lessee hereby represents, warrants, and covenants that (i) Lessee is a valid and existing corporation or other entity; (ii) Lessee is qualified to do business in California; (iii) all fees and all franchise and corporate taxes of Lessee are paid to date, and will be paid when due; (iv) all required forms and reports will be filed when due; and (v) the signers of this Lease are properly authorized to execute this Lease on behalf of Lessee and to bind Lessee hereto.

28. **SURRENDER OF PREMISES.**

a. **Condition of Premises.** Lessee shall, upon Lease Termination, surrender the Premises in the condition required pursuant to subsection 10.b. above, and otherwise in broom clean, trash free, and in good condition, reasonable wear and tear, and insured casualties to the extent of Net Insurance Proceeds recovered by Lessor, alone excepted. By written notice to Lessee, Lessor may elect to cause Lessee to remove from the Premises or cause to be removed, at Lessee’s expense, any logos, signs, notices, advertisements or displays placed on the Premises by Lessee. If the Premises is not so surrendered as required by this Article 28, Lessee shall indemnify, defend and hold harmless Lessor from and against any loss or liability resulting from Lessee’s failure to comply with the provisions of this Article 28, including, without limitation, any claims made by any succeeding tenant or losses to Lessor due to lost opportunities to lease to succeeding tenants, and the obligations of Lessor under this Lease shall survive the Lease Termination.

b. **Removal of Personal Property.** Lessee shall remove all its personal property from the Premises upon Lease Termination, and shall immediately repair all damage to the Premises, Building and Common Area caused by such removal. Any personal property remaining on the Premises after Lease expiration or sooner termination may be packed, transported, and stored at a public warehouse at Lessee’s expense. If after Lease Termination and, within ten (10) days after written demand by Lessor, Lessee fails to remove Lessee’s personal property or, if removed by Lessor, fails to pay the removal expenses, the personal property may be deemed abandoned property by Lessor and may be disposed of as Lessor deems appropriate. Lessee shall repair any damage to the Premises caused by or in connection with the removal of any personal property, including without limitation, the floor and patch and paint the walls, when required by Lessor, to Lessor’s reasonable satisfaction, all at Lessee’s sole cost and expense. The provisions of this Article 28 shall survive Lease Termination.

29. **LESSOR DEFAULT AND MORTGAGEE PROTECTION.** Lessor shall not be in default under this Lease unless Lessor shall have given Lessee written notice of the breach, and, within thirty (30) days after notice, Lessor has not cured the breach or, if the breach is such that it cannot reasonably be cured under the circumstances

within thirty (30) days, has not commenced diligently to prosecute the cure to completion. The liability of Lessor pursuant to this Lease shall be limited to Lessor’s interest in the Building and any money judgment obtained by Lessee based upon. Lessor’s breach of this Lease or otherwise relating to this Lease or the Premises, shall be satisfied only out of the proceeds of the sale or disposition of Lessor’s interest in the Building (whether by Lessor or by execution of judgment). Lessor agrees that the obligations of Lessor under this Lease do not constitute personal obligations of the individual partners, whether general or limited, members, directors, officers or shareholders of, and Lessor shall not seek recourse against the individual partners, members, directors, officers or shareholders of Lessor or any of their personal assets for satisfaction of any liability with respect to this Lease. Upon any default by Lessor under this Lease, Lessor shall give notice by registered mail to any beneficiary or mortgagee of a deed of trust or mortgage encumbering the Premises, and/or any portion of the Project, whose address shall have been famished to it, and shall offer such beneficiary or mortgagee a reasonable opportunity to cure the default, including time to obtain possession of the Premises, and/or Project, or any portion thereof, by power of sale or judicial foreclosure, if such should prove necessary to effect a cure.

30. **RIGHTS RESERVED BY LESSOR.** Lessor reserves the right from time to time, without abatement of Rentals and without limiting Lessor’s other rights under this Lease: (i) to install, use, maintain, repair and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to other parts of the Project above the ceiling surfaces, below the floor surfaces, within the walls and in the central core areas, and to relocate any pipes, ducts, conduits, wires and appurtenant meters and equipment included in the Premises which are located in the Premises or located elsewhere outside the Premises, and to expand any buildings within the Project; (ii) to designate other land outside the current boundaries of the Project be a part of the Project, in which event the Parcel shall be deemed to include such additional land, and the Common Areas shall be deemed to include Common Areas upon such additional land; (iii) to add additional buildings and/or other improvements (including, without limitation, additional parking structures or extension of existing parking structures) to the Project, which may be located on land added to the Project pursuant to clause (ii) above; (iv) to make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscape areas and walkways; (v) to close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available; (vi) to use the Common Areas while engaged in making additional improvements, repairs or alterations to the Building or the Project, or any portion thereof; (vii) to grant the right to the use of the Exterior Common Area to the occupants of other improvements located on the Parcel; (viii) to designate the name, address, or other designation of the Building and/or Project, without notice or liability to Lessee; (ix) to close entrances, doors, corridors, elevators, escalators or other Building facilities or temporarily abate their operation; (x) to change or revise the business hours of the Building; and (xi) to do and performs such other acts and make such other changes in, to or with respect to the Common Areas, the Building or any other portion of the Project as Lessor deems to be appropriate in the exercise of its reasonable business judgment, provided that Lessor shall use reasonable efforts to avoid substantial interference with the conduct of Lessee’s normal business.

31. **EXHIBITS.** Exhibits and riders, if any, signed by the Lessor and the Lessee and endorsed on or affixed to this Lease are a part hereof.
32. **WAIVER.** No covenant, term or condition in this Lease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. Any waiver of the breach of any covenant, term or condition herein shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Lessor of any performance by Lessee after the time the same shall have become due shall not constitute a waiver by Lessor of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Lessor in writing. The acceptance by Lessor of any sum less than that which is required to be paid by Lessee shall be deemed to have been received only on account of the obligation for which it is paid (or for which it is allocated by Lessor, in Lessor’s absolute discretion, if Lessee does not designate the obligation as to which the payment should be credited), and shall not be deemed an accord and satisfaction notwithstanding any provisions to the contrary written on any check or contained in a letter of transmittal. Lessor’s efforts to mitigate damages caused by any default by Lessee shall not constitute a waiver of Lessor’s right to recover damages for any default by Lessee. No custom or practice which may arise between the parties hereto in the administration of the terms hereof shall be construed as a waiver or diminution of Lessor’s right to demand performance by Lessee in strict accordance with the terms of this Lease.

33. **NOTICES.** All notices, consents and demands which may or are to be required or permitted to be given by either party to the other hereunder shall be in writing. All notices, consents and demands by Lessor to Lessee shall be personally delivered, sent by overnight courier providing receipt of delivery (such as Federal Express), or sent by United States Certified Mail, postage prepaid return receipt requested, addressed to Lessee as designated in Article 1.1., or to such other place as Lessee may from time to time designate in a notice to Lessor pursuant to this Article 33. All notices and demands by Lessee to Lessor shall be personally delivered, sent by overnight courier providing receipt of delivery (such as Federal Express) or sent by United States Certified Mail, postage prepaid return receipt requested (provided that a copy of any such notice or demand so sent by United States Certified Mail shall be concurrently sent by Lessee to Lessor by facsimile transmission), addressed to Lessor as designated in Article 1.1., or to such other person or place as Lessor may from time to time designate in a notice to Lessee pursuant to this Article 33. Notices sent by overnight courier shall be drained delivered upon the next business day following deposit with such overnight courier for next business day delivery. Mailed notices shall be deemed delivered two (2) business days after deposit in the United States mail as required by this Article 33.

34. **JOINT OBLIGATIONS.** If Lessee consists of more than one person or entity, the obligations of each Lessee under this Lease shall be joint and several.

35. **MARGINAL HEADINGS.** The captions of paragraphs and articles of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

36. **TIME.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor except as to the delivery of possession of the Premises to Lessee.

37. **SUCCESSIONS AND ASSIGNS.** The covenants and conditions herein contained, subject to the provisions of Article 13, apply to and bind the heirs, successors, executors, administrators, legal representatives and assigns of the parties hereto.

38. **RECORDATION.** Upon request by Lessor, Lessee shall execute and acknowledge a short form of this Lease in form for recording which may be recorded at Lessor’s election. Lessee shall not record this Lease or a short form or memorandum hereof without the prior written consent of Lessor.

39. **QUIET POSSESSION.** Upon Lessee paying the Rentals reserved hereunder and observing and performing all of the covenants, conditions and provisions on Lessee’s part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire Term, subject to all the provisions of this Lease and subject to any ground or underlying leases, mortgages or deeds of trust now or hereafter affecting the Premises or the Building and the rights reserved by Lessor hereunder.

40. **LATE CHARGES; ADDITIONAL RENT AND INTEREST.**

a. **Late Charges.** Lessee acknowledges that late payment by Lessee to Lessor of Rentals or other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which are impracticable or extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by the terms of any mortgage or trust deed covering the Premises or any part of the Project. Accordingly, if any installment of Rentals or any other sum due from Lessee is not received by Lessor or Lessor’s designee within three (3) business days after the due date, then Lessee shall pay to Lessor, in each case, a late charge equal to eight percent (8%) of such overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the cost that Lessor will incur by reason of late payment by Lessee. Acceptance of any late charges by Lessor shall in no event constitute a waiver of Lessee’s default with respect to such overdue amount, nor prevent Lessor from exercising any of its other rights and remedies under this Lease.

b. **Rentals, Additional Rent and Interest.** All taxes, charges, costs, expenses, and other amounts which Lessee is required to pay hereunder, including without limitation, Lessee’s Percentage Share of Building Expenses, and all interest and charges (including late charges) that may accrue thereon upon Lessee’s failure to pay the same and all damages, costs and expenses which Lessor may incur by reason of any default by Lessee shall be deemed to be additional rent hereunder. Upon nonpayment by Lessee of any additional rent, Lessor shall have all the rights and remedies with respect thereto as Lessor has for the nonpayment of Base Rent. The term “Rentals” as used in this Lease is Base Rent and all additional rent. Any payment due from Lessee to Lessor (including but not limited to Base Rent and all additional rent) which is not paid within three (3) business days of when due shall bear interest from the date when due until paid, at an annual rate equal to the maximum rate that Lessor is allowed to contract for by law. Payment of such interest shall not excuse or cure any default by Lessee. In addition, Lessee shall pay all costs and attorneys’ fees incurred by Lessor in collection of such amounts. All Rentals and other moneys due under this Lease shall survive the Lease Termination. Interest on Rentals past due as provided herein shall be in addition to the late charges levied pursuant to 40.a. above. All Rentals shall be paid to Lessor, in lawful money of the United States of America which shall be legal tender at the time of payment, at the address of Lessor as provided herein, or to such other person or at such other place as Lessor may from time to time designate in writing. If at any time during the Term Lessee pays any Rentals by check which is returned for insufficient funds, Lessor shall have the right, in addition to any other rights or remedies Lessor may have hereunder, to require that Rentals thereafter be paid in cash or by cashier’s or certified check.

41. **PRIOR AGREEMENTS.** This Lease contains all of the agreements of the parties hereto with respect to the Premises, this Lease or any matter covered or mentioned in this Lease, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Lease
42. **INABILITY TO PERFORM.** This Lease and the obligations of the Lessee hereunder shall not be affected or impaired because the Lessor is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, Acts of God, or any other cause, similar or dissimilar, beyond the reasonable control of the Lessor.

43. **ATTORNEYS’ FEES.** If either party to this agreement shall bring an action to interpret or enforce this agreement or for any airily against the other, including, but not limited to, declaratory relief or a proceeding in arbitration, the losing party shall pay to the prevailing party a reasonable sum for attorney’s fees, expert witness fees and other costs incurred in such action or proceeding. Additionally, the prevailing party shall be entitled to all additional attorney’s fees and costs incurred in enforcing and collecting any such judgment or award. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorney’s fees and costs incurred in enforcing such award or judgment.

44. **SALE OF PREMISES BY LESSOR.** Upon a sale or conveyance by the Lessor herein named (and in case of any subsequent transfers or conveyances, the then grantor) of Lessor’s interest in the Building, or other than a transfer for security purposes only, the Lessor wherein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be relieved, from and after the date of such transfer, of all obligations and liabilities accruing thereafter on the part of Lessor, provided that any funds in the hands of Lessor or the then grantor at the time of transfer and in which Lessee has an interest, less any deductions permitted by law or this Lease, shall be delivered to Lessor’s successor. Following such sale or conveyance by Lessor or the then grantor, Lessor agrees to look solely to the responsibility of the successor-in-interest of Lessee in and to this Lease. This Lease shall not be affected by any such sale or conveyance and Lessor agrees to attorn to the purchaser or assignee.

45. **SUBORDINATION/ATTORNMENT.** This Lease shall automatically be subject and subordinate to all ground or underlying leases which now exist or may hereafter be executed affecting any portion of the Project and to the lien of any mortgages or deeds of trust (including all advances thereunder, renewals, replacements, modifications, supplements, consolidations, and extensions thereof) in any amount or amounts whatsoever now or hereafter placed on or against any portion of the Project, or on or against Lessor’s interest or estate therein, or on or against any ground or underlying lease, without the necessity of the execution and delivery of any farther instruments on the part of Lessee to effectuate such subordination. Lessee covenants and agrees to execute and deliver upon demand and without charge therefor, such further instruments evidencing the subordination of this Lease to such ground or underlying leases and/or to the lien of any such mortgages or deeds of trust as may be required by Lessor or a lender making a loan affecting the Project; provided that such mortgagee or beneficiary under such mortgage or deed of trust or lessor under such ground or underlying lease agrees in writing that so long as Lessee is not in default under this Lease, this Lease shall not be terminated in the event of any foreclosure or

termination of any ground or underlying lease. Failure of Lessee to execute such instruments evidencing subordination of this Lease shall constitute a default by Lessee under this Lease. If any mortgagee, beneficiary or lessor elects to have this Lease prior to the lien of its mortgage, deed of trust or lease, and shall give written notice thereof to Lessee, this Lease shall be deemed prior to such mortgage, deed of trust or lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust, or lease or the date of the recording thereof.

If any proceedings are brought to terminate any ground or underlying leases for foreclosure, or upon the exercise of the power of sale, under any mortgage or deed of trust covering any portion of the Project, Lessee shall attorn to the lessor or purchaser upon any such termination, foreclosure or sale and recognize such lessor or purchaser as the Lessor under this Lease. So long as Lessee is not in default hereunder and norm as required above, this Lease shall remain in full force and effect for the full term hereof after any such termination, foreclosure or sale.

46. **NAME.** Lessee shall not use any name, picture or representation of the Building or Project for any purpose other than as an address of the business to be conducted by the Lessee in the Premises.

47. **SEVERABILITY.** Any provision of this Lease which proves to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease and all such other provisions shall remain in full force and effect; however, if Lessee’s obligation to pay the Rentals is determined to be invalid or unenforceable, this Lease shall terminate at the option of Lessor.

48. **CUMULATIVE REMEDIES.** Except has otherwise expressly provided in this Lease, no remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

49. **CHOICE OF LAW.** This Lease shall be governed by the laws of the State of California.

50. **SIGNS.** Lessee shall not inscribe, paint, affix or place any sign, awning, canopy, advertising matter, decoration or lettering upon any portion of the Premises, including, without limitation, any exterior door, window or wall, without Lessor’s prior written consent. Subject in all events to the requirements of the City of Cupertino and other applicable governmental requirements and any other restrictions of record or to which the Project is subject, (a) Lessee shall be entitled to Building standard identification of Lessee upon the common Building lobby directory board sign to be installed by Lessor at Lessor’s cost; (b) Lessor shall, at Lessor’s cost, install Building standard signage identifying Lessee at the Premises entry. The exact location, size, materials, coloring and lettering of all Lessee signage shall be subject to Lessor’s prior written approval.

51. **GENDER AND NUMBER.** Wherever the context so requires, each gender shall include any other gender, and the singular number shall include the plural and vice-versa.

52. **CONSENTS.** Whenever the consent of Lessor is required herein, the giving or withholding of such consent in any one or any number of instances shall not limit or waive the need for such consent in any other or future instances. Any consent given by Lessor shall not be binding upon Lessor unless in writing and signed by Lessor or Lessor’s agents. Notwithstanding any other provision of this Lease, where Lessee is required to obtain the consent of Lessor to do any act, or to refrain from the performance of any act, Lessee agrees that if Lessee is in default with respect to any term, condition, covenant or provision of this Lease, then Lessor shall be deemed to have acted reasonably in withholding its consent if said consent is, in fact, withheld.

53. **BROKERS.** Lessee warrants that it has had no dealing with any real estate broker or agents in connection with the negotiation of this Lease excepting only the broker or agent designated in Article 1.m., and that it knows of no other real estate broker or agent who is entitled to or can claim a commission in connection with this Lease. Lessee agrees to indemnify, defend and hold Lessor harmless from and against any and all claims demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses) with respect to any alleged leasing commission or equivalent compensation alleged to be owing on account of Lessee’s dealings with any real estate broker or agent.
54. **SUBSURFACE AND AIRSPACE.** This Lease confers on Lessee no rights either with respect to the subsurface of the Parcel or with regard to airspace above the top of the Building or above any paved or landscaped areas on the Parcel or Common Area and Lessor expressly reserves the right to use such subsurface and airspace areas, including without limitation the right to perform construction work thereon and in regard thereto. Any diminution or shutting off of light, air or view by any structure which may be erected by Lessor on those portions of the Parcel, Common Area and/or Building reserved by Lessor shall in no way affect this Lease or impose any liability on Lessor. Lessor shall have the exclusive right to use all or any portion of the roof, side and rear walls of the Premises and Building for any purpose. Lessee shall have no right whatsoever to the exterior of the exterior walls or the roof of the Premises or any portion of the Project outside the Premises except as provided in Article 55 of this Lease.

55. **COMMON AREA.** For purposes of the Lease, “Common Area” shall collectively mean the following:

a. **Exterior Common Area.** That portion of the Parcel other than the land comprising the property, and all facilities and improvements on such portion for the non-exclusive use of Lessee in common with other authorized users, including, but not limited to, vehicle parking areas, driveways, sidewalks, landscaped areas, and the facilities and improvements necessary for the operation thereof (the “Exterior Common Area”); and

b. **Building Common Area.** That portion of the Building in which the Premises are located, and all of the facilities therein, set aside by Lessor for the non-exclusive use of Lessee in common with other authorized users, including, but not limited to, entrances, lobbies, halls, atriums, corridors, toilets and lavatories, passenger elevators and service areas (the “Building Common Area”).

Subject to the limitations and restrictions contained in this Lease, and the Rules and Regulations, Lessor grants to Lessee and Lessee’s Agents the nonexclusive right to use the Common Area in common with Lessor, Lessor’s agent, other occupants of the Building and Project, other authorized users and their agents, subject to the provisions of this Lease. The right to use the Common Area shall terminate upon Lease Termination.

56. **LABOR DISPUTES.** If Lessee becomes involved in or is the object of a labor dispute which subjects the Premises or any part of the Project to any picketing, work stoppage, or other concerted activity which in the reasonable opinion of Lessor is in any manner detrimental to the operation of any part of the Project, or its tenants, Lessor shall have the right to require Lessee, at Lessee’s own expense and within a reasonable period of time specified by Lessor, to use Lessee’s best efforts to either resolve such labor dispute or terminate or control any such picketing, work stoppage or other concerted activity to the extent necessary to eliminate any interference with the operation of the Project or its tenants. To the extent such labor dispute interferes with the performance of Lessor’s duties hereunder, Lessor shall be excused from the performance of such duties and Lessee hereby waives any and all claims against Lessor for damages or losses in regard to such duties. If Lessee fails to use its best efforts to so resolve such dispute or terminate or control such picketing, work stoppage or other concerted activity within the period of time specified by Lessor, Lessor shall have the right to terminate this Lease. Nothing contained in this Article 56 shall be construed as placing Lessor in an employer-employee relationship with any of Lessee’s employees or with any other employee who may be involved in such labor dispute. Lessee shall indemnify, defend and hold harmless Lessor from and against any and all liability (including, without limitation, attorneys’ fees and expenses) arising from any labor dispute in which Lessee is involved and which affects any part of the Project.

57. **CONDITIONS.** All agreements by Lessee contained in this Lease, whether expressed as covenants or conditions, shall be construed to be both covenants and conditions, conferring upon Lessor, upon breach thereof, the right to terminate this Lease.

58. **LESSEE’S FINANCIAL STATEMENTS.** Lessee hereby warrants that all financial statements delivered by Lessee to Lessor prior to the execution of this Lease by Lessee, or that shall be delivered in accordance wide the terms hereof, are or shall be at the time delivered true, correct, and complete, and prepared in accordance with generally accepted accounting principles. Lessee acknowledges and agrees that Lessor is relying on such financial statements in accepting this Lease, and that a breach of Lessee’s warranty as to such financial statements shall constitute a default by Lessee.

59. **LESSOR NOT A TRUSTEE.** Lessor shall not be deemed to be a trustee of any funds paid to Lessor by Lessee (or held by Lessor for Lessee) pursuant to this Lease. Lessor shall not be required to keep any such funds separate from Lessor’s general funds or segregated from any funds paid to Lessor by (or held by Lessor for) other tenants of the Building. Any funds held by Lessor pursuant to this Lease shall not bear interest.

60. **MERGER.** The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of the Lessor, terminate all or any existing subleases or subtenancies, or may, at the option of Lessor, operate as an assignment to it of any or all such subleases or subtenancies.

61. **NO PARTNERSHIP OR JOINT VENTURE.** Nothing in this Lease shall be construed as creating a partnership or joint venture between Lessor, Lessee, or any other party, or cause Lessor to be responsible for the debts or obligations of Lessee or any other party.

62. **LESSOR’S RIGHT TO PERFORM LESSEE’S COVENANTS.** Except as otherwise expressly provided herein, if Lessee fails at any time to make any payment or perform any other act on its part to be made or performed under this Lease, then upon ten (10) days written notice to Lessee (provided that no such notice shall be required in the event of an emergency), Lessor may, but shall not be obligated to, and without waiving or releasing Lessee from any obligation under this Lease, make such payment or perform such other act to the extent that Lessor may deem desirable, and in connection therewith, pay expenses and employ counsel. All sums so paid by Lessor and all penalties, interest and costs in connection therewith shall be due and payable by Lessee as additional rent upon demand.

63. **PLANS.** Lessee acknowledges that any plan of the Project which may have been displayed or furnished to Lessee or which may be a part of Exhibit A or Exhibit B is tentative; Lessor may from time to time change the shape, size, location, number, and extent of the improvements shown on any such plan and eliminate or add any improvements to the Project, in Lessor’s sole discretion.

64. **INTENTIONALLY DELETED.**

65. **WAIVER OF JURY.** LESSEE AND LESSEE HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY ON ANY CAUSE OF ACTION, CLAIM, COUNTER-CLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING AND/OR HEARING BROUGHT BY EITHER
66. **JOINT PARTICIPATION.** Lessor and Lessee hereby acknowledge that both parties have been represented by counsel in connection with this Lease and that both parties have participated in the negotiation and drafting of all of the terms and provisions hereof. By reason of this joint participation, no term or provision of this Lease will be construed against either party as the “drafter” thereof, which terms and provisions shall include, without limitation, Article 14 hereof.

67. **COUNTERPARTS.** This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

**IF THIS LEASE HAS BEEN FILLED IN, IT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE LESSOR OR THE REAL ESTATE BROKER OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTIONS RELATING THERETO.**

IN WITNESS WHEREOF, the parties hereto have entered into this Lease as of the date first written above.

**LESSOR:**

CUPERTINO CITY CENTER BUILDINGS,
a California limited partnership

By: PROM XX, INC., a California corporation, its general partner

By: PROMETHEUS REAL ESTATE GROUP, INC., a California corporation, agent for owner

By: /s/ Jackie Safier
Print Name: Jackie Safier
Its: President
Date: January 13, 2011

By: /s/ Blaine R. Emmons
Print Name: Blaine R. Emmons
Its: Vice President
Date: January 14, 2011

**LESSEE:**

SPLUNK, INC., a Delaware corporation

By: /s/ Godfrey Sullivan
Print Name: Godfrey Sullivan
Its: CEO
Date: January 12, 2011

By: /s/ Raman Kapur
Print Name: Raman Kapur
Its: VP, Finance
Date: January 12, 2011

**EXHIBIT “A”**

**FLOOR PLAN OF THE PREMISES**
EXHIBIT "B"

DEPICTION OF THE PROJECT
EXHIBIT “C”

WORK LETTER

Lessor shall cause, at Lessor’s sole cost and expense, the construction of certain improvements within the Premises as itemized below (the “Lessee Improvements”). The Lessee Improvements shall be constructed by Lessor or Lessor’s designated contractor using Building standard materials and in compliance with all applicable building codes. The Lessee Improvements consist of the following listed items:

1. Remove the first six (6) offices along the window line to create a more open office environment;
2. Remove the demising wall separating the kitchen from the open office area;
3. Recarpet affected areas after demolition;
4. Repair, if necessary, the supplemental HVAC tonnage in the server rooms (Lessor shall repair and replace such units for Lessee’s use throughout the Term);
5. Increase, if necessary, electrical supply in break room to no less than five (5) 20 amp dedicated circuits; and
6. Touch up paint as necessary.

EXHIBIT “D”

RULES AND REGULATIONS
1. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed or printed or affixed on or to any part of the outside or inside of the Building without prior written consent of Lessor. Lessor shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of Lessee. All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Lessee by a person approved of by Lessor. Lessee shall not place anything or allow anything to be places near the glass of any exterior window, door, partition or wall which may appear unsightly from outside the Premises. Lessee shall not, without prior written consent of Lessor cover or otherwise sunscreen any window.

2. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by Lessee or used by Lessee for any purpose other than for ingress or egress from its Premises.

3. Lessor will furnish Lessee, free of charge, with two keys to each door lock in the Premises. Lessor may make a reasonable charge for any additional keys. Lessee shall return all keys issued for the Premises. Lessee shall pay to Lessor the costs of re-keying Use Premises if all keys are not returned. Without Lessor’s prior approval and otherwise complying with the provisions of this Lease governing the making of Alterations, Lessee shall not alter any lock or install any new or additional locks or any bolts on any doors or windows of the Premises.

4. The Common Area toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Lessee who, or whose agents, officers, employees, contractors, servants, invitees or guests shall have caused it.

5. Lessee shall not overload the floor of the Premises or in any way deface the Premises or any part thereof. Lessor shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the time and manner of moving the same in and out of the Building. Safes and other heavy objects shall, if considered necessary by Lessor, stand on supports of such thickness as is necessary to properly distribute the weight. Lessor will not be responsible for loss of or damage to any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Lessee.

6. No furniture, freight or equipment of any kind shall be brought into the Building without prior notice to Lessor and all moving of the same into or out of the Building shall be done at such time and in such manner as Lessor shall designate. Unless otherwise agreed to in writing by Lessor, any such movement of furniture, freight, or equipment shall be made during non-business hours for the Building.

7. Lessee shall have the right to use the loading facilities provided at the Building, if any, in common with the other tenants. All Lessee deliveries of bulk items shall be through the Building loading facilities, if any. Freight elevator(s) will be available for use by all tenants in the Building, subject to such reasonable scheduling as Lessor, in its discretion, deems appropriate. Lessor shall have the right at its sole discretion to prohibit Lessee’s delivery through the main lobbies.

8. Lessee shall not use, keep or permit to be used or kept, any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Lessor or other occupants of the Building by reason of noise, odors or vibrations, or interfere in any way with other tenants or those having business therein, nor shall any animals or birds be in or kept in or about the Premises or Building (other than “seeing-eye” dogs or other animals providing assistance to disabled persons).

9. The Premises will not be used for lodging, storage of merchandise, washing clothes, or manufacturing of any kind, nor shall the Premises be used for any improper, immoral or objectionable purpose. No cooking will be done or permitted on the Premises without Lessor’s consent, except the use by Lessee of Underwriters Laboratory approved equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted, and the use of a microwave oven for employees use will be permitted, provided that such equipment and use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations.

10. Lessee shall not use or keep in the Premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material, or any method of heating or air conditioning other than supplied by Lessor.

11. Lessor shall approve in writing the method of attachment of any objects affixed to walls, ceilings or doors. Lessor will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for the wires will be allowed without the consent of Lessor. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Lessor. Lessee shall not install any wiring above the ceiling tiles that does not comply with the fire codes. Any such wiring shall be removed immediately at the expense of Lessee. Lessee will not affix any floor covering la the floor of the Premises in any manner except as approved by Lessor.

12. All cleaning and janitorial services for the Building and the Premises will be provided exclusively through Lessor, and except with the written consent of Lessor, no person or persons other than those approved by Lessor will be employed by Lessee or permitted to miter the Building for the purpose of cleaning the same.

13. Lessee will store all its trash and garbage within its Premises or in other facilities provided by Lessor. Lessee will not place in any trash box or receptacle any material which cannot be disposed of in Use ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal is to be made in accordance with directions issued from time to time by Lessor.

14. On Saturdays, Sundays and legal holidays, and on other days between the hours of 6:00 p.m. and 7:00 a.m. the following day, access to the Building, or to the halls, corridors, elevators or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the person or employee of the Building in charge and has a pass or is properly identified. Lessor shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, not, public excitement or other commotion, Lessor reserves the right to prevent access to the Building during the continuance of the same by closing the doors or otherwise, for the safety of the tenants and protection of the Building and of property in the Building.

15. Lessee will not waste electricity, water or air conditioning and agrees to cooperate fully with Lessor to assure the most effective operation of the Building’s heating and air conditioning and to comply with any governmental energy-saving rules, laws or regulations of which Lessee has actual notice, and will refrain from attempting to adjust controls. Lessee will keep corridor doors closed, and shall keep all window coverings pulled down.
16. Lessor reserves the right to exclude or expel from the Building any person who, in the judgment of Lessor, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building.

17. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of Lessor.

18. Lessor shall have the right, exercisable without notice and without liability to Lessee to change the name and street address of the Building or the Project.

19. Lessee shall not disturb, solicit or canvass any occupant of the Building or Project and shall cooperate to prevent the same.

20. Lessor shall have the right to control and operate the public portions of the Buildings and the public facilities, and heating and air conditioning, as well as facilities furnished for the common use of the tenants, in such manner as it deems best for the benefit of the tenants generally.

21. All entrance doors in the Premises shall be left locked when the Premises are not in use and all doors opening to public corridors shall be kept closed except for normal ingress or egress from the Premises.

22. Without the written consent of Lessor, Lessee shall not use the name of the Building or Project in connection with or in promoting or advertising the business of Lessee except at Lessee’s address.

23. Lessee shall place pads under all desk chairs, or have carpet coasters to protect carpeting.

24. The current “Building Hours” are between 7:00 a.m. to 6:00 p.m. on weekdays, Monday through Friday, except generally recognized Building holidays.

25. Lessee will not install any radio or television antenna, loudspeaker, satellite dishes or other devices on the roof(s) or exterior walls of the Building or the Project. Lessee will not interfere with radio or television broadcasting or reception from or in the Project or elsewhere. If Lessee desires telegraphic, telephonic, burglar alarm, satellite dishes, antennae or similar services, it will first obtain Lessor’s approval, and comply with, Lessor’s reasonable rules and requirements applicable to such services, which may include (without limitation) separate licensing by, and fees paid to, Lessor.

26. Lessee agrees to comply with all safety, fire protection and evacuation procedures and regulations established by Lessor or any governmental agency.

27. Lessee assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.

28. Lessor may prohibit smoking in the Building and/or any other portion of the Project and may require Lessee and any of its employees, agents, clients, customers, invitees and guests who desire to smoke, to smoke within designated smoking areas within the Project, if any such smoking areas are provided.

29. Lessee’s requirements will be attended to by Lessor only upon appropriate application to Lessor’s management office for the Project by an authorized individual of Lessee. Employees of Lessor will not perform any work or do anything outside of their regular duties unless under special instructions from Lessor, and no employee of Lessor will admit any person (Lessee or otherwise) to any office without specific instructions from Lessor.

30. In the event of any conflict between these Rules and Regulations and the Lease of which they are a part, the other provisions of the Lease shall prevail. Lessor may waive any one or more of these Rules and Regulations for the benefit of Lessee or any other tenant, but no such waiver by Lessor will be construed as a waiver of such Rules and Regulations in favor of Lessee or any other tenant, nor prevent Lessor from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Project.
1. ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

2. LOAN AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay Bank the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

2.1.1 Revolving Advances.

(a) Availability. Subject to the terms and conditions of this Agreement and to deduction of Reserves, Bank shall make Advances not exceeding the Availability Amount. Amounts borrowed hereunder may be repaid and, prior to the Revolving Line Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein.

(b) Streamline Period. Borrower may, at its option, elect not to have any Advances outstanding during specified periods of time (each, a “Streamline Period”). At least ten (10) days prior to requesting that a Streamline Period be put into effect, Borrower shall give Bank written notice thereof, specifying the date the Streamline Period is to begin. On or prior to the Business Day immediately preceding the commencement of the Streamline Period, Borrower will pay to Bank, by wire transfer, an amount sufficient to repay in full all outstanding Advances, all accrued interest thereon, and all other outstanding monetary Obligations. A Streamline Period may be put into effect if (i) there are no outstanding Obligations on the Revolving Line, or (ii) Borrower’s Quick Ratio is greater than 1.50 to 1.00. During a Streamline Period, Borrower may not request any Advances, and Bank shall have no obligation to make any Advances. To terminate a Streamline Period, Borrower shall provide Bank at least thirty (30) days prior written notice thereof together with a Transaction Report and such information relating to the Eligible Accounts, and other Collateral as Bank may specify.

(c) Termination; Repayment. The Revolving Line terminates on the Revolving Line Maturity Date, when the principal amount of all Advances; the unpaid interest thereon, and all other Obligations relating to the Revolving Line shall be immediately due and payable.

2.1.2 Letters of Credit Sublimit.

(a) As part of the Revolving Line, Bank shall issue or have issued Letters of Credit denominated in Dollars or a Foreign Currency for Borrower’s account. The aggregate Dollar Equivalent amount utilized for the issuance of Letters of Credit shall at all times reduce the amount otherwise available for Advances under the Revolving Line. The Dollar Equivalent of the face amount of outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit) may not exceed the lesser of One Million Dollars ($1,000,000) or the Availability Amount.

(b) If, on the Revolving Line Maturity Date (or the effective date of any termination of this Agreement), there are any outstanding Letters of Credit, then on such date Borrower shall provide to Bank cash collateral in an amount equal to 105% of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment), to secure all of the Obligations relating to such Letters of Credit. All Letters of Credit shall be in form and substance acceptable to Bank in its sole discretion and shall be subject to the terms and conditions of Bank’s standard Application and Letter of Credit Agreement (the “Letter of Credit Application”). Borrower agrees to execute any further documentation in connection with the Letters of Credit as Bank may reasonably request. Borrower further agrees to be bound by the regulations and interpretations of the issuer of any Letters of Credit guaranteed by Bank and opened for Borrower’s account or by Bank’s interpretations of any Letter of Credit issued by Bank for Borrower’s account, and Borrower understands and agrees that Bank shall not be liable for any error, negligence, or mistake, whether of omission or commission, in following Borrower’s instructions or those contained in the Letters of Credit or any modifications, amendments, or supplements thereto.

(c) The obligation of Borrower to immediately reimburse Bank for drawings made under Letters of Credit shall be absolute, unconditional, and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, such Letters of Credit, and the Letter of Credit Application.

2.1.3 Foreign Exchange Sublimit. As part of the Revolving Line, Borrower may enter into foreign exchange contracts with Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency (each, a “FX Forward Contract”) on a specified date (the “Settlement Date”). FX Forward Contracts shall have a Settlement Date of at least one (1) FX Business Day after the contract date and shall be subject to a reserve of ten percent (10%) of each outstanding FX Forward Contract (the “FX Reserve”). The aggregate amount of FX Forward Contracts at any one time may not exceed ten (10) times the lesser of One Million Dollars ($1,000,000) or the Availability Amount. The amount otherwise available for Credit Extensions under the Revolving Line shall be reduced by an amount equal to ten percent (10%) of each outstanding FX Forward Contract (the “FX Reduction Amount”). Any amounts needed to fully
2.1.4 Cash Management Services Sublimit. Borrower may use up to the lesser of (1) One Million Dollars ($1,000,000) or (ii) the Availability Amount of the Revolving Line for Bank’s cash management services which may include merchant services, direct deposit of payroll, business credit card, and check cashing services identified in Bank’s various cash management services agreements (collectively, the “Cash Management Services”).

2.2 Overadvances. If, at any time, the total of all outstanding Obligations exceeds the Availability Amount (such sum being an “Overadvance”) Borrower shall immediately pay to Bank in cash such Overadvance. Without limiting Borrower’s obligation to repay Bank any amount of the Overadvance, Borrower agrees to pay Bank interest on the outstanding amount of any Overadvance, on demand, at the Default Rate.

2.3 Payment of interest on the Credit Extensions.

(a) Advances. Subject to Section 2.3(b), the principal amount outstanding under the Revolving Line shall accrue interest at a floating per annum rate equal to the Prime Rate, plus four percent (4.00%), which interest shall be payable monthly in accordance with Section 2.3(e) below.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is five percentage points (5.00%) above the rate that is otherwise applicable thereto (the “Default Rate”) unless Bank otherwise elects from time to time in its sole discretion to impose a smaller increase. Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(c) Adjustment to Interest Rate. Changes to the interest rate of any Credit Extension based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of any such change.

(d) Debit of Accounts. Bank may debit any of Borrower’s deposit accounts, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes Bank when due. These debits shall not constitute a set-off.

(e) Payment; Interest Computation; Float Charge. Interest is payable monthly on the last calendar day of each month and shall be computed on the basis of a 360-day year for the actual number of days elapsed. In computing interest, (i) all Payments received after 12:00 p.m. Pacific time on any day shall be deemed received at the opening of business on the next Business Day, and (ii) the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension. In addition, Bank shall be entitled to charge Borrower a “float” charge in an amount equal to two (2) Business Days interest, at the interest rate applicable to the Advances whether or not any Advances are outstanding, on all Payments received by Bank. Such float charge is not included in interest for purposes of computing Minimum Monthly Interest (if any) under this Agreement. The float charge for each month shall be payable on the last day of the month. Bank shall not, however, be required to credit Borrower’s account for the amount of any item of payment which is unsatisfactory to Bank in its good faith business judgment, and Bank may charge Borrower’s Designated Deposit Account for the amount of any item of payment which is returned to Bank unpaid.

2.4 Fees. Borrower shall pay to Bank:

(a) Commitment Fee. A fully earned, non-refundable commitment fee of Twenty Five Thousand Dollars ($25,000) (the “Commitment Fee”), on the Effective Date;

(b) Good Faith Deposit. Borrower has paid to Bank a good faith deposit of Fifteen Thousand Dollars ($15,000) (the “Good Faith Deposit”) to initiate Bank’s due diligence review process. Bank shall apply the Good Faith Deposit to the Bank Expenses and shall apply any remaining portion of the Good Faith Deposit to the Commitment Fee;

(c) Letter of Credit Fee. Bank’s customary fees and expenses for the issuance or renewal of Letters of Credit, upon the issuance of such Letter of Credit, each anniversary of the issuance during the term of such Letter of Credit, and upon the renewal of such Letter of Credit by Bank;

(d) Termination Fee. Subject to the terms of Section 12.1, a termination fee;

and

(e) Bank Expenses. All Bank Expenses (including reasonable attorneys’ fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

2.5 Payments; Application of Payments.

(a) All payments (including prepayments) to be made by Borrower under any Loan Document shall be made in immediately available funds in U.S. Dollars, without setoff or counterclaim, before 12:00 p.m. Pacific time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Pacific time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.
3. **CONDITIONS OF LOANS**

3.1 **Conditions Precedent to Initial Credit Extension.** Bank’s obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:

   (a) duly executed original signatures to the Loan Documents;
   (b) duly executed original signatures to the Control Agreement;
   (c) Borrower’s Operating Documents and a good standing certificate of Borrower certified by the Secretary of State of the State of Delaware as of a date no earlier than thirty (30) days prior to the Effective Date;
   (d) duly executed original signatures to the completed Borrowing Resolutions for Borrower;
   (e) duly executed original signatures to the Intercreditor Agreement;
   (f) certified copies, dated as of a recent date, of financing statement searches, as Bank shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;
   (g) the Perfection Certificate of Borrower, together with the duly executed original signature thereto;
   (h) evidence satisfactory to Bank that the insurance policies required by Section 6.7 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and/or additional insured clauses or endorsements in favor of Bank; and
   (i) payment of the fees and Bank Expenses then due as specified in Section 2.4 hereof.

3.2 **Conditions Precedent to all Credit Extensions.** Bank’s obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

   (a) except as otherwise provided in Section 3.4, timely receipt of an executed Transaction Report;
   (b) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the date of the Transaction Report and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower’s representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; and
   (c) in Bank’s sole discretion, there has not been a Material Adverse Change.

3.3 **Covenant to Deliver.** Borrower agrees to deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower’s obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank’s sole discretion.

3.4 **Procedures for Borrowing.** Subject to the prior satisfaction of all other applicable conditions to the making of an Advance set forth in this Agreement, to obtain an Advance (other than Advances under Section 2.1.2 or 2.1.4), Borrower shall notify Bank (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 noon Pacific time on the Funding Date of the Advance. Together with such notification, Borrower must promptly deliver to Bank by electronic mail or facsimile a completed Transaction Report executed by a Responsible Officer or his or her designee. Bank shall credit Advances to the Designated Deposit Account. Bank may make Advances under this Agreement based on instructions from a Responsible Officer or his or her designee or without instructions if the Advances are necessary to meet Obligations which have become due. Bank may rely on any telephone notice given by a person whom Bank believes is a Responsible Officer or designee.

4. **CREATION OF SECURITY INTEREST**

4.1 **Grant of Security Interest.** Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

4.2 **Priority of Security Interest.** Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens that may have superior priority to Bank’s Lien under this Agreement). If Borrower shall acquire a commercial tort claim, Borrower shall promptly notify Bank in a writing signed by Borrower of the general
details thereof and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank.

If this Agreement is terminated, Bank’s Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations and at such time as Bank’s obligation to make Credit Extensions has terminated, Bank shall, at Borrower’s sole cost and expense, release its Liens in the Collateral and all rights therein shall revert to Borrower.

4.3 Authorization to File Financing Statements. Borrower hereby authorizes Bank to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Bank’s interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Bank under the Code. Such financing statements may indicate the Collateral as “all assets of the Debtor” or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Bank’s discretion.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

5.1 Due Organization, Authorization; Power and Authority. Borrower is duly existing and in good standing as a Registered Organization in the State of Delaware and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower’s business. In connection with this Agreement, Borrower has delivered to Bank a completed certificate signed by Borrower, entitled “Perfection Certificate”. Borrower represents and warrants to Bank that (a) Borrower’s exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower’s organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower’s place of business, or, if more than one, its chief executive office as well as Borrower’s mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement).

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower’s organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower’s business.

5.2 Collateral. Borrower has good title to, has rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no deposit accounts other than the deposit accounts with Bank, the deposit accounts, if any, described in the Perfection Certificate delivered to Bank in connection herewith, or of which Borrower has given Bank notice and taken such actions as are necessary to give Bank a perfected security interest therein. The Accounts are bona fide, existing obligations of the Account Debtors.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2. All Inventory is in all material respects of good and marketable quality, free from material defects.

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licenses granted to its customers in the ordinary course of business, (b) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate. Each issued Patent which it owns or purports to own and which is material to Borrower’s business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower’s business has been judged invalid or unenforceable, in whole or in part. To the best of Borrower’s knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower’s business.

Except as noted on the Perfection Certificate, Borrower is not a party to, nor is it bound by, any Restricted License.

5.3 Accounts Receivable.

(a) For each Account with respect to which Advances are requested, on the date each Advance is requested and made, such Account shall be an Eligible Account.

(b) All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Eligible Accounts are and shall be true and correct and all such invoices, instruments and other documents, and all of Borrower’s Books are genuine and in all respects what they purport to be. Whether or not an Event of Default has occurred and is continuing, Bank may notify any Account Debtor owing Borrower money of Bank’s security interest in such funds and verify the amount of such Eligible Account. All sales and other transactions underlying or giving rise to each Eligible Account shall comply in all material respects with all applicable laws and governmental rules and regulations. Borrower has no knowledge of any actual or imminent Insolvency Proceeding of any Account Debtor whose accounts are Eligible Accounts in any Transaction Report. To the best of Borrower’s knowledge,
5.4 Litigation. There are no actions or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving more than, individually or in the aggregate, Two Hundred Fifty Thousand Dollars ($250,000).

5.5 Financial Statements; Financial Condition. All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank fairly present in all material respects Borrower’s consolidated financial condition and Borrower’s consolidated results of operations. There has not been any material deterioration in Borrower’s consolidated financial condition since the date of the most recent financial statements submitted to Bank.

5.6 Solvency. The fair salable value of Borrower’s assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities; Borrower is not left, with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

5.7 Regulatory Compliance. Borrower is not an “investment company” or a company “controlled” by an “investment company” under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a “holding company” or an “affiliate” of a “holding company” or a “subsidiary company” of a “holding company” as each term is defined and used in the Public Utility Holding Company Act of 2005. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a material adverse effect on its business. None of Borrower’s or any of its Subsidiaries’ properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower’s knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

5.8 Subsidiaries; Investments. Borrower does not own any stock, partnership interest or other equity securities except for Permitted Investments.

5.9 Tax Returns and Payments; Pension Contributions. Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower. Borrower may defer payment of any contested taxes, provided that Borrower (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Bank in writing of the commencement of, and any material development in, the proceedings, or (c) posts bonds or takes any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a “Permitted Lien”. Borrower is unaware of any claims or adjustments proposed for any of Borrower’s prior tax years which could result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

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

5.11 Full Disclosure. No written representation, warranty or other statement of Borrower in any certificate or written statement given to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.12 Definition of “Knowledge.” For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower’s knowledge or awareness, to the “best of Borrower’s knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge of the Responsible Officers or such level of knowledge or awareness as would be obtained or should have been known at the time by a prudent business person under substantially similar circumstance after reasonable investigation.

6. AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

6.1 Government Compliance.

(a) Maintain its and all its Subsidiaries’ legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower’s business or operations. Borrower shall comply, and have each Subsidiary comply, with all laws, ordinances and regulations to which it is subject, noncompliance with which could have a material adverse effect on Borrower’s business.

(b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank in all of its property. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank.

6.2 Financial Statements, Reports, Certificates. Provide Bank with the following:
(a) weekly, a Transaction Report (and any schedules related thereto); provided, however, during any Streamline Period, provided no Event of Default has occurred and is continuing, Borrower shall provide the Transaction Report on a monthly basis, within fifteen (15) days after the end of each month;

(b) within fifteen (15) days after the end of each month, (A) monthly accounts receivable agings, aged by invoice date, (B) monthly accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, and (C) monthly reconciliations of accounts receivable agings (aged by invoice date), transaction reports and general ledger;

(c) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated balance sheet, income statement and cash flow statement, covering Borrower’s consolidated operations for such month certified by a Responsible Officer and in a form acceptable to Bank (the “Monthly Financial Statements”);

(d) within thirty (30) days after the last day of each month and together with the Monthly Financial Statements, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Bank shall reasonably request, including, without limitation, a statement that at the end of such month there were no held checks;

(e) within thirty (30) days prior to the end of each fiscal year of Borrower, (A) annual operating budgets (including income statements, balance sheets and cash flow statements, by month) for the upcoming fiscal year of Borrower, and (B) annual financial projections for the following fiscal year (on a quarterly basis) as approved by Borrower’s board of directors, together with any related business forecasts used in the preparation of such annual financial projections; and

(f) as soon as available, and in any event within one hundred eighty (180) days following the end of Borrower’s fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Bank in its reasonable discretion.

(g) in the event that Borrower becomes subject to the reporting requirements under the Exchange Act within five (5) days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower’s website on the Internet at Borrower’s website address;

(h) within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower’s security holders or to any holders of Subordinated Debt or the TriplePoint Indebtedness;

(i) prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, Two Hundred Fifty Thousand Dollars ($250,000) or more; and

(j) any other financial information reasonably requested by Bank.

6.3 Accounts Receivable.

(a) Schedules and Documents Relating to Accounts. Borrower shall deliver to Bank transaction reports and schedules of collections, as provided in Section 6.2, on Bank’s standard forms; provided, however, that Borrower’s failure to execute and deliver the same shall not affect or limit Bank’s Lien and other rights in all of Borrower’s Accounts, nor shall Bank’s failure to advance or lend against a specific Account affect or limit Bank’s Lien and other rights therein. If requested by Bank, Borrower shall furnish Bank with copies (or, at Bank’s request, originals) of all contracts, orders, invoices, and other similar documents, and all shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to such Accounts. In addition, Borrower shall deliver to Bank, on its request, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary indorsements, and copies of all credit memos.

(b) Disputes. Borrower shall promptly notify Bank of all disputes or claims relating to Accounts. Borrower may forgive (completely or partially), compromise, or settle any Account for less than payment in full, or agree to do any of the foregoing so long as (i) Borrower does so in good faith, in a commercially reasonable manner, in the ordinary course of business, in arm’s-length transactions, and reports the same to Bank in the regular reports provided to Bank; (ii) no Event of Default has occurred and is continuing; and (iii) after taking into account all such discounts, settlements and forgiveness, the total outstanding Obligations will not exceed the lesser of the Revolving Line or the Borrowing Base.

(c) Collection of Accounts. Borrower shall have the right to collect all Accounts, unless and until an Event of Default has occurred and is continuing. Bank shall require that all proceeds of Accounts be deposited by Borrower into a lockbox account, or such other “blocked account” as specified by Bank, pursuant to a blocked account agreement in such form as Bank may specify in its good faith business judgment. All funds in the blocked account shall be applied to reduce the Obligations on a daily basis. For purposes of interest calculations, collections deposited into the blocked account will be deemed applied two (2) days after receipt of such amounts by Bank.

(d) Returns. Provided no Event of Default has occurred and is continuing, if any Account Debtor returns any Inventory to Borrower, Borrower shall promptly (i) determine the reason for such return, (ii) issue a credit memorandum to the Account Debtor in the appropriate amount, and (iii) provide a copy of such credit memorandum to Bank, upon request from Bank. In the event any returned return occurs after the occurrence and during the continuance of any Event of Default, Borrower shall hold the returned Inventory in trust for Bank, and immediately notify Bank of the return of the Inventory.
6.4 Remittance of Proceeds. Except as otherwise provided in Section 6.3(c), deliver, in kind, all proceeds arising from the disposition of any Collateral to Bank in the original form in which received by Borrower not later than the following Business Day after receipt by Borrower, to be applied to the Obligations (a) prior to an Event of Default, pursuant to the terms of Section 2.5(b) hereof, and (b) after the occurrence and during the continuance of an Event of Default, pursuant to the terms of Section 9.4 hereof; provided that, if no Event of Default has occurred and is continuing, Borrower shall not be obligated to remit to Bank the proceeds of the sale of worn out or obsolete Equipment disposed of by Borrower in good faith in an arm’s length transaction for an aggregate purchase price of Twenty Five Thousand Dollars ($25,000) or less (for all such transactions in any fiscal year). Borrower agrees that it will not commingle proceeds of Collateral with any of Borrower’s other funds or property, but will hold such proceeds separate and apart from such other funds and property and in an express trust for Bank. Nothing in this subsection limits the restrictions on disposition of Collateral set forth elsewhere in this Agreement.

6.5 Taxes; Pensions. Timely file, and require each of its Subsidiaries to timely pay, all required tax returns and reports and timely pay, and require each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.9 hereof, and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

6.6 Access to Collateral; Books and Records. At reasonable times, on one (1) Business Day’s notice (provided no notice is required if an Event of Default has occurred and is continuing), Bank, or its agents, shall have the right to inspect the Collateral and the right to audit and copy Borrower’s Books. Provided no Event of Default has occurred and is continuing, such audits shall be conducted no more than twice every twelve (12) months or more frequently as conditions warrant. The foregoing inspections and audits shall be at Borrower’s expense, and the charge therefor shall be $750 per person per day (or such higher amount as shall represent Bank’s then-current standard charge for the same), plus reasonable out-of-pocket expenses. In the event of any failure by Borrower and Bank to schedule an audit more than ten (10) days in advance, and Borrower cancels or seeks to reschedules the audit with less than ten (10) days written notice to Bank, then (without limiting any of Bank’s rights or remedies), Borrower shall pay Bank a fee of $1,000 plus any out-of-pocket expenses incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling.

6.7 Insurance. Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower’s industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are satisfactory to Bank. All property policies shall have a lender’s loss payable endorsement showing Bank as the lender loss payee and waive subrogation against Bank. All liability policies shall show, or have endorsements showing, Bank as an additional insured. All policies (or the loss payable and additional insured endorsements) shall provide that the insurer shall give Bank at least twenty (20) days notice before canceling, amending, or declining to renew its policy. At Bank’s request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any property policy shall, at Bank’s option, be payable to Bank on account of the Obligations. If Borrower fails to obtain insurance as required under this Section 6.7 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 6.7, and take any action under the policies Bank deems prudent.

6.8 Operating Accounts.

(a) Maintain its primary operating and other deposit accounts and securities accounts with Bank and Bank’s Affiliates.

(b) Provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank’s Affiliates. For each Collateral Account that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank’s Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower’s employees and identified to Bank by Borrower as such.

6.9 Financial Covenants. Maintain at all times, to be tested as of the last day of each quarter, unless otherwise noted, on a consolidated basis with respect to Borrower:

(a) Minimum Bookings. Consummate new contracts during each such quarter having a Total Contract Value of not less than the following amounts:

<table>
<thead>
<tr>
<th>Period</th>
<th>Minimum Bookings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective Date through March 31, 2009</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>April 1, 2009 through June 30, 2009</td>
<td>$6,000,000</td>
</tr>
<tr>
<td>July 1, 2009 through September 30, 2009</td>
<td>$7,000,000</td>
</tr>
</tbody>
</table>
NEGATIVE COVENANTS

7. Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, “Transfer”), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment; and (c) in connection with Permitted Liens and Permitted Investments.

7.2 Changes in Business, Ownership, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; or (c) enter into any transaction or series of related transactions in which the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own more than forty-nine percent (49%) of the voting stock of Borrower immediately after giving effect to such transaction or related series of such transactions (other than by the sale of Borrower’s equity securities in a public offering or to venture capital investors so long as Borrower identifies to Bank the venture capital investors prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction). Borrower shall not, without at least thirty (30) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Ten Thousand Dollars ($10,000) in Borrower’s assets or property) or deliver any portion of the Collateral valued, individually or in excess of Ten Thousand Dollars ($10,000) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate; (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Ten Thousand Dollars ($10,000) to a bailee at a location other than as provided in the Perfection Certificate, Borrower will first receive the written consent of Bank, and such bailee shall execute and deliver a bailee agreement in form and substance satisfactory to Bank in its sole discretion.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person. A Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

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

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of the Collateral, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein (subject only to Permitted Liens that may have superior priority to Bank’s Lien under this Agreement), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting
7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.8 hereof.

7.7 Distributions; Investments. (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock provided that (i) Borrower may pay dividends solely in common stock and (ii) Borrower may repurchase the stock of former employees or consultants pursuant to stock repurchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, provided such repurchases do not exceed in the aggregate the Two Hundred Fifty Thousand Dollars ($250,000) per fiscal year; or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.8 Transactions with Affiliates. Except as set forth in Schedule 7.8 attached hereto, directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for transactions that are in the ordinary course of Borrower’s business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm’s length transaction with a non-affiliated Person.

7.9 Subordinated Debt; TriplePoint Indebtedness. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to Bank or (c) amend any provision in any TriplePoint Loan Document in any manner which is prohibited under the Intercreditor Agreement.

7.10 Compliance. Become an “investment company” or a company controlled by an “investment company”, under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower’s business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an “Event of Default”) under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Revolving Line Maturity Date). Notwithstanding the foregoing, during the cure period, the failure to make or pay any payment specified under clause (a) or (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

(a) Borrower fails or neglects to perform any obligation in Sections 6.2, 6.5, 6.7, 6.8, or violates any covenant in Section 7;

(b) Borrower fails or neglects to perform its obligations in Section 6.11 and has failed to cure the default within five (5) days after the occurrence thereof; or

(c) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot be cured without such ten (10) day cure period or cannot be cured after diligent attempts by Borrower to cure the default, the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants set forth in clause (a) above;

8.3 [Reserved].

8.4 Attachment; Levy; Restraint on Business.

(a) (i) the service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary) on deposit or otherwise maintained with Bank or any Bank Affiliate, or (ii) a notice of lien or levy is filed against any of Borrower’s assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

(b) (i) any material portion of Borrower’s assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting any material part of its business;
8.5 **Insolvency.** (a) Borrower is unable to pay its debts (including trade debts) as they become due; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while of any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

8.6 **Other Agreements.** There is, under any agreement to which Borrower is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Two Hundred Fifty Thousand Dollars ($250,000); or (b) any default by Borrower, the result of which could have a material adverse effect on Borrower’s business;

8.7 **Judgments.** One or more final judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least One Million Dollars ($1,000,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower and the same are not, within ten (10) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the discharge, stay, or bonding of such judgment, order, or decree);

8.8 **Misrepresentations.** Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made; or

8.9 **Subordinated Debt.** Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the

Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement or the Intercreditor Agreement.

9. **BANK’S RIGHTS AND REMEDIES**

9.1 **Rights and Remedies.** While an Event of Default occurs and continues Bank may, without notice or demand, do any or all of the following:

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

(b) stop advancing money or extending credit for Borrower’s benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) demand that Borrower (i) deposit cash with Bank in an amount equal to 105% of the Dollar Equivalent of the aggregate face amount of all Letters of Credit remaining undrawn (plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;

(d) terminate any FX Forward Contracts;

(e) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, notify any Person owing Borrower money of Bank’s security interest in such funds, and verify the amount of such account;

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral, Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank’s rights or remedies;

(g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower;

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

(i) place a “hold” on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower’s Books; and

(k) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).
9.2 **Power of Attorney.** Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower’s name on any checks or other forms of payment or security; (b) sign Borrower’s name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Bank determines reasonable; (d) make, settle, and adjust all claims under Borrower’s insurance policies; (e) pay, contest or settle any lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Bank or a third party as the Code permits. Borrower hereby appoints Bank as its lawful attorney-in-fact to sign Borrower’s name on any documents necessary to perfect or continue the perfection of Bank’s security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full and Bank is under no further obligation to make Credit Extensions hereunder. Bank’s foregoing appointment as Borrower’s attorney in fact, and all of Bank’s rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and Bank’s obligation to provide Credit Extensions terminates.

9.3 **Protective Payments.** If Borrower fails to obtain the insurance called for by Section 6.7 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank’s waiver of any Event of Default.

9.4 **Application of Payments and Proceeds.** If an Event of Default has occurred and is continuing, Bank may apply any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations in such order as Bank shall determine in its sole discretion. Any surplus shall be paid to Borrower by credit to the Designated Deposit Account or to other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. If Bank, in its good faith business judgment, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

9.5 **Bank’s Liability for Collateral.** So long as Bank complies with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Bank, Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 **No Waiver; Remedies Cumulative.** Bank’s failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereunder to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank’s rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank’s exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank’s waiver of any Event of Default is not a continuing waiver. Bank’s delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 **Demand Waiver.** Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

10. **NOTICES**

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: Splunk Inc. 250 Brannan Street, 2nd Floor San Francisco, California 94107 Attn: Phil Oreste Fax: Email:

If to Bank: Silicon Valley Bank 2400 Hanover Street Palo Alto, California 94303-3306 Attn: Albert Martinez Fax: Email:

11. **CHOICE OF LAW, VENUE, JURY TRIAL WAIVER AND JUDICIAL REFERENCE**
A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES’ AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with the California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

12. GENERAL PROVISIONS

12.1 Termination Prior to Revolving Line Maturity Date. This Agreement may be terminated prior to the Revolving Line Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Notwithstanding any such termination, Bank’s lien and security interest in the Collateral shall continue until Borrower fully satisfies its Obligations. If such termination is at Borrower’s election or at Bank’s election due to the occurrence and continuance of an Event of Default, Borrower shall pay to Bank, in addition to the payment of any other expenses or fees then-owing, a termination fee in an amount equal to one percent (1.00%) of the Revolving Line provided that no termination fee shall be charged if the credit facility hereunder is replaced with a new facility from another division of Bank.

12.2 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank’s prior written consent (which may be granted or withheld in Bank’s discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank’s obligations, rights, and benefits under this Agreement and the other Loan Documents.

12.3 Indemnification. Borrower agrees to indemnify, defend and hold Bank and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Bank (each, an “Indemnified Person”) harmless against: (a) all obligations, demands, claims, and liabilities (collectively, “Claims”) claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (b) all losses or expenses (including Bank Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Bank and Borrower (including reasonable attorneys’ fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person’s gross negligence or willful misconduct.

12.4 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

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

12.6 Correction of Loan Documents. Bank may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties.

12.7 Amendments in Writing; Waiver; Integration. No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any
controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a
account receivable and other sums owing to Borrower.

As used in this Agreement, the following capitalized terms have the following meanings:

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

12.9 **Survival.** All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Borrower in Section 12.3 to indemnify Bank shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.10 **Confidentiality.** In handling any confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank’s Subsidiaries or Affiliates; (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, Bank shall use its best efforts to obtain any prospective transferee’s or purchaser’s agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to Bank’s regulators or as otherwise required in connection with Bank’s examination or audit; (e) as Bank considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Bank’s possession when disclosed to Bank, or becomes part of the public domain after disclosure to Bank; or (ii) disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

Bank may use confidential information for the development of databases, reporting purposes, and market analysis so long as such confidential information is aggregated and anonymized prior to distribution unless otherwise expressly permitted by Borrower. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

12.11 **Attorneys’ Fees, Costs and Expenses.** In any action or proceeding between Borrower and Bank arising out of or relating to the Loan Documents, the prevailing party shall be entitled to recover its reasonable attorneys’ fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

12.12 **Electronic Execution of Documents.** The words “execution,” “signed,” “signature” and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

12.13 **Captions.** The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

12.14 **Construction of Agreement.** The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

12.15 **Relationship.** The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm’s-length contract.

12.16 **Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

13. **DEFINITIONS**

13.1 **Definitions.** As used in the Loan Documents, the word “shall” is mandatory, the word “may” is permissive, the word “or” is not exclusive, the words “includes” and “including” are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

- **Account** is any “account” as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

- **Account Debtor** is any “account debtor” as defined in the Code with such additions to such term as may hereafter be made.

- **Advance** or “Advances” means an advance (or advances) under the Revolving Line.

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

- **Agreement** is defined in the preamble hereof.
“Availability Amount” is (a) the lesser of (i) the Revolving Line or (ii) the amount available under the Borrowing Base, minus (b) the Dollar Equivalent amount of all outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit), minus (c) the FX Reduction Amount, minus (d) any amounts used for Cash Management Services, and minus (e) the outstanding principal balance of any Advances.

“Bank” is defined in the preamble hereof.

“Bank Expenses” are all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.

“Borrower” is defined in the preamble hereof.

“Borrower’s Books” are all Borrower’s books and records including ledgers, federal and state tax returns, records regarding Borrower’s assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“Borrowing Base” is eighty percent (80%) of Eligible Accounts as determined by Bank from Borrower’s most recent Transaction Report; provided, however, that Bank may decrease the foregoing percentage in its good faith business judgment based on events, conditions, contingencies, or risks which, as determined by Bank, may adversely affect Collateral.

“Borrowing Resolutions” are, with respect to any Person, those resolutions substantially in the form attached hereto as Exhibit D.

“Business Day” is any day that is not a Saturday, Sunday or a day on which Bank is closed.

“Cash Equivalents” means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc.; and (c) Bank’s certificates of deposit issued maturing no more than one (1) year after issue.

“Cash Management Services” is defined in Section 2.1.4.

“Code” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“Collateral” is any and all properties, rights and assets of Borrower described on Exhibit A.

“Collateral Account” is any Deposit Account, Securities Account, or Commodity Account.

“Commodity Account” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made.

“Compliance Certificate” is that certain certificate in the form attached hereto as Exhibit B.

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

“Control Agreement” is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

“Copyrights” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“Credit Extension” is any Advance, Letter of Credit, FX Forward Contract, amount utilized for Cash Management Services, or any other extension of credit by, Bank for Borrower’s benefit.

“Current Liabilities” are all obligations and liabilities of Borrower to Bank, plus, without duplication, the aggregate amount of Borrower’s Total Liabilities that mature within one (1) year.

“Default Rate” is defined in Section 2.3(b).
“Deferred Revenue” is all amounts received or invoiced in advance of performance under contracts and not yet recognized as revenue.

“Deposit Account” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made.

“Designated Deposit Account” is Borrower’s deposit account, account number , maintained with Bank.

“Dollar Equivalent” is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

“Dollars,” “dollars” or use of the sign “$” means only lawful money of the United States and not any other currency, regardless of whether that currency uses the “$” sign to denote its currency or may be readily converted into lawful money of the United States.

“EBITDA” shall mean (a) Net Income, plus (b) Interest Expense, plus (c) to the extent deducted in the calculation of Net Income, depreciation expense and amortization expense, plus (d) income tax expense, plus (e) any change in Deferred Revenue, for the applicable quarter, since December 31, 2008.

“Effective Date” is defined in the preamble hereof.

“Eligible Accounts” means Accounts which arise in the ordinary course of Borrower’s business and which Bank has been granted a valid security interest and that meet all Borrower’s representations and warranties in Section 5.3. Bank reserves the right at any time after the Effective Date to adjust any of the criteria set forth below and to establish new criteria in its good faith business judgment. Unless Bank otherwise agrees in writing, Eligible Accounts shall not include;

(a) Accounts that the Account Debtor has not paid within ninety (90) days of invoice date regardless of invoice payment period terms;

(b) Accounts owing from an Account Debtor, fifty percent (50%) or more of whose Accounts have not been paid within ninety (90) days of invoice date;

(c) Accounts owing from an Account Debtor which does not have its principal place of business in the United States;

(d) Accounts billed and/or payable outside of the United States;

(e) Accounts owing from an Account Debtor to the extent that Borrower is indebted or obligated in any manner to the Account Debtor (as creditor, lessor, supplier or otherwise - sometimes called “contra” accounts, accounts payable, customer deposits or credit accounts), with the exception of customary credits, adjustments and/or discounts given to an Account Debtor by Borrower in the ordinary course of its business;

(f) Accounts for which the Account Debtor is Borrower’s Affiliate, officer, employee, or agent;

(g) Accounts with credit balances over ninety (90) days from invoice date;

(h) Accounts owing from an Account Debtor, including Affiliates, whose total obligations to Borrower exceed thirty five percent (35%) of all Accounts, for the amounts that exceed that percentage, unless Bank approves in writing;

(i) Accounts owing from an Account Debtor which is a United States government entity or any department, agency, or instrumentality thereof unless Borrower has assigned its payment rights to Bank and the assignment has been acknowledged under the Federal Assignment of Claims Act of 1940, as amended;

(j) Accounts for demonstration or promotional equipment, or in which goods are consigned, or sold on a “sale guaranteed”, “sale or return”, “sale on approval”, or other terms if Account Debtor’s payment may be conditional;

(k) Accounts owing from an Account Debtor that has not been invoiced or where goods or services have not yet been rendered to the Account Debtor (sometimes called memo billings or pre-billings);

(l) Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements where the Account Debtor has a right of offset for damages suffered as a result of Borrower’s failure to perform in accordance with the contract (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts);

(m) Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor’s satisfaction of Borrower’s complete performance (but only to the extent of the amount withheld; sometimes called retainage billings);

(n) Accounts subject to trust provisions, subrogation rights of a bonding company, or a statutory trust;

(o) Accounts owing from an Account Debtor that has been invoiced for goods that have not been shipped to the Account Debtor unless Bank, Borrower, and the Account Debtor have entered into an agreement acceptable to Bank in its sole discretion wherein the Account Debtor acknowledges that (i) it has title to and has ownership of the goods wherever located, (ii) a bona fide sale of the goods has occurred, and (iii) it owes payment for such goods in accordance with invoices from Borrower (sometimes called “bill and hold” accounts);
(p) Accounts owing from an Account Debtor with respect to which Borrower has received Deferred Revenue (but only to the extent of such Deferred Revenue);

(q) Accounts for which the Account Debtor has not been invoiced;

(r) Accounts that represent non-trade receivables or that are derived by means other than in the ordinary course of Borrower’s business;

(s) Accounts for which Borrower has permitted Account Debtor’s payment to extend beyond 90 days;

(t) Accounts subject to chargebacks or others payment deductions taken by an Account Debtor (but only to the extent the chargeback is determined invalid and subsequently collected by Borrower);

(u) Accounts in which the Account Debtor disputes liability or makes any claim (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding, or becomes insolvent, or goes out of business;

(v) Accounts owing to Borrower under a Restricted License; and

(w) Accounts for which Bank in its good faith business judgment determines collection to be doubtful.

“Equipment” is all “equipment” as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.


“Foreign Currency” means lawful money of a country other than the United States.

“Funding Date” is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

“FX Business Day” is any day when (a) Bank’s Foreign Exchange Department is conducting its normal business and (b) the Foreign Currency being purchased or sold by Borrower is available to Bank from the entity from which Bank shall buy or sell such Foreign Currency.

“FX Forward Contract” is defined in Section 2.1.3.

“FX Reduction Amount” is defined in Section 2.1.3.

“FX Reserve” is defined in Section 2.1.3.

“GAAP” is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

“Governmental Approval” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“Governmental Authority” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

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

“Indemnified Person” is defined in Section 12.3.

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

“Intellectual Property” means all of Borrower’s right, title, and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;

(b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;

(c) any and all source code;

(d) any and all design rights which may be available to a Borrower;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual Property rights identified above; and
all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

“Intercreditor Agreement” is that certain Intercreditor Agreement by and between Bank and TriplePoint of even date herewith.

“Interest Expense” means for any fiscal period, interest expense (whether cash or non-cash) determined in accordance with GAAP for the relevant period ending on such date, including, in any event, interest expense with respect to any Credit Extension and other Indebtedness of Borrower, including, without limitation or duplication, all commissions, discounts, or related amortization and other fees and charges with respect to letters of credit and bankers’ acceptance financing and the net costs associated with interest rate swap, cap, and similar arrangements, and the interest portion of any deferred payment obligation (including leases of all types).

“Inventory” is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“Investment” is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

“Letter of Credit” means a standby letter of credit issued by Bank or another institution based upon an application, guarantee, indemnity or similar agreement on the part of Bank as set forth in Section 2.1.2.

“Letter of Credit Application” is defined in Section 2.1.2(b).

“Lien” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“Loan Documents” are, collectively, this Agreement, the Perfection Certificate, the Intercreditor Agreement, any note, or notes or guaranties executed by Borrower, and any other present or future agreement between Borrower and/or for the benefit of Bank in connection with this Agreement, all as amended, restated, or otherwise modified.

“Material Adverse Change” is (a) a material impairment in the perfection or priority of Bank’s Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; (c) a material impairment of the prospect of repayment of any portion of the Obligations; or (d) Bank determines, based upon information available to it and in its reasonable judgment, that there is a reasonable likelihood that

Borrower shall fail to comply with one or more of the financial covenants in Section 6 during the next succeeding financial reporting period.

“Monthly Financial Statements” is defined in Section 6.2(c).

“Net Income” means, as calculated on a consolidated basis for Borrower and its Subsidiaries for any period as at any date of determination, the net profit (or loss), after provision for taxes, of Borrower and its Subsidiaries for such period taken as a single accounting period.

“Obligations” are Borrower’s obligations to pay when due any debts, principal, interest, Bank Expenses and other amounts Borrower owes Bank now or later, whether under this Agreement, the Loan Documents, or otherwise, including, without limitation, all obligations relating to letters of credit (including reimbursement obligations for drawn and undrawn letters of credit), cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower’s duties under the Loan Documents.

“Operating Documents” are, for any Person, such Person’s formation documents, as certified with the Secretary of State of such Person’s state of formation on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“Overadvance” is defined in Section 2.2.

“Patents” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

“Payment” means all checks, wire transfers and other items of payment received by Bank (including proceeds of Accounts and payment of the Obligations in full) for credit to Borrower’s outstanding Credit Extensions or, if the balance of the Credit Extensions has been reduced to zero, for credit to its deposit accounts.

“Perfection Certificate” is defined in Section 5.1.

“Permitted Indebtedness” is:

(a) Borrower’s Indebtedness to Bank under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and shown on the Perfection
Certificate;

(c) Subordinated Debt;

(d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(f) Indebtedness secured by Liens permitted under clauses (a), (b) and (d) of the definition of “Permitted Liens” hereunder;

(g) the TriplePoint Indebtedness; and

(b) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (g) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

“Permitted Investments” are:

(a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date and shown on the Perfection Certificate;

(b) Investments consisting of Cash Equivalents;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of deposit accounts in which Bank has a perfected security interest;

(e) Investments accepted in connection with Transfers permitted by Section 7.1;

(f) Investments (i) by Borrower in Subsidiaries not to exceed Fifty Thousand Dollars ($50,000) in the aggregate in any fiscal year and (ii) by Subsidiaries in other Subsidiaries not to exceed Fifty Thousand Dollars ($50,000) in the aggregate in any fiscal year or in Borrower;

(g) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower’s Board of Directors;

(h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business; and

(i) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (i) shall not apply to Investments of Borrower in any Subsidiary.

“Permitted Liens” are:

(a) Liens existing on the Effective Date and shown on the Perfection Certificate or arising under this Agreement and the other Loan Documents;

(b) Liens in favor of TriplePoint on the Collateral to secure the TriplePoint Indebtedness, subject to the priority arrangements and other provisions set forth in the Intercreditor Agreement.

(c) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(d) purchase money Liens (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Fifty Thousand Dollars ($50,000) in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;

(e) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Fifty Thousand Dollars ($50,000) and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(f) Liens to secure payment of workers’ compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(g) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;
otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such
elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is
interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to
“Subordinated Debt” for purposes of this Agreement.

acceptable to Bank. Notwithstanding anything set forth in the Loan Documents to the contrary, the TriplePoint Indebtedness shall not be deemed to
subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms
constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts which Bank determines in good faith
and priority thereof); or (b) to reflect Bank's good faith belief that any collateral report or financial information furnished by or on behalf of Borrower to Bank is
(ii) the assets, business or prospects of Borrower, or (iii) the security interests and other rights of Bank in the Collateral (including the enforceability, perfection
and 8.7; and
(k) Liens in favor of other financial institutions arising in connection with Borrower’s deposit and/or securities accounts held at such
institutions, provided that Bank has a perfected security interest in the amounts held in such deposit and/or securities accounts.

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

“Prime Rate” is Bank’s most recently announced “prime rate,” even if it is not Bank’s lowest rate.

“Quick Ratio” is a ratio of Quick Assets to Current Liabilities.

“Registered Organization” is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made
“Requirement of Law” is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or
regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its
property or to which such Person or any of its property is subject.

“Reserves” means, as of any date of determination, such amounts as Bank may from time to time establish and revise in its good faith business judgment,
reducing the amount of Advances and other financial accommodations which would otherwise be available to Borrower (a) to reflect events, conditions,
contingencies or risks which, as determined by Bank in its good faith business judgment, do or may adversely affect (i) the Collateral or any other property which
is security for the Obligations or its value (including without limitation any increase in delinquencies of Accounts),

(ii) the assets, business or prospects of Borrower, or (iii) the security interests and other rights of Bank in the Collateral (including the enforceability, perfection
and priority thereof); or (b) to reflect Bank’s good faith belief that any collateral report or financial information furnished by or on behalf of Borrower to Bank is
or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts which Bank determines in good faith
constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

“Responsible Officer” is any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

“Restricted License” is any material license or other agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts
Borrower from granting a security interest in Borrower’s interest in such license or agreement or any other property, or (b) for which a default under or termination
of could interfere with the Bank’s right to sell any Collateral,

“Revolving Line” is an Advance or Advances in an amount equal to Five Million Dollars ($5,000,000).

“Revolving Line Maturity Date” is May 28, 2010.

“SEC” shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

“Securities Account” is any “securities account” as defined in the Code with such additions to such term as may hereafter be made.

“Settlement Date” is defined in Section 2.1.3.

“Streamline Period” is defined in Section 2.1.1(b).

“Subordinated Debt” is indebtedness incurred by Borrower subordinated to all of Borrower’s now or hereafter indebtedness to Bank (pursuant to a
subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms
acceptable to Bank. Notwithstanding anything set forth in the Loan Documents to the contrary, the TriplePoint Indebtedness shall not be deemed to be
“Subordinated Debt” for purposes of this Agreement.

“Subsidiary” is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership
interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to
elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is
otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such
“Total Contract Value” means the aggregate dollar amount of all payments required to be paid to Borrower under the applicable contract (absent a default by Borrower under such contract). In the event of any ambiguity in regard to the “dollar amount” required to be paid under any contract, or any ambiguity in regard to whether any particular payment is “required” to be paid, such determination shall be made by Bank.

“Total Liabilities” is on any day, obligations that should, under GAAP, be classified as liabilities on Borrower’s consolidated balance sheet, including all Indebtedness, but excluding all Subordinated Debt.

“Trademarks” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

“Transaction Report” is that certain report of transactions and schedule of collections in the form attached hereto as Exhibit C.

“Transfer” is defined in Section 7.1.

“TriplePoint” is TriplePoint Capital LLC, a Delaware limited liability company.

“TriplePoint Indebtedness” is Indebtedness in an aggregate principal amount not to exceed Five Million Dollars ($5,000,000) under the TriplePoint Loan Documents.

“TriplePoint Loan Documents” is that certain Plain English Growth Capital Loan and Security Agreement and Plain English Master Lease Agreement both dated September 10, 2008 by and between Borrower and TriplePoint and any note, or notes or guaranties executed by Borrower, and any other present or future agreement between Borrower and/or for the benefit of TriplePoint in connection with the TriplePoint Indebtedness, all as amended, restated, or otherwise modified.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

SPLUNK INC.

By /s/ Godfrey R. Sullivan
Name: Godfrey R. Sullivan
Title: President & CEO

BANK:

SILICON VALLEY BANK

By /s/ Ryan Edwards
Name: Ryan Edwards
Title: Relationship Manager

EXHIBIT A

The Collateral consists of all of Borrower’s right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower’s Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accretions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include any of the following, whether now owned or hereafter acquired any copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of Borrower connected with and symbolized thereby, know-how, operating manuals, trade secret rights, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing; provided, however, the Collateral shall include all Accounts, license and royalty fees and other revenues, proceeds, or income arising out of or relating to any of the foregoing.

Borrower has agreed not to encumber any of its copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions,
EXHIBIT B

COMPLIANCE CERTIFICATE

TO:   SILICON VALLEY BANK
FROM: SPLUNK INC.

The undersigned authorized officer of Splunk Inc. (“Borrower”) certifies that under the terms and conditions of the Amended and Restated Loan and Security Agreement between Borrower and Bank (the “Agreement”), (1) Borrower is in complete compliance for the period ending with all required covenants except as noted below, (2) there are no Events of Default, (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, (4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.9 of the Agreement, and (5) no Liens have been levied or claims made against Borrower relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank. Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Please indicate compliance status by circling Yes/No under “Complies” column.

<table>
<thead>
<tr>
<th>Reporting Covenant</th>
<th>Required</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly financial statements with + CC</td>
<td>Monthly within 30 days</td>
<td>Yes No</td>
</tr>
<tr>
<td>Annual financial statement (CPA Audited) + CC</td>
<td>FYE within 180 days</td>
<td>Yes No</td>
</tr>
<tr>
<td>A/R &amp; A/P Agings</td>
<td>Monthly with 15 days</td>
<td>Yes No</td>
</tr>
<tr>
<td>Transaction Report</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Streamline Period</td>
<td>Weekly</td>
<td>Yes No</td>
</tr>
<tr>
<td>Non-Streamline Period</td>
<td>Monthly</td>
<td>Yes No</td>
</tr>
<tr>
<td>Board Projections</td>
<td>Within 30 days of FYE</td>
<td>Yes No</td>
</tr>
<tr>
<td>Field Exams</td>
<td>Twice annually or as conditions warrant</td>
<td>Yes No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Financial Covenant</th>
<th>Required</th>
<th>Actual</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintain on a Quarterly Basis:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum Bookings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effective Date through March 31, 2009</td>
<td>$5,000,000</td>
<td>Yes No</td>
<td></td>
</tr>
<tr>
<td>April 1, 2009 through June 30, 2009</td>
<td>$6,000,000</td>
<td>Yes No</td>
<td></td>
</tr>
<tr>
<td>July 1, 2009 through September 30, 2009</td>
<td>$7,000,000</td>
<td>Yes No</td>
<td></td>
</tr>
<tr>
<td>October 1, 2009 through December 31, 2009</td>
<td>$8,500,000</td>
<td>Yes No</td>
<td></td>
</tr>
<tr>
<td>EBITDA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effective Date through March 31, 2009</td>
<td>$(3,000,000)</td>
<td>Yes No</td>
<td></td>
</tr>
<tr>
<td>April 1, 2009 through June 30, 2009</td>
<td>$(1,500,000)</td>
<td>Yes No</td>
<td></td>
</tr>
<tr>
<td>July 1, 2009 through September 30, 2009</td>
<td>$(1,000,000)</td>
<td>Yes No</td>
<td></td>
</tr>
<tr>
<td>October 1, 2009 through December 31, 2009</td>
<td>$0</td>
<td>Yes No</td>
<td></td>
</tr>
<tr>
<td>Streamline Analysis</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quick Ratio</td>
<td>1.50:1.00</td>
<td>:1.00</td>
<td>Streamline Eligible? Yes No</td>
</tr>
</tbody>
</table>

The following financial covenant analyses and information set forth in Schedule 1 attached hereto are true and accurate as of the date of this Certificate.

The following are the exceptions with respect to the certification above: (If no exceptions exist, state “No exceptions to note.”)

SPLUNK INC.

By: 
Name: 
Title:

BANK USE ONLY
Received by: 
Date: 
AUTHORIZED SIGNER

Verified: 
Date: 
AUTHORIZED SIGNER

Compliance Status: Yes No
Schedule 1 to Compliance Certificate

Financial Covenants of Borrower

Dated:

In the event of a conflict between this Schedule and the Loan Agreement, the terms of the Loan Agreement shall govern.

I. Minimum Bookings (Section 6.9(a))

Required:

<table>
<thead>
<tr>
<th>Period</th>
<th>Minimum Bookings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective Date through March 31, 2009</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>April 1, 2009 through June 30, 2009</td>
<td>$6,000,000</td>
</tr>
<tr>
<td>July 1, 2009 through September 30, 2009</td>
<td>$7,000,000</td>
</tr>
<tr>
<td>October 1, 2009 through December 31, 2009</td>
<td>$8,500,000</td>
</tr>
</tbody>
</table>

Actual:

<table>
<thead>
<tr>
<th>Period</th>
<th>Minimum Bookings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective Date through March 31, 2009</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>April 1, 2009 through June 30, 2009</td>
<td>$6,000,000</td>
</tr>
<tr>
<td>July 1, 2009 through September 30, 2009</td>
<td>$7,000,000</td>
</tr>
<tr>
<td>October 1, 2009 through December 31, 2009</td>
<td>$8,500,000</td>
</tr>
</tbody>
</table>

Do the actual values above exceed or equal the values projected for their respective periods?

- o No, not in compliance
- o Yes, in compliance

II. EBITDA (Section 6.9(b))

Required: See chart below

<table>
<thead>
<tr>
<th>Period</th>
<th>Minimum EBITDA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective Date through March 31, 2009</td>
<td>$(3,000,000)</td>
</tr>
<tr>
<td>April 1, 2009 through June 30, 2009</td>
<td>$(1,500,000)</td>
</tr>
<tr>
<td>July 1, 2009 through September 30, 2009</td>
<td>$(1,000,000)</td>
</tr>
<tr>
<td>October 1, 2009 through December 31, 2009</td>
<td>$0</td>
</tr>
</tbody>
</table>

Actual:

A. Net Income $ 
B. To the extent included in the determination of Net Income $ 
  1. The provision for income taxes $ 
  2. Depreciation expense $ 
  3. Amortization expense $ 
  4. Net Income Expense $ 
  5. All other charges which are both non-cash and non-recurring $ 
  6. All non-cash income $ 
  7. Change in Deferred Revenue, for the applicable quarter, since December 31, 2008 $ 
  8. The sum of lines line 7)1 through 5 minus line 6, [ $ 
C. EBITDA (line A plus line B.8) $ 

Is line C equal to or greater than the required amount?

- o No, not in compliance
- o Yes, in compliance

III. Quick Ratio (not a financial covenant; applicable for Streamline Period and collections)

Required for Streamline Period: 1.50:1.00

Actual:

A. Aggregate value of the unrestricted cash and cash equivalents of Borrower and its Subsidiaries $ 
B. Aggregate value of the net billed accounts receivable of Borrower and its Subsidiaries $ 
C. Aggregate value of the Investments with maturities of fewer than 12 months of Borrower and its Subsidiaries $ 
D. Quick Assets (the sum of lines A through C) $ 
E. Aggregate value of Obligations to Bank $
F. Aggregate value of liabilities that should, under GAAP, be classified as liabilities on Borrower’s consolidated balance sheet, including all Indebtedness, and not otherwise reflected in line E above that matures within one (1) year.$

G. Current Liabilities (the sum of lines E and F) $

H. Quick Ratio (line D divided by line G)

Is line H equal to or greater than 1.50:1.00? Yes o No o

3

EXHIBIT C
TRANSACTION REPORT AND LOAN REQUEST

ACCOUNTS RECEIVABLE COLLATERAL

<table>
<thead>
<tr>
<th></th>
<th>Beginning Accounts Receivable Balance Per Previous Report (Line 7)</th>
<th>$ 3,055,946.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Add: Sales for Period (Schedule A)</td>
<td>$ —</td>
</tr>
<tr>
<td>3</td>
<td>Add: Misc. Customers</td>
<td>$ —</td>
</tr>
<tr>
<td>4</td>
<td>Less: Credit Memos (Schedule A)</td>
<td>$ —</td>
</tr>
<tr>
<td>5</td>
<td>Less: Cash Receipts Applied To Accounts Receivable (Direct-Schedule B)</td>
<td>$ —</td>
</tr>
<tr>
<td>5a</td>
<td>Total Cash (Applied to Accounts Receivable)</td>
<td>$ —</td>
</tr>
<tr>
<td>6</td>
<td>Adjustments: Dr. - Increase Cr. (Decrease)</td>
<td>$ —</td>
</tr>
<tr>
<td>7</td>
<td>Ending Accounts Receivable Balance (Sum Lines 1-4a,5a,6)</td>
<td>$ 3,055,946.00</td>
</tr>
<tr>
<td>8</td>
<td>Deduct: Ineligible Accounts Receivable Per Aging Dated: 4/30/2009</td>
<td>$ (927,047.00)</td>
</tr>
<tr>
<td>9</td>
<td>Total Eligible Accounts Receivable</td>
<td>$ 2,128,899.00</td>
</tr>
</tbody>
</table>

COMPUTATION OF BORROWING AVAILABILITY

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Availability from Receivables 80.0%</td>
<td>$ 1,703,119.20</td>
</tr>
<tr>
<td>10a</td>
<td>Total availability before reserves &amp; loan balance (Up to line limit)</td>
<td>$ 1,703,119.20</td>
</tr>
</tbody>
</table>

11 Less Reserves:
- Letters of Credits
- Business Credit Cards
- Total Reserves

12 NET BORROWING AVAILABILITY: Before Loans Line Limit $ 5,000,000 $ 1,703,119.20

COMPUTATION OF LOAN

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>Beginning Loan Balance (Line 21 of Previous Report)</td>
<td>$ —</td>
</tr>
<tr>
<td>14</td>
<td>Add: Returned Checks (NSF, Endorsement, etc.)</td>
<td>$ —</td>
</tr>
<tr>
<td>15</td>
<td>Add: Amount deposited back into client’s account after paying down loan balance</td>
<td>$ —</td>
</tr>
<tr>
<td>16</td>
<td>Less: Cash Applied To Loan - Accounts Receivable (Direct) from Schedule B</td>
<td>$ —</td>
</tr>
<tr>
<td>17</td>
<td>Less: Cash - Other</td>
<td>$ —</td>
</tr>
<tr>
<td>18</td>
<td>Ending Loan Balance - Before Loan Request (Sum Lines 13-17 all items)</td>
<td>$ —</td>
</tr>
</tbody>
</table>

19 UNUSED BORROWING AVAILABILITY BEFORE LOAN REQUEST $ 1,703,119.20

20 AT SILICON VALLEY BANK OFFICE: CFD
21 NEW LOAN BALANCE - AFTER LOAN ADVANCE $ 0.00
22 REMAINING UNUSED BORROWING AVAILABILITY - After Loan Request $ 1,703,119.20

The above described Collateral is subject to a security interest in favor of SILICON VALLEY BANK pursuant to the terms and conditions of a Loan and Security Agreement’s, as executed by and between SILICON VALLEY BANK and the undersigned.

$ has been deposited/wired to your account pursuant to the request set forth above.

BORROWER

Silicon Valley Bank

Borrower: Splunk Inc.

Auth Signer: Ryan Edwards

Name: Signature

Title: Relationship Manager

Date: DATE

EXHIBIT D
CORPORATE BORROWING CERTIFICATE

BORROWER: Splunk Inc.
BANK: Silicon Valley Bank

I hereby certify on behalf of Borrower as follows, as of the date set forth above:

1. I am the Secretary, Assistant Secretary or other officer of the Borrower. My title is as set forth below.

DATE: May 2009
2. Borrower’s exact legal name is set forth above. Borrower is a corporation existing under the laws of the State of Delaware.

3. Attached hereto are true, correct and complete copies of Borrower’s Articles/Certificate of Incorporation (including amendments), as filed with the Secretary of State of the state in which Borrower is incorporated as set forth in paragraph 1 above. Such Articles/Certificate of Incorporation have not been amended, annulled, rescinded, revoked or supplemented, and remain in full force and effect as of the date hereof.

4. The following resolutions were duly and validly adopted by Borrower’s Board of Directors at a duly held meeting of such directors (or pursuant to a unanimous written consent or other authorized corporate action). Such resolutions are in full force and effect as of the date hereof and have not been in any way modified, repealed, rescinded, amended or revoked, and Bank may rely on them until Bank receives written notice of revocation from Borrower.

WHEREAS, the Board of Directors ("Board") has determined that it is in the best interests of Splunk Inc. (the "Company") (to obtain from Silicon Valley Bank ("Lender") an accounts receivable credit facility (the “Facility”) pursuant to which the Company may obtain loans in a total amount of up to $5,000,000;

WHEREAS, in order to establish the Facility with Lender, the Company must grant Lender a security interest in all of the Company’s assets and properties, excluding intellectual property (as to which the Company will make a negative pledge);

WHEREAS, in order to establish the Facility with Lender, the Company must enter into the following agreements with Lender in substantially the forms attached hereto as Exhibits A – C: (i) a Loan and Security Agreement; (ii) a Securities Account Control Agreement; and (iii) an Intercreditor Agreement (to which Triple Point Capital is also a party) (collectively, the “Loan Agreements”);

NOW THEREFORE, BE IT RESOLVED, that the officers of the Company, each of them with full authority to act without the others, are hereby authorized to establish the Facility with Lender and to cause the Company to execute, deliver, enter into and perform its obligations under the Loan Agreements, each of which are hereby approved, together with such changes thereto (and the schedules and exhibits thereto) as may be approved by such officers, their approval being conclusively established by their execution and delivery of such documents on behalf of the Company;

RESOLVED FURTHER, that any one of the following officers or employees of the Company, whose names, titles and signatures are below, may act on behalf of the Company with respect to the Loan Agreements:

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Signature</th>
<th>Authorized to Add or Remove Signatories</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>0</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>0</td>
</tr>
</tbody>
</table>

RESOLVED FURTHER, that any one of the persons designated above with a checked box beside his or her name may, from time to time, add or remove any individuals to and from the above list of persons authorized to act on behalf of Borrower.

RESOLVED FURTHER, that the officers of the Company, each of them with full authority to act without the others, are hereby authorized to take any and all such other actions and to execute and deliver on behalf of the Company any and all such other documents, that they may determine to be necessary or appropriate in connection with the establishment of the Facility, to cause the Company to perform its obligations under the Loan Agreements and to give effect to the intent of the foregoing resolutions.

RESOLVED FURTHER, that prior actions taken by the officers of the Company contemplated by the Loan Agreements are hereby ratified and approved.

5. The persons listed above are Borrower’s officers or employees with their titles and signatures shown next to their names.

By: 
Name: 
Title: 

*** If the Secretary, Assistant Secretary or other certifying officer executing above is designated by the resolutions set forth in paragraph 4 as one of the authorized signing officers, this Certificate must also be signed by a second authorized officer or director of Borrower.

I, the CEO of Borrower, hereby certify on behalf of Borrower as to paragraphs 1 through 5 above, as of the date set forth above.

By: 
Name: 
Title: 

2
Re: Revised Employment Letter with Change in Control Protection

Dear Godfrey:

This letter agreement (the “Agreement”) is entered into between Splunk, Inc. (“Company” or “we”) and Godfrey Sullivan (“Employee” or “you”). This Agreement is effective as of January 11, 2012 (“Effective Date”). The purpose of this letter is to confirm the current terms and conditions of your employment and to specify your treatment upon certain terminations of employment.

1. Your Position; Annual Salary; and Variable Compensation. Your current role is President and Chief Executive Officer, and you will continue to report directly to the Company’s board of directors (the “Board”). Your base salary as of the Effective Date will be $350,000 per year and you will be paid semi-monthly at a rate of $14,583.33, less applicable withholdings. In addition, you will be eligible to earn an annual bonus of 90% of your base salary at target, based on achieving a combination of individual goals and Company financial goal(s). As of the Effective Date, your annual on target earnings, based on your current annual salary and variable compensation will be $665,000, less applicable withholdings. Currently, a bonus payment is made approximately 45 days after the completion of the fiscal year. Notwithstanding your full-time obligation to the Company and subject to your fulfilling your legal obligations to all entities, the Company has no objection to your continued service on the boards of Citrix and Informatica. You acknowledge that it is the Board’s expectation that you will not serve on any additional boards beyond those two and agree that you will not serve on any other board of directors unless the Board provides its consent.

2. Benefits. You will continue to be eligible to participate in regular healthcare, retirement and other employee benefit plans established for our employees. The Company covers 75% of benefit expenses on your behalf. You pay the remaining 25% through a payroll deduction. You will be eligible for healthcare benefits the first day of the month following your start date including retirement benefits. You will also be entitled to 15 days of Personal Time-Off (PTO) per year of employment accrued on a monthly basis.

3. Confidentiality. As an employee of the Company, you will continue to have access to certain confidential information of the Company and you may, during the course of your employment, develop certain information or inventions that will be the property of the Company. To protect the interests of the Company, your acceptance of this letter confirms that the terms of the Company’s “Employee Invention Assignment and Confidentiality Agreement” that you signed on September 1, 2008, continue to be in effect and that during the period that you render services to the Company, you agree to not engage in any employment, business or activity that is in any way competitive with the business or proposed business of the Company. You will disclose to the Company in writing any other gainful employment, business or activity that you are currently associated with or participate in that competes with the Company. You will not assist any other person or organization in competing with the Company or in preparing to engage in competition with the business or proposed business of the Company.

4. At-Will Employment. You acknowledge and agree that you continue to be an at-will employee of the Company, which means the employment relationship can be terminated by either of us for any reason, at any time, with or without prior notice and with or without cause. Your participation in any stock option or benefit program is not to be regarded as assuring you of continuing employment for any particular period of time. Any modification or change in your at-will employment status may only occur by way of a written employment agreement signed by you and the Chief Executive Officer of the Company.

5. Severance. (a) Separation in Event of Termination Within the 3-Month Period Before or 12-Month Period Following Change in Control. In the event of your involuntary separation from service from the Company without Cause or for Good Reason, in each case within the period that begins after the signing of a definitive agreement that ultimately results in a Change in Control within three (3) months of its signing or within twelve (12) months following a Change in Control (“Change in Control Period”), and provided that you deliver to the Company a signed release of claims in favor of the Company (“Release”), and satisfy all conditions to make the Release effective within sixty (60) days following your separation from service, then, in addition to any accrued compensation, you shall be entitled to the benefits as set forth below:

(i) Lump sum payment equal to eighteen (18) months of your then-current base salary, plus eighteen (18) months of your annual target bonus for the year of termination;

(ii) Provided you timely elect to continue health coverage under COBRA, reimbursement for any monthly COBRA premium payments made by you in the eighteen (18) months following your separation from service. If at the time you separate from service, it would result in a Company excise tax to reimburse you for COBRA premiums than no such premiums will be reimbursed and if doing so would not cause imposition of an excise tax you will be paid a single lump sum of $24,000; and

(iii) Acceleration of vesting as to all then-unvested shares subject to all equity awards which have been granted to you. You shall have six (6) months following your separation from service from the Company in which to exercise all options that have been granted to you.

(b) Severance in Event of Termination Without Cause. In the event of your involuntary separation from service with the Company without Cause not during the Change in Control Period, and provided that you deliver to the Company a signed Release and satisfy all conditions to make the...
Release effective within sixty (60) days following your separation from service, then, in addition to any accrued compensation, you shall be entitled to benefits as set forth below:

(i) Lump sum payment equal to twelve (12) months of your then-current base salary, plus a pro-rated portion of your annual target bonus for the year of termination;

(ii) Provided you timely elect to continue health coverage under COBRA, reimbursement for any monthly COBRA premium payments made by you in the twelve (12) months following your separation from service. If at the time you separate from service, it would result in a Company excise tax to reimburse you for COBRA premiums than no such premiums will be reimbursed and if doing so would not cause imposition of an excise tax you will be paid a single lump sum of $12,000; and

(iii) Acceleration of vesting as to an additional twelve (12) months of shares subject to all equity awards which have been granted to you. You shall have six (6) months following your separation from service from the Company in which to exercise all vested options that have been granted to you.


(a) For purposes of this Agreement, no payment will be made to Employee upon termination of Employee’s employment unless such termination constitutes a “separation from service” within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and Section 1.409A-1(h) of the regulations promulgated thereunder.

(b) To the extent any payments to which Employee becomes entitled under this agreement, or any agreement or plan referenced herein, in connection with Employee’s separation from service from the Company constitute deferred compensation subject to Section 409A of the Code (the “Deferred Payments”), such payments will be paid on, or in the case of installments, will not commence, until the sixtieth (60th) day following Employee’s separation from service from the Company, or if later, such time as required by Section 6(c). Except as required by Section 6(c), any installment payments that would have been made to Employee during the sixty (60) day period immediately following Employee’s separation from service but for the preceding sentence will be paid to Employee on the sixtieth (60th) day following Employee’s separation from service and the remaining payments will be made as provided herein.

(c) If Employee is deemed at the time of such separation from service to be a “specified” employee under Section 409A of the Code, then any Deferred Payment(s) shall not be made or commence until the earliest of (i) the expiration of the six (6)-month period measured from the date of Employee’s separation from service as (such term is at the time defined in Treasury Regulations under Section 409A of the Code with the Company or (ii) the date of Employee’s death following such separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to Employee, including (without limitation) the additional twenty percent (20%) tax for which Employee would otherwise be liable under Section 409A(a)(1)(B) of the Code in the absence of such deferral. Upon the expiration of the applicable deferral period, any payments which would have otherwise been made during that period (whether in a single sum or in installments) in the absence of this paragraph shall be paid to Employee or Employee’s beneficiary in one lump sum.

(d) To the extent any payments to which Employee becomes entitled under this agreement, or any agreement or plan referenced herein, in connection with Employee’s separation from service from the Company constitute deferred compensation subject to Section 409A of the Code, the Employee and the Company may make changes to this Agreement to avoid adverse tax consequences under Section 409A. Each payment and benefit payable hereunder is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

7. Definitions.

(a) Cause. For purposes of this Agreement, “Cause” means (i) Employee’s conviction of or plea of nolo contendere to a felony or a crime involving moral turpitude which the Board believes has had or will have a detrimental effect on the Company’s reputation or business, (ii) Employee engaging in an act of gross negligence or willful misconduct in the performance of his employment obligations and duties, (iii) Employee’s committing an act of fraud against, material misconduct or willful misappropriation of property belonging to the Company; (iv) Employee engaging in any other misconduct that has had or will have an adverse effect on the Company’s reputation or business; or (v) Employee’s breach of the Employee’s

Invention Assignment and Confidentiality Agreement or other unauthorized misuse of the Company’s trade secrets or proprietary information.

(b) Change in Control. For purposes of this Agreement “Change in Control” means (i) a sale, conveyance, exchange or transfer (excluding any venture-backed or similar investments in the Company) in which any person or entity, other than persons or entities who as of immediately prior to such sale, conveyance, exchange or transfer own securities in the Company, either directly or indirectly, becomes the beneficial owner, directly or indirectly, of securities of the Company representing fifty (50%) percent of the total voting power of all its then-outstanding voting securities; (ii) a merger or consolidation of the Company in which its voting securities immediately prior to the merger or consolidation do not represent, or are not converted into securities that represent, a majority of the voting power of all voting securities of the surviving entity immediately after the merger or consolidation; or (iii) a sale of substantially all of the assets of the Company or a liquidation or dissolution of the Company.

(c) Good Reason. For purposes of this Agreement, “Good Reason” means any of the following taken without the Employee’s written consent and provided (a) the Company receives, within thirty (30) days following the occurrence of any of the events set forth in clauses (i) through (iv) below, written notice from the Employee specifying the specific basis for Employee’s belief that Employee is entitled to terminate employment for Good Reason, (b) the Company fails to cure the event constituting Good Reason within thirty (30) days after receipt of such written notice thereof, and (c) the Employee terminates employment within thirty (30) days following expiration of such cure period: (i) a material change, adverse to Employee, in Employee’s position, titles, offices or duties; (ii) an assignment of any significant duties to Employee that are inconsistent with Employee’s positions or offices held under this Agreement; (iii) a decrease in Employee’s then-current annual base salary by more than 10% (other than in connection with a general decrease in the salary of all executives); or (iv) the relocation of the Employee to a facility or a location more than thirty (30) miles from Employee’s then-current residence.
8. **Arbitration.**

(a) **Arbitration.** In consideration of your employment with the Company, its promise to arbitrate all employment-related disputes, and your receipt of the compensation, pay raises, and other benefits paid to you by the Company, at present and in the future, you agree that any and all controversies, claims, or disputes with anyone (including the Company and any employee, officer, director, shareholder, or benefit plan of the Company, in their capacity as such or otherwise), arising out of, relating to, or resulting from your employment with the Company or the termination of your employment with the Company, including any breach of this Agreement, shall be subject to binding arbitration under the arbitration provisions set forth in California Code of Civil Procedure sections 1280 through 1294.2, including section 1281.8 (the “Act”), and pursuant to California law, and shall be brought in your individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. The Federal Arbitration Act shall continue to apply with full force and effect notwithstanding the application of procedural rules set forth in the Act. Disputes that you agree to arbitrate, and thereby agree to waive any right to a trial by jury, include any statutory claims under local, state, or federal law, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Sarbanes-Oxley Act, the Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the California Labor Code, claims of harassment, discrimination, and wrongful termination, and any statutory or common law claims. Notwithstanding the foregoing, you understand that nothing in this Agreement constitutes a waiver of your rights under section 7 of the National Labor Relations Act. You further understand that this Agreement to arbitrate also applies to any disputes that the Company may have with you.

(b) **Procedure.** You agree that any arbitration will be administered by Judicial Arbitration & Mediation Services, Inc. ("JAMS"), pursuant to its employment arbitration rules & procedures (the “JAMS rules”), which are available at http://www.jamsadr.com/rules-employment-arbitration/ and from Human Resources. You agree that the arbitrator shall issue a written decision on the merits. You also agree that the arbitrator shall have the power to award any remedies available under applicable law. You agree that the decree or award rendered by the arbitrator may be entered as a final and binding judgment in any court having jurisdiction thereof. You understand that the Company will pay for any administrative or hearing fees charged by the arbitrator or JAMS except that you shall pay any filing fees associated with any arbitration that you initiate, but only so much of the filing fees as you would have instead paid had you filed a complaint in a court of law. You agree that the arbitrator shall administer and conduct any arbitration in accordance with California law, including the California Code of Civil Procedure and the California Evidence Code, and that the arbitrator shall apply substantive and procedural California law to any dispute or claim, without reference to rules of conflict of law. To the extent that the JAMS rules conflict with California law, California law shall take precedence. You agree that any arbitration hearing under this Agreement shall be conducted in San Francisco County, California.

(c) **Remedy.** Except as provided by the Act and this Agreement, arbitration shall be the sole, exclusive, and final remedy for any dispute between you and the Company. Accordingly, except as provided for by the Act and this Agreement, neither you nor the Company will be permitted to pursue court action regarding claims that are subject to arbitration.

(d) **Administrative relief.** This Agreement does not prohibit you from pursuing an administrative claim with a local, state, or federal government agency that is authorized to enforce or administer laws related to employment, including, but not limited to, the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, the National Labor Relations Board, or the Workers’ Compensation Board. This Agreement does, however, preclude you from pursuing court action regarding any such claim, except as permitted by law.

(e) **Voluntary nature of Agreement.** You acknowledge and agree that you are executing this Agreement voluntarily and without any duress or undue influence by the Company or anyone else. You further acknowledge and agree that you have carefully read this Agreement and that you have asked any questions needed for you to understand the terms, consequences, and binding effect of this Agreement and fully understand it, including that you are waiving your right to a jury trial. Finally, you agree that you have been provided an opportunity to seek the advice of an attorney of your choice before signing this Agreement.

9. **Acceptance.** To accept the letter, please sign in the space indicated and fax it to Human Resources at (415) 738-5456. Your signature will acknowledge that you have read and understood and agreed to the terms and conditions of this offer letter.

Please feel free to contact me if you have any questions at (415) 848-8601.

Best,

/s/ Nicholas Sturiale
Nicholas Sturiale
Chairman, Compensation Committee of the Board
Splunk, Inc.

I have read and understood this offer letter and hereby acknowledge, accept and agree to the terms as set forth above and further acknowledge that no other commitments were made to me as part of my employment offer except as specifically set forth herein.

/s/ Godfrey Sullivan January 11, 2012
Godfrey Sullivan Date
Re: Employment Letter with Change in Control Protection

Dear Erik:

This letter agreement (the “Agreement”) is entered into between Splunk, Inc. (“Company” or “we”) and Erik Swan (“Employee” or “you”). This Agreement is effective as of January 11, 2012 (“Effective Date”). The purpose of this letter is to confirm the current terms and conditions of your employment and to specify your treatment upon certain terminations of employment.

1. Your Position; Annual Salary; and Variable Compensation. Your current role is Chief Technology Officer, and you will continue to report to Godfrey Sullivan, CEO and President. Your base salary as of the Effective Date will be $250,000 per year and you will be paid semi-monthly at a rate of $10,416.66, less applicable withholdings. Effective February 1, 2012, your base salary will be $275,000 per year and you will be paid semi-monthly at a rate of $11,458.33, less applicable withholdings. In addition, you will be eligible to earn an annual bonus of 40% of your base salary at target (which will increase to 50% of your base salary at target as of February 1, 2012), based on achieving a combination of individual goals and Company financial goal(s). As of the Effective Date, your annual on target earnings, based on your current annual salary and variable compensation will be $350,000, less applicable withholdings. As of February 1, 2012, your annual on target earnings, based on your annual salary and variable compensation as of February 1, 2012, will be $412,500, less applicable withholdings. Currently, a pro-rated bonus payment is made approximately 45 days after the end of each fiscal quarter and actual achievement against the plan is calculated at year end and any remaining bonus earned is paid 45 days after the completion of the fiscal year.

2. Benefits. You will continue to be eligible to participate in regular healthcare, retirement and other employee benefit plans established for our employees. The Company covers 75% of benefit expenses on your behalf. You pay the remaining 25% through a payroll deduction. You will be eligible for healthcare benefits on your first day of the month following your start date including retirement benefits. You will also be entitled to 15 days of Personal Time-Off (PTO) per year of employment accrued on a monthly basis.

3. Confidentiality. As an employee of the Company, you will continue to have access to certain confidential information of the Company and you may, during the course of your employment, develop certain information or inventions that will be the property of the Company. To protect the interests of the Company, you will need to sign the Company’s standard “Employee Invention Assignment and Confidentiality Agreement.” During the period that you render services to the Company, you agree not to engage in any employment, business or activity that is in any way competitive with the business or proposed business of the Company. You will disclose to the Company in writing any other gainful employment, business or activity that you are currently associated with or participate in that competes with the Company. You will not assist any other person or organization in competing with the Company or in preparing to engage in competition with the business or proposed business of the Company.

4. At-Will Employment. You acknowledge and agree that you continue to be an at-will employee of the Company, which means the employment relationship can be terminated by either of us for any reason, at any time, with or without prior notice and with or without cause. Your participation in any stock option or benefit program is not to be regarded as assuring you of continuing employment for any particular period of time. Any modification or change in your at-will employment status may only occur by way of a written employment agreement signed by you and the Chief Executive Officer of the Company.

5. Severance.

(a) Separation in Event of Termination Within the 3-Month Period Before or 12-Month Period Following Change in Control. In the event of your involuntary separation from service from the Company without Cause or for Good Reason, in each case within the period that begins after the signing of a definitive agreement that ultimately results in a Change in Control within three (3) months of its signing or within twelve (12) months following a Change in Control (“Change in Control Period”), and provided that you deliver to the Company a signed release of claims in favor of the Company (“Release”), and satisfy all conditions to make the Release effective within sixty (60) days following your separation from service, then, in addition to any accrued compensation, you shall be entitled to the benefits as set forth below:

(i) Lump sum payment equal to twelve (12) months of your then-current base salary, plus a pro-rated portion of your annual target bonus for the year of termination;

(ii) Provided you timely elect to continue health coverage under COBRA, reimbursement for any monthly COBRA premium payments made by you in the twelve (12) months following your separation from service. If at the time you separate from service, it would result in a Company excise tax to reimburse you for COBRA premiums than no

such premiums will be reimbursed and if doing so would not cause imposition of an excise tax you will be paid a single lump sum of $24,000; and

(iii) Acceleration of vesting as to all then-unvested shares subject to all equity awards which have been granted to you. You shall have six (6) months following your separation from service from the Company in which to exercise all options that have been granted to you.

(b) Severance in Event of Termination Without Cause. In the event of your involuntary separation from service with the Company without Cause not during the Change in Control Period, and provided that you deliver to the Company a signed Release and satisfy all conditions to make the
Release effective within sixty (60) days following your separation from service, then, in addition to any accrued compensation, you shall be entitled to benefits as set forth below:

(i) Lump sum payment equal to six (6) months of your then-current base salary, plus a pro-rated portion of your annual target bonus for the year of termination;

(ii) Provided you timely elect to continue health coverage under COBRA, reimbursement for any monthly COBRA premium payments made by you in the six (6) months following your separation from service. If at the time you separate from service, it would result in a Company excise tax to reimburse you for COBRA premiums than no such premiums will be reimbursed and if doing so would not cause imposition of an excise tax you will be paid a single lump sum of $12,000; and

(iii) Acceleration of vesting as to an additional six (6) months of shares subject to all equity awards which have been granted to you. You shall have six (6) months following your separation from service from the Company in which to exercise all vested options that have been granted to you.

6. **Section 409A Matters.**

   (a) For purposes of this Agreement, no payment will be made to Employee upon termination of Employee’s employment unless such termination constitutes a “separation from service” within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and Section 1.409A-1(h) of the regulations promulgated thereunder.

   (b) To the extent any payments to which Employee becomes entitled under this agreement, or any agreement or plan referenced herein, in connection with Employee’s separation from service from the Company constitute deferred compensation subject to Section 409A of the Code (the “Deferred Payments”), such payments will be paid on, or in the case of installments, will not commence, until the sixtieth (60th) day following Employee’s separation from service, or if later, such time as required by Section 6(c). Except as required by 6(c), any installment payments that would have been made to Employee during the sixty (60) day period immediately following Employee’s separation from service but for the preceding sentence will be paid to Employee on the sixtieth (60th) day following Employee’s separation from service and the remaining payments will be made as provided herein.

   (c) If Employee is deemed at the time of such separation from service to be a “specified” employee under Section 409A of the Code, then any Deferred Payment(s) shall not be made or commence until the earliest of (i) the expiration of the six (6)-month period measured from the date of Employee’s “separation from service” (as such term is at the time defined in Treasury Regulations under Section 409A of the Code with the Company or (ii) the date of Employee’s death following such separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to Employee, including (without limitation) the additional twenty percent (20%) tax for which Employee would otherwise be liable under Section 409A(a)(1)(B) of the Code in the absence of such deferral. Upon the expiration of the applicable deferral period, any payments which would have otherwise been made during that period (whether in a single sum or in installments) in the absence of this paragraph shall be paid to Employee or Employee’s beneficiary in one lump sum.

   (d) To the extent any payments to which Employee becomes entitled under this agreement, or any agreement or plan referenced herein, in connection with Employee’s separation from service from the Company constitute deferred compensation subject to Section 409A of the Code, the Employee and the Company may make changes to this Agreement to avoid adverse tax consequences under Section 409A. Each payment and benefit payable hereunder is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

7. **Definitions.**

   (a) **Cause.** For purposes of this Agreement, “Cause” means (i) Employee’s conviction of or plea of nolo contendere to a felony or a crime involving moral turpitude which the Board believes has had or will have a detrimental effect on the Company’s reputation or business, (ii) Employee engaging in an act of gross negligence or willful misconduct in the performance of his employment obligations and duties, (iii) Employee’s committing an act of fraud against, material misconduct or willful misappropriation of property belonging to the Company; (iv) Employee engaging in any other misconduct that has had or will have an adverse effect on the Company’s reputation or business; or (v) Employee’s breach of the Employee Invention Assignment and Confidentiality Agreement or other unauthorized misuse of the Company’s trade secrets or proprietary information.

   (b) **Change in Control.** For purposes of this Agreement “Change in Control” means (i) a sale, conveyance, exchange or transfer (excluding any venture-backed or similar investments in the Company) in which any person or entity, other than persons or entities who as of immediately prior to such sale, conveyance, exchange or transfer owns securities in the Company, either directly or indirectly, becomes the beneficial owner, directly or indirectly, of securities of the Company representing fifty (50%) percent of the total voting power of all its then-outstanding voting securities; (ii) a merger or consolidation of the Company in which its voting securities immediately prior to the merger or consolidation do not represent, or are not converted into securities that represent, a majority of the voting power of all voting securities of the surviving entity immediately after the merger or consolidation; or (iii) a sale of substantially all of the assets of the Company or a liquidation or dissolution of the Company.

   (c) **Good Reason.** For purposes of this Agreement, “Good Reason” means any of the following taken without the Employee’s written consent and provided (a) the Company receives, within thirty (30) days following the occurrence of any of the events set forth in clauses (i) through (iv) below, written notice from the Employee specifying the specific basis for Employee’s belief that Employee is entitled to terminate employment for Good Reason, (b) the Company fails to cure the event constituting Good Reason within thirty (30) days after receipt of such written notice thereof, and (c) the Employee terminates employment within thirty (30) days following expiration of such cure period: (i) a material change, adverse to Employee, in Employee’s position, titles, offices or duties; (ii) an assignment of any significant duties to Employee that are inconsistent with Employee’s positions or offices held under this Agreement; (iii) a decrease in Employee’s then-current annual base salary by more than 10% (other than in connection with a general decrease in the salary of all executives); or (iv) the relocation of the Employee to a facility or a location more than thirty (30) miles from Employee’s then-current residence.
8. **Arbitration.**

(a) **Arbitration.** In consideration of your employment with the Company, its promise to arbitrate all employment-related disputes, and your receipt of the compensation, pay raises, and other benefits paid to you by the Company, at present and in the future, you agree that any and all controversies, claims, or disputes with anyone (including the Company and any employee, officer, director, shareholder, or benefit plan of the Company, in their capacity as such or otherwise), arising out of, relating to, or resulting from your employment with the Company or the termination of your employment with the Company, including any breach of this Agreement, shall be subject to binding arbitration under the arbitration provisions set forth in California Code of Civil Procedure sections 1280 through 1294.2, including section 1281.8 (the “Act”), and pursuant to California law, and shall be brought in your individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. The Federal Arbitration Act shall continue to apply with full force and effect notwithstanding the application of procedural rules set forth in the Act. Disputes that you agree to arbitrate, and thereby agree to waive any right to a trial by jury, include any statutory claims under local, state, or federal law, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Sarbanes-Oxley Act, the Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the California Labor Code, claims of harassment, discrimination, and wrongful termination, and any statutory or common law claims. Notwithstanding the foregoing, you understand that nothing in this Agreement constitutes a waiver of your rights under section 7 of the National Labor Relations Act. You further understand that this Agreement to arbitrate also applies to any disputes that the Company may have with you.

(b) **Procedure.** You agree that any arbitration will be administered by Judicial Arbitration & Mediation Services, Inc. (“JAMS”), pursuant to its employment arbitration rules & procedures (the “JAMS rules”), which are available at http://www.jamsadr.com/rules-employment-arbitration/ and from Human Resources. You agree that the arbitrator shall issue a written decision on the merits. You also agree that the arbitrator shall have the power to award any remedies available under applicable law. You agree that the decree or award rendered by the arbitrator may be entered as a final and binding judgment in any court having jurisdiction thereof. You understand that the Company will pay for any administrative or hearing fees charged by the arbitrator or JAMS except that you shall pay any filing fees associated with any arbitration that you initiate, but only so much of the filing fees as you would have instead paid had you filed a complaint in a court of law. You agree that the arbitrator shall administer and conduct any arbitration in accordance with California law, including the California Code of Civil Procedure and the California Evidence Code, and that the arbitrator shall apply substantive and procedural California law to any dispute or claim, without reference to rules of conflict of law. To the extent that the JAMS rules conflict with California law, California law shall take precedence. You agree that any arbitration hearing under this Agreement shall be conducted in San Francisco County, California.

(c) **Remedy.** Except as provided by the Act and this Agreement, arbitration shall be the sole, exclusive, and final remedy for any dispute between you and the Company. Accordingly, except as provided for by the Act and this Agreement, neither you nor the Company will be permitted to pursue court action regarding claims that are subject to arbitration.

(d) **Administrative relief.** This Agreement does not prohibit you from pursuing an administrative claim with a local, state, or federal administrative body or government agency that is authorized to enforce or administer laws related to employment, including, but not limited to, the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, the National Labor Relations Board, or the Workers’ Compensation Board. This Agreement does, however, preclude you from pursuing court action regarding any such claim, except as permitted by law.

(e) **Voluntary nature of Agreement.** You acknowledge and agree that you are executing this Agreement voluntarily and without any duress or undue influence by the Company or anyone else. You further acknowledge and agree that you have carefully read this Agreement and that you have asked any questions needed for you to understand the terms, consequences, and binding effect of this Agreement and fully understand it, including that you are waiving your right to a jury trial. Finally, you agree that you have been provided an opportunity to seek the advice of an attorney of your choice before signing this Agreement.

9. **Acceptance.** To accept the letter, please sign in the space indicated and fax it to Human Resources at (415) 738-5456. Your signature will acknowledge that you have read and understood and agreed to the terms and conditions of this offer letter.

Please feel free to contact me if you have any questions at (415) 848-8601.

Best,

/s/ Godfrey Sullivan

Godfrey Sullivan
President & CEO
Splunk, Inc.

I have read and understood this offer letter and hereby acknowledge, accept and agree to the terms as set forth above and further acknowledge that no other commitments were made to me as part of my employment offer except as specifically set forth herein.

/s/ Erik Swan January 11, 2012

Erik Swan  Date
January 9, 2012

Thomas E. Schodorf

Re: Revised Employment Letter with Change in Control Protection

Dear Tom:

This letter agreement (the “Agreement”) is entered into between Splunk, Inc. (“Company” or “we”) and Thomas E. Schodorf (“Employee” or “you”). This Agreement is effective as of January 9, 2012 (“Effective Date”). The purpose of this letter is to confirm the current terms and conditions of your employment and to specify your treatment upon certain terminations of employment.

1. **Your Position; Annual Salary; and Variable Compensation.** Your current role is Senior Vice President, Field Operations, and you will continue to report to Godfrey Sullivan, CEO and President. Your base salary as of the Effective Date will be $240,000 per year and you will be paid semi-monthly at a rate of $10,000, less applicable withholdings. Effective February 1, 2012, your base salary will be $275,000 per year and you will be paid semi-monthly at a rate of $11,458.33, less applicable withholdings. In addition, you will be eligible to earn an annual bonus of 101% of your base salary at target (which will be 100% of your base salary at target as of February 1, 2012), based on achieving a combination of individual goals and Company financial goal(s). As of the Effective Date, your annual on target earnings, based on your current annual salary and variable compensation will be $482,400, less applicable withholdings. As of February 1, 2012, your annual on target earnings, based on your annual salary and variable compensation as of February 1, 2012, will be $550,000, less applicable withholdings. Currently, a pro-rated bonus payment is made approximately 45 days after the end of each fiscal quarter and actual achievement against the plan is calculated at year end and any remaining bonus earned is paid 45 days after the completion of the fiscal year.

2. **Benefits.** You will continue to be eligible to participate in regular healthcare, retirement and other employee benefit plans established for our employees. The Company covers 75% of benefit expenses on your behalf. You pay the remaining 25% through a payroll deduction. You will be eligible for healthcare benefits the first day of the month following your start date including retirement benefits. You will also be entitled to 15 days of Personal Time-Off (PTO) per year of employment accrued on a monthly basis.

3. **Confidentiality.** As an employee of the Company, you will continue to have access to certain confidential information of the Company and you may, during the course of your employment, develop certain information or inventions that will be the property of the Company. To protect the interests of the Company, your acceptance of this letter confirms that the terms of the Company’s “Employee Invention Assignment and Confidentiality Agreement” that you signed on October 5, 2009, continue to be in effect and that during the period that you render services to the Company, you agree to not engage in any employment, business or activity that is in any way competitive with the business or proposed business of the Company. You will disclose to the Company in writing any other gainful employment, business or activity that you are currently associated with or participate in that competes with the Company. You will not assist any other person or organization in competing with the Company or in preparing to engage in competition with the business or proposed business of the Company.

4. **At-Will Employment.** You acknowledge and agree that you continue to be an at-will employee of the Company, which means the employment relationship can be terminated by either of us for any reason, at any time, with or without prior notice and with or without cause. Your participation in any stock option or benefit program is not to be regarded as assuring you of continuing employment for any particular period of time. Any modification or change in your at-will employment status may only occur by way of a written employment agreement signed by you and the Chief Executive Officer of the Company.

5. **Severance.**

   (a) **Separation in Event of Termination Within the 3-Month Period Before or 12-Month Period Following Change in Control.** In the event of your involuntary separation from service from the Company without Cause or for Good Reason, in each case within the period that begins after the signing of a definitive agreement that ultimately results in a Change in Control within three (3) months of its signing or within twelve (12) months following a Change in Control (“Change in Control Period”), and provided that you deliver to the Company a signed release of claims in favor of the Company (“Release”), and satisfy all conditions to make the Release effective within sixty (60) days following your separation from service, then, in addition to any accrued compensation, you shall be entitled to benefits as set forth below:

      (i) Lump sum payment equal to twelve (12) months of your then-current base salary, plus a pro-rated portion of your annual target bonus for the year of termination;

      (ii) Provided you timely elect to continue health coverage under COBRA, reimbursement for any monthly COBRA premium payments made by you in the twelve (12) months following your separation from service. If at the time you separate from service, it would result in a Company excise tax to reimburse you for COBRA premiums than no such premiums will be reimbursed and if doing so would not cause imposition of an excise tax you will be paid a single lump sum of $24,000; and

      (iii) Acceleration of vesting as to all then-unvested shares subject to all equity awards which have been granted to you. You shall have six (6) months following your separation from service from the Company in which to exercise all options that have been granted to you.

   (b) **Severance in Event of Termination Without Cause.** In the event of your involuntary separation from service with the Company without Cause not during the Change in Control Period, and provided that you deliver to the Company a signed Release and satisfy all conditions to make the Release effective within sixty (60) days following your separation from service, then, in addition to any accrued compensation, you shall be entitled to benefits as set forth below:
(i) Lump sum payment equal to six (6) months of your then-current base salary, plus a pro-rated portion of your annual target bonus for the year of termination;

(ii) Provided you timely elect to continue health coverage under COBRA, reimbursement for any monthly COBRA premium payments made by you in the six (6) months following your separation from service. If at the time you separate from service, it would result in a Company excise tax to reimburse you for COBRA premiums than no such premiums will be reimbursed and if doing so would not cause imposition of an excise tax you will be paid a single lump sum of $12,000; and

(iii) Acceleration of vesting as to an additional six (6) months of shares subject to all equity awards which have been granted to you. You shall have six (6) months following your separation from service from the Company in which to exercise all vested options that have been granted to you.


(a) For purposes of this Agreement, no payment will be made to Employee upon termination of Employee’s employment unless such termination constitutes a “separation from service” within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and Section 1.409A-1(h) of the regulations promulgated thereunder.

(b) To the extent any payments to which Employee becomes entitled under this agreement, or any agreement or plan referenced herein, in connection with Employee’s separation from service from the Company constitute deferred compensation subject to Section 409A of the Code (the “Deferred Payments”), such payments will be paid on, or in the case of installments, will not commence, until the sixtieth (60th) day following Employee’s separation from service, or if later, such time as required by Section 6(c). Except as required by 6(c), any installment payments that would have been made to Employee during the sixty (60) day period immediately following Employee’s separation from service but for the preceding sentence will be paid to Employee on the sixtieth (60th) day following Employee’s separation from service and the remaining payments will be made as provided herein.

(c) If Employee is deemed at the time of such separation from service to be a “specified” employee under Section 409A of the Code, then any Deferred Payment(s) shall not be made or commence until the earliest of (i) the expiration of the six (6)-month period measured from the date of Employee’s “separation from service” (as such term is at the time defined in Treasury Regulations under Section 409A of the Code with the Company or (ii) the date of Employee’s death following such separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to Employee, including (without limitation) the additional twenty percent (20%) tax for which Employee would otherwise be liable under Section 409A(a)(1)(B) of the Code in the absence of such deferral. Upon the expiration of the applicable deferral period, any payments which would have otherwise been made during that period (whether in a single sum or in installments) in the absence of this paragraph shall be paid to Employee or Employee’s beneficiary in one lump sum.

(d) To the extent any payments to which Employee becomes entitled under this agreement, or any agreement or plan referenced herein, in connection with Employee’s separation from service from the Company constitute deferred compensation subject to Section 409A of the Code, the Employee and the Company may make changes to this Agreement to avoid adverse tax consequences under Section 409A. Each payment and benefit payable hereunder is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

7. Definitions.

(a) Cause. For purposes of this Agreement, “Cause” means (i) Employee’s conviction of or plea of nolo contendere to a felony or a crime involving moral turpitude which the Board believes has had or will have a detrimental effect on the Company’s reputation or business, (ii) Employee engaging in an act of gross negligence or willful misconduct in the performance of his employment obligations and duties, (iii) Employee’s committing an act of fraud against, material misconduct or willful misappropriation of property belonging to the Company; (iv) Employee engaging in any other misconduct that has had or will have an adverse effect on the Company’s reputation or business; or (v) Employee’s breach of the Employee Invention Assignment and Confidentiality Agreement or other unauthorized misuse of the Company’s trade secrets or proprietary information.

(b) Change in Control. For purposes of this Agreement “Change in Control” means (i) a sale, conveyance, exchange or transfer (excluding any venture-backed or similar investments in the Company) in which any person or entity, other than persons or entities who as of immediately prior to such sale, conveyance, exchange or transfer own securities in the Company, either directly or indirectly, becomes the beneficial owner, directly or indirectly, of securities of the Company representing fifty (50%) percent of the total voting power of all its then-outstanding voting securities; (ii) a merger or consolidation of the Company in which its voting securities immediately prior to the merger or consolidation do not represent, or are not converted into securities that represent, a majority of the voting power of all voting securities of the surviving entity immediately after the merger or consolidation; or (iii) a sale of substantially all of the assets of the Company or a liquidation or dissolution of the Company.

(c) Good Reason. For purposes of this Agreement, “Good Reason” means any of the following taken without the Employee’s written consent and provided (a) the Company receives, within thirty (30) days following the occurrence of any of the events set forth in clauses (i) through (iv) below, written notice from the Employee specifying the basic reason for Employee’s belief that Employee is entitled to terminate employment for Good Reason, (b) the Company fails to cure the event constituting Good Reason within thirty (30) days after receipt of such written notice thereof, and (c) the Employee terminates employment within thirty (30) days following expiration of such cure period: (i) a material change, adverse to Employee, in Employee’s position, titles, offices or duties; (ii) an assignment of any significant duties to Employee that are inconsistent with Employee’s positions or offices held under this Agreement; (iii) a decrease in Employee’s then-current annual base salary by more than 10% (other than in connection with a general decrease in the salary of all executives); or (iv) the relocation of the Employee to a facility or a location more than thirty (30) miles from Employee’s then-current residence.

8. Arbitration.
Arbitration. In consideration of your employment with the Company, its promise to arbitrate all employment-related disputes, and your receipt of the compensation, pay raises, and other benefits paid to you by the Company, at present and in the future, you agree that any and all controversies, claims, or disputes with anyone (including the Company and any employee, officer, director, shareholder, or benefit plan of the Company, in their capacity as such or otherwise), arising out of, relating to, or resulting from your employment with the Company or the termination of your employment with the Company, including any breach of this Agreement, shall be subject to binding arbitration under the arbitration provisions set forth in California Code of Civil Procedure sections 1280 through 1294.2, including section 1281.8 (the “Act”), and pursuant to California law, and shall be brought in your individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. The Federal Arbitration Act shall continue to apply with full force and effect notwithstanding the application of procedural rules set forth in the Act. Disputes that you agree to arbitrate, and thereby agree to waive any right to a trial by jury, include any statutory claims under local, state, or federal law, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Sarbanes-Oxley Act, the Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the California Labor Code, claims of harassment, discrimination, and wrongful termination, and any statutory or common law claims. Notwithstanding the foregoing, you understand that nothing in this Agreement constitutes a waiver of your rights under section 7 of the National Labor Relations Act. You further understand that this Agreement to arbitrate also applies to any disputes that the Company may have with you.

(b) Procedure. You agree that any arbitration will be administered by Judicial Arbitration & Mediation Services, Inc. (“JAMS”), pursuant to its employment arbitration rules & procedures (the “JAMS rules”), which are available at http://www.jamsadr.com/rules-employment-arbitration/ and from Human Resources. You agree that the arbitrator shall issue a written decision on the merits. You also agree that the arbitrator shall have the power to award any remedies available under applicable law. You agree that the decree or award rendered by the arbitrator may be entered as a final and binding judgment in any court having jurisdiction thereof. You understand that the Company will pay for any administrative or hearing fees charged by the arbitrator or JAMS except that you shall pay any filing fees associated with any arbitration that you initiate, but only so much of the filing fees as you would have instead paid had you filed a complaint in a court of law. You agree that the arbitrator shall administer and conduct any arbitration in accordance with California law, including the California Code of Civil Procedure and the California Evidence Code, and that the arbitrator shall apply substantive and procedural California law to any dispute or claim, without reference to rules of conflict of law. To the extent that the JAMS rules conflict with California law, California law shall take precedence. You agree that any arbitration hearing under this Agreement shall be conducted in San Francisco County, California.

(c) Remedy. Except as provided by the Act and this Agreement, arbitration shall be the sole, exclusive, and final remedy for any dispute between you and the Company. Accordingly, except as provided for by the Act and this Agreement, neither you nor the Company will be permitted to pursue court action regarding claims that are subject to arbitration.

(d) Administrative relief. This Agreement does not prohibit you from pursuing an administrative claim with a local, state, or federal administrative body or government agency that is authorized to enforce or administer laws related to employment, including, but not limited to, the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, the National Labor Relations Board, or the Workers’ Compensation Board. This Agreement does, however, preclude you from pursuing court action regarding any such claim, except as permitted by law.

(e) Voluntary nature of Agreement. You acknowledge and agree that you are executing this Agreement voluntarily and without any duress or undue influence by the Company or anyone else. You further acknowledge and agree that you have carefully read this Agreement and that you have asked any questions needed for you to understand the terms, consequences, and binding effect of this Agreement and fully understand it, including that you are waiving your right to a jury trial. Finally, you agree that you have been provided an opportunity to seek the advice of an attorney of your choice before signing this Agreement.

9. Acceptance. To accept the letter, please sign in the space indicated and fax it to Human Resources at (415) 738-5456. Your signature will acknowledge that you have read and understood and agreed to the terms and conditions of this offer letter.

Please feel free to contact me if you have any questions at (415) 848-8601.

Best,

/s/ Godfrey Sullivan

Godfrey Sullivan
President & CEO
Splunk, Inc.

I have read and understood this offer letter and hereby acknowledge, accept and agree to the terms as set forth above and further acknowledge that no other commitments were made to me as part of my employment offer except as specifically set forth herein.

/s/ Thomas E. Schdorf

Thomas E. Schodorf

January 9, 2012

Date
28 August 2009
Raman Kapur

Dear Raman:

We are thrilled to invite you to join us and extend to you an offer of employment with Splunk Inc. (the “Company”). You will be reporting to Phil Oreste in the role of Corporate Controller. This offer is contingent upon the completion of a satisfactory background check. The terms of our offer and the benefits currently provided by Splunk are as follows:

1. Starting Salary. Your starting base salary will be $165,000 per year and you will be paid semi-monthly at a rate of $6,875.00. In addition, you will be eligible to earn an annual variable compensation of $16,500 based on achieving a combination of individual goals and a company sales bookings goal. Your first-year on target earnings will be $181,500. Bonus payments are payable 45 days after the end of each quarter.

2. Start Date. Your start date will be Monday August 31, 2009.

3. Benefits. You will be eligible to participate in regular healthcare, retirement and other employee benefit plans established for our employees. The Company covers 75% of the medical benefit expenses on your behalf. You will be required to pay the remaining 25% through a payroll deduction. The Company covers all standard dental, vision and life insurance benefit costs. You will be eligible for healthcare benefits the first day of the month following your start date including retirement benefits. You will also be entitled to 15 days of Personal Time Off (PTO) per year of employment accrued on a monthly basis.

4. Stock Options. We will recommend to the Board of Directors of the Company that you be granted the opportunity to purchase up to 75,000 shares of Common Stock of the Company under our equity incentive plan (the “Plan”) at the fair market value of the Company’s Common Stock, as determined by the Board of Directors on the date the Board approves your stock option grant. The shares you will be given the opportunity to purchase will vest over a four (1) year period beginning on the date you start your employment with the company with 25% of the shares vesting on the one (1) year anniversary of your start date and the remainder to vest monthly over the remaining 36 months, so long as you remain employed by the Company.

5. Confidentiality. As an employee of the Company, you will have access to certain confidential Information of the Company and you may, during the course of your employment, develop certain information or inventions that will be the property of the Company. To protect the interests of the Company, you will need to sign the Company’s standard “Employee Invention Assignment and Confidentiality Agreement” as a condition of your employment. We wish to impress upon you that we do not want you to, and we hereby direct you not to, bring with you any confidential or proprietary material of any former employer or to violate any other obligations you may have to any former employer. During the period that you render services to the Company, you agree to not engage in any employment, business or activity that is in any way competitive with the business or proposed business of the Company. You will disclose to the Company in writing any other gainful employment, business or activity that you are currently associated with or participate in that competes with the Company. You will not assist any other person or organization in preparing to engage in competition with the business or proposed business of the Company. You represent that your signing of this offer letter, agreement(s) concerning stock options granted to you, if any, under the Plan (as defined below) and the Company’s Employee Invention Assignment and Confidentiality Agreement and your commencement of employment with the Company will not violate any agreement currently in place between yourself and current or past employers.

6. At-Will Employment. Although during your entire employment you will be an at-will employee of the Company, which means the employment relationship can be terminated by either of us for any reason, at any time, with or without prior notice and with our without cause — the first 90 days are considered your probationary period. Your participation in any stock option or benefit program Is not to be regarded as assuring you of continuing employment for any particular period of time. Any modification or change in your at will employment status may only occur by way of a written employment agreement signed by you and the Chief Executive Officer of the Company.

7. Authorization to Work. Please note that because of employer regulations adopted in the immigration Reform and Control Act of 1986, within three (3) business days of starting your new position you will need to present documentation demonstrating that you have authorization to work in the United States.

8. Arbitration. You and the Company shall submit to mandatory and exclusive binding arbitration of any controversy or claim arising out of, or relating to, this Agreement or any breach hereof, provided, however, that the parties retain their right to, and shall not be prohibited, limited or in any other way restricted from, seeking or obtaining equitable relief from a court having jurisdiction over the parties. Such arbitration shall be governed by the Federal Arbitration Act and conducted through the American Arbitration Association in the State of California, Santa Clara County, before a single neutral arbitrator, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association in effect at that time. The parties may conduct only essential discovery prior to the hearing, as defined by the MA arbitrator. The arbitrator shall issue a written decision that contains the essential findings and conclusions on which the decision is based. You shall bear only those costs of arbitration you would otherwise bear had you brought a claim covered by this Agreement in court. Judgment upon the determination or award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

9. Acceptance. To accept the offer, please sign in the space indicated and fax it to Human Resources at 415.738.5456. Your signature will acknowledge that you have read and understood and agreed to the terms and conditions of this offer letter.

Please feel free to contact me if you have any questions at (415) 848-8503.

Best,

Phil Oreste
Vice President, Finance and Operations

I have read and understood this offer letter and hereby acknowledge, accept and agree to the terms as set forth above and further acknowledge that no other commitments were made to me as part of my employment offer except as specifically set forth herein.
Office of the Accountant
Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549

Re: Splunk Inc.

Dear Sirs:

We have received a copy of the proposed disclosure in response to Item 11(i) as it is expected to appear in Form S-1 of Splunk Inc. (the “Form S-1”) and have attached it as an appendix to this letter. We are in agreement with such proposed disclosure and confirm that there were no disagreements with the management of Splunk on any matter which, if not resolved to our satisfaction, would have caused us to make reference in our report to the matter.

We hereby consent to the filing of this letter as an exhibit to the Form S-1.

Sincerely,

/s/ ARMANINO McKENNA, LLP
ARMANINO McKENNA, LLP
San Jose, California

APPENDIX

Changes in Accountants

Armanino McKenna LLP audited our financial statements for the year ended December 31, 2005 through the year ended December 31, 2009. Armanino McKenna’s reports for each of these periods did not contain an adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principles.

In July 2010, our audit committee determined not to renew Armanino McKenna’s engagement as our independent accountant. In July 2010, our board of directors approved the appointment of PricewaterhouseCoopers LLP as our independent accountant commencing with work to be performed in relation to our audit for fiscal 2011. In addition, our audit committee engaged PricewaterhouseCoopers to audit our fiscal 2009 and fiscal 2010 financial statements.

During the period in which Armanino McKenna served as our independent accountant, there were no disagreements between Armanino McKenna and us on any matter of accounting principles or practices, financial statements disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of Armanino McKenna, would have caused Armanino McKenna to make reference to such disagreements in the firm’s reports on our financial statements for such periods. In addition, no reportable events, as defined in Item 304 (a)(1)(v) of Regulation S-K, occurred during our two most recent fiscal years.

We have provided Armanino McKenna with a copy of the foregoing disclosure and have requested that Armanino McKenna furnish us with a letter addressed to the SEC stating whether or not Armanino McKenna agrees with the above statements and, if not, stating the respects in which it does not agree. A copy of the letter from Armanino McKenna, in which Armanino McKenna agrees with the above statements, is filed as an exhibit to the registration statement of which this prospectus is a part.
<table>
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<th>Name</th>
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<td>Splunk Services Cayman Ltd.</td>
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<td>Singapore</td>
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<td>Splunk Services UK Limited</td>
<td>United Kingdom</td>
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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of Splunk Inc. of our report dated January 12, 2012 relating to the consolidated financial statements of Splunk Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
San Jose, California
January 12, 2012
CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM
January 12, 2012

VIA EDGAR
Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549

Re: Splunk Inc.
Registration Statement on Form S-1

Ladies and Gentlemen:

On behalf of Splunk Inc. (the "Company"), we are transmitting for filing a registration statement on Form S-1 pursuant to the Securities Act of 1933, as amended.

In connection with the filing of the registration statement, the Company has paid a filing fee of $14,325.00 by wire transfer to the Securities and Exchange Commission.

Please feel free to contact the undersigned at (650) 565-3969 with any questions or comments.

Very truly yours,

/s/ JON C. AVINA

Jon C. Avina